

*All-Party Parliamentary Group
to End Modern Slavery and
Human Trafficking*



*Groupe parlementaire
multipartite de lutte contre
l'esclavage moderne et la traite
des personnes*

Bill C-75 Brief to the Standing Committee on Legal and Constitutional Affairs

The All-Party Parliamentary Group to End Modern Slavery and Human Trafficking (“APPG”) was launched April 2018 and includes members from across all official parties in the House of Commons and Senate. The APPG has four co-chairs representing Liberal, Conservative, NDP parties, and the Independent Senators Group.

By working collaboratively across party lines this past year, we have been able to regularly engage Parliamentarians with the issue of human trafficking and build partnerships with community organizations and stakeholders across Canada. The activities of the APPG are supported by a partnership with the Allard School of Law’s International Justice and Human Rights Clinic at UBC.

Introduction

Bill C-75 proposes to amend specific “indictable offences” into hybrid offences, which includes the human trafficking offences in subsection 279.02(1) (material benefit — trafficking), subsection 279.03(1) (withholding or destroying documents — trafficking), and subsection 286.2(1) (material benefit from sexual services). Such amendments would provide prosecutorial discretion on how to proceed with such an offence, considering the seriousness of the offence and the circumstances surrounding such.

As well, Bill C-75 proposes to amend the human trafficking provision of Bill C-452, which received royal assent in 2015 but was not brought into force, which will eliminate the consecutive human trafficking sentence provisions of Bill C-452.

The APPG has reviewed the amendments proposed for C-75 and have serious concerns with the consequences such amendments will have on successfully addressing human trafficking in Canada.

Human Trafficking in Canada

Human trafficking is a horrific and brutal crime that is growing in Canada and around the world. Human trafficking involves the recruitment, transportation, harbouring and/ or exercising control, direction or influence over the movements of a person in order to exploit that person, typically through sexual exploitation or forced labour.¹ It is often described as a modern form of slavery.

¹ Government of Canada, “National Action Plan to Combat Human Trafficking”, 2012, ISBN: 978-1-100-20681-3, p.4

We know the vast majority of human victims in Canada are female and young. While those most at risk include indigenous women and youth, teenage runaways, and children who are in protection, we know anyone can become a victim of human trafficking.

Current statistics have identified that between 2005 and 2018, 531 human trafficking offences have been committed resulting in charges and prosecution. Of those cases 143 have resulted in successful conviction and 316 cases are currently before the courts.² Although this may seem like a substantial number, it is estimated that human trafficking is occurring at a significantly higher rate and current investigations into the issue are just beginning to “scratch the surface”.³

Under the National Action Plan to Combat Human Trafficking (“National Plan”), Canada has identified that human trafficking is a crime of low-risk and high financial pay-off, primarily because it is difficult to detect, which contributes to the low rate of actual prosecution of offences.⁴ It is estimated that a trafficker can financially profit anywhere from \$500.00 - \$1,000.00 a day from the trafficking of just one individual.⁵

The Hybridizing of S.279.02(1), 279.03 (1) and 286.2(1)

Currently, s.279.02(1), material benefit from trafficking, is an indictable offence where a person found guilty of the offence can receive a sentence of up to 10 years imprisonment. S. 279.03(1), withholding or destroying documents for the purpose of human trafficking, is also currently an indictable offence where a person found guilty of the offence can receive a sentence of up to 5 years imprisonment. Finally, s. 286.2(1), material benefit from sexual services, is currently an indictable offence and provides a sentence of up to 10 years imprisonment.

If the amendments proposed by Bill C-75 are accepted, anyone found guilty of the offences could end up with a fine for \$5,000.00 and face no jail time at all. The actual deterrence provided by a \$5000.00 fine is minimal compared to the \$300,000 profit a trafficker makes for only one victim per year. In such instances a fine of \$5000.00 would only be 1.6% of the potential profit that a trafficker makes from trafficking of an individual victim. In considering the extreme violence and human degradation that victims of human trafficking often endure, the punishment proposed for the offences clearly does not correlate to the nature of the crime.

Burden of Proof and Proceeds of Crime

Bill C-75 will also bring into force the previous Bill C-452 which was proposed by former NDP Member of Parliament Maria Mourani. This Bill contained three important tools to fight human trafficking: a reverse burden of proof in cases of human trafficking, the ability for Courts to seize proceeds of crime for human trafficking offences and consecutive serving of human trafficking offences

The APPG notes with regret the significant delay in the coming into force of Bill C-452. It was adopted by the House of Commons unanimously in 2013 and adopted by the Senate in 2015. The reverse burden of proof on traffickers and the ability to seize the proceeds of human trafficking are important tools for law enforcement and prosecutors to effectively diminish human

² Human Trafficking National Coordination Center, obtained from <http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>, on May 5th, 2019.

³ Royal Canadian Mounted Police, “Domestic Human Trafficking for Sexual Exploitation in Canada”, October, 2013, ISBN: 978-1-100-23177-8, p. 38.

⁴ Supra, note 1 at p.6.

⁵ Supra, note 3, at p. 1.

trafficking in Canada. Regrettably, law enforcement and prosecutors have waited over six years for these tools. We support the adoption of these amendments.

Consecutive Sentences

Often, human trafficking perpetrators are trafficking more than one individual at a time and may often be charged with multiple human trafficking offences, as human trafficking is often implemented in sex rings and agencies.⁶ If the consecutive sentencing amendment proposed is accepted, the result would mean that an individual that is found guilty of numerous human trafficking offences to several victims would end up only having to serve imprisonment for one offence. This result of the proposed amendment is startling and will do little to deter offenders from committing human trafficking.

The loss of consecