



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ELECTRONIC MAIL & ONLINE SUBMISSION

May 12, 2021

Daryl Kramp
Chair of the Committee
Standing Committee on Justice Policy
Legislative Assembly of Ontario
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Chair Kramp:

RE: Written Submission to the Standing Committee on Justice Policy of the Legislative Assembly of Ontario: Bill 251, the *Combating Human Trafficking Act, 2021*

Bill 251, the *Combating Human Trafficking Act, 2021* (the Bill) proposes to address human trafficking by enacting, amending and repealing various statutes.

The Information and Privacy Commissioner of Ontario (the IPC) recognizes the importance of the Bill and its aim to combat human trafficking. We also recognize that, in order to successfully meet its important aim, the Bill must be grounded in a framework that supports privacy, transparency and accountability.

As currently drafted, the privacy implications of the Bill are significant, including those associated with increased law enforcement and inspection-related powers. We see several opportunities to improve the privacy, transparency and accountability aspects of the Bill, as detailed in this submission. We believe these recommended amendments will enhance the Bill's capacity to effectively combat human trafficking, including by enhancing public confidence in the Bill's measures while upholding Ontarians' privacy and human rights.

In this submission to the Standing Committee on Justice Policy we present our recommendations in four categories:

1. Amendment to the *Combating Human Trafficking Act, 2021* to require a five-year review of the legislation and its regulations.
2. Amendments to Schedule 1, the *Accommodation Sector Registration of Guests Act, 2021* (ASRGA).
3. Amendments to Schedule 2, the *Anti-Human Trafficking Strategy Act, 2021* (AHTSA).



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4. Amendment to both the *ASRGA* and *AHTSA* to require the government to consult with the IPC when developing any regulations under these Acts that relate to personal information.

Recommendations:

1. Amendment to the *Combating Human Trafficking Act, 2021*

Absent from the Bill is a requirement for the Legislature or the government to review the legislation. While the *AHTSA* requires that the government maintain a strategy to end human trafficking and review that strategy every five years, there is no provision in the Bill requiring the review of the legislation itself, including the *ASRGA*, the *AHTSA*, and their regulations.

The privacy and human rights implications of the Bill are significant, including those associated with warrantless police demand power, duties to report suspicious behavior, and the history of over-policing and under-policing with respect to sex workers and other marginalized communities. In our view, a legislative review will help ensure that the proposals are not only necessary and proportionate, but also effective in reducing and ultimately eliminating the exploitative practices associated with human trafficking. Accordingly, we strongly encourage that the Bill be amended to include a requirement for regular reviews, every five years, of the *ASRGA*, the *AHTSA* and their regulations. Section 336 of the *Children, Youth and Family Services Act* provides a model for such a provision.

2. Amendments to the *Accommodation Sector Registration of Guests Act, 2021*

The Bill proposes to repeal the *Hotel Registration of Guests Act* and replace it with the *ASRGA*. The *ASRGA* will continue the requirement that hotels and motels keep a guest registry that includes the names and residences of guests, and additionally will:

- a) Extend the requirement to keep such registers to other prescribed classes of short term accommodation providers;
- b) Require that additional prescribed information about guests be collected and maintained in the register;
- c) Require that information in a guest registry be retained for prescribed periods; and
- d) Augment existing police powers by enacting a statutory power allowing police to demand access to information in a guest registry without prior judicial authorization in exigent circumstances. Police would be permitted to make such demands to accommodation providers, in writing, if there are reasonable grounds to believe that:
 - Information in the register will assist in locating or identifying a person who is currently a victim of trafficking or is at imminent risk of being trafficked; and

- The victim will suffer bodily harm, or the information in the register will be destroyed, within the time needed to obtain an order.

On the assumption that the increased collection of, and police access to, information about guests can be justified to achieve the important aims of the Bill, it is our view that critical legislative controls must be put in place to protect Ontarians' privacy rights in what the Supreme Court of Canada has described as our "homes away from home" (see [R. v. Wong 1990, CanLII 56 \(SCC\)](#); also see [Los Angeles v. Patel, 576 U.S. 409 \(2015\)](#)).

Consistent with the reasoning of the Supreme Court of Canada in [R. v. Tse, 2012 SCC 16](#) and [Wakeling v. United States of America, 2014 SCC 72](#), the IPC recommends that the ASRGA be amended to provide for the following privacy, transparency and accountability related safeguards in connection with the police demand power provisions:

- post-demand notice to individuals whose information was obtained by the police;
- internal police recordkeeping and reporting requirements; and
- annual public reporting requirements.

The IPC believes that such requirements are necessary to help ensure that police services, police service boards, elected officials and members of the public will be better informed about the use of this warrantless power. The requirements can be designed so as not to interfere with timely and effective policing, while also ensuring that decision makers may be held accountable for the manner in which they operationalize such an exceptional grant of power.

In our view, such accountability mechanisms are necessary not only to deter and identify inappropriate intrusions on privacy, but also to ensure that police powers are used effectively to achieve vital public safety goals and that the public maintains confidence in those powers. A properly configured notice, recordkeeping, and reporting regime will also help ensure that the proposed power is used to protect rather than disadvantage vulnerable members of the community, including individuals working in the sex trade.

In addition, we recommend that the ASRGA be amended such that the legislation itself – rather than the regulations – addresses what information accommodation providers will be required to collect, and how long they will be required to retain that information. In this context, we recommend that the ASRGA set out an exhaustive list of the classes of identifying information that may be collected in guest registries. Further, in keeping with universally-accepted data minimization requirements, we recommend that the ASRGA prohibit:

- The collection, retention, use and disclosure of personal information in circumstances where other information will serve the purpose of the collection, retention, use or disclosure; and

- The collection, retention, use or disclosure of more personal information than is reasonably necessary to meet the purpose of the collection, retention, use or disclosure, as the case may be.

Finally, we recommend that the *ASRGA* include clear standards requiring that accommodation providers:

- Provide a notice of collection to their guests before they make a reservation (e.g., in writing online or orally over the phone) and in writing at check-in; and
- Take reasonable steps to protect the information in their guest registries from privacy breaches, and securely dispose of the information at the end of the applicable retention period.

Providing for these kinds of explicit rules and standards in the *ASRGA* would make it easier for all participants in the accommodation sector, including new ones entering the sharing economy, to understand and comply with privacy requirements.

3. Amendments to *the Anti-Human Trafficking Strategy Act, 2021*

The IPC is supportive of the government's goal of developing a robust, rights-protective, transparent, and survivor-centered anti-human trafficking strategy. At the same time, we are concerned that the *AHTSA* will delegate overly-broad regulation-making authority to Cabinet and the Minister of Children, Community and Social Services (the Minister) on matters that have significant privacy implications. For example, the *AHTSA* explicitly permits Cabinet to impose duties on yet-to-be specified persons and entities that will require them to report "instances of suspected human trafficking" and to disclose personal information for that purpose to unspecified recipients.

We are concerned that such a "duty to report" requirement, particularly when triggered by a subjective threshold and backed by financial penalties for non-compliance, will result in over-reporting of lawful activities. As demonstrated by the Privacy Commissioner of Canada's [2017 Final Report](#) on transaction reporting duties imposed on various financial entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, comparable mandatory reporting requirements have resulted in "many thousands of reports containing information that should not have been reported to [the Financial Transactions and Reports Analysis Centre of Canada]", with attendant risks to personal privacy.

The IPC urges the *AHTSA* be amended so as to replace the duty to report instances of suspected human trafficking with a provision that permits accommodation providers, their employees and other prescribed individuals to disclose personal information to law enforcement officials, on the condition that the provider, employee or individual has reasonable grounds to believe that the information relates to a human trafficking-related contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed.

Additionally, we note that the Minister will be permitted to appoint inspectors who may conduct warrantless inspections “for the purposes of this Act.” While inspectors may not enter a place or a part of a place that is a dwelling without the consent of the occupant, the *AHTSA* does not define the term “dwelling.” For greater clarity, we recommend that the Bill be amended to clearly state that an accommodation that includes sleeping quarters in a hotel, motel or other applicable short term rental service is a dwelling and will not be subject to inspection without a warrant or the consent of the occupant.

We are also concerned that the Minister will be permitted to publish information respecting a person or entity’s compliance with the *AHTSA* regulations, including personal information about convictions and penalties imposed on conviction. We recommend that this power to publish personal information be limited to:

- Information about convictions and penalties imposed on conviction where the publication of such information would be in the public interest; and
- Information the publication of which is required to advance an ongoing investigation or to reduce or eliminate a significant risk of serious bodily harm.

Finally, the IPC recommends that the *AHTSA* be amended so as to:

- Expressly *exclude* personal information from the scope of the regulation-making authority where its collection, retention, use, and disclosure is not necessary to the applicable statutory purpose, as has already been provided for in relation to clause 6(1)(f) of the *AHTSA*.
- Provide that, where its collection, retention, use and/or disclosure *is* necessary, any such regulation must not require the collection, retention, use or disclosure of more personal information than is reasonably necessary to meet the applicable statutory purpose (e.g., in relation to clause 6(e)).

4. Amendments to require consultation with the IPC regarding *ASRGA* and *AHTSA* regulations

As detailed above, the *ASRGA* and the *AHTSA* include broad regulation-making authority in areas of considerable privacy risk. We ask that the government commit to consulting with the IPC in the development of these regulations with a view to considering such privacy risks and mitigating them with appropriate, conditions and safeguards.

Specifically, we recommend that the *ASRGA* and *AHTSA* be amended to require that the government consult with the IPC when developing any regulations under these Acts that would permit, require or authorize the collection, retention, use or disclosure of personal information. [Section 4.2\(12\)](#) of the *Highway Traffic Act* provides a model for such a requirement.

Conclusion

We appreciate the opportunity to make this submission with regards to improving the privacy, transparency and accountability aspects of such an important Bill. The IPC is committed to working with the Committee and the government to implement the recommended amendments.

Summary of IPC recommendations:

1. Amend the *Combating Human Trafficking Act, 2021* to require the government or Legislature to conduct regular reviews of the legislation and its regulations every five years.
2. Amend Schedule 1, the *Accommodation Sector Registration of Guests Act, 2021 (ASRGA)*, to:
 - a. Require police to enact privacy, transparency and accountability safeguards in respect of police demand power provisions, including:
 - i. post-demand notice to individuals whose information was obtained by the police;
 - ii. internal police recordkeeping and reporting requirements; and
 - iii. annual public reporting requirements.
 - b. Specify by way of statutory provision the information that may be collected in guest registries, and require accommodation providers to:
 - i. give a notice of collection to guests;
 - ii. safeguard the information collected; and
 - iii. dispose of the information securely at the end of a retention period.
3. Amend Schedule 2, the *Anti-Human Trafficking Strategy Act, 2021 (AHTSA)*, to:
 - a. Clarify that an accommodation with sleeping quarters in a hotel, motel or short term rental service is a “dwelling” and will not be subject to inspection without a warrant or the consent of the occupant.
 - b. Replace the duty to report instances of suspected human trafficking with a provision clarifying that accommodation providers and other prescribed individuals may disclose personal information to law enforcement when they have reasonable grounds to believe that a human trafficking offence has been, is being, or is about to be committed.

- c. Exclude personal information from the scope of regulation-making authority wherever possible. Where personal information cannot be excluded, institute necessity and data minimization requirements.
 - d. Limit the proposed Minister's powers to publish personal information to instances where publication of such information would be in the public interest, or is required to advance an ongoing investigation, or reduce or eliminate a significant risk of serious bodily harm.
4. Amend the *ASRGA* and *AHTSA* to require the government to consult with the IPC when developing regulations under these Acts that relate to personal information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Kosseim', with a horizontal line underneath the name.

Patricia Kosseim
Commissioner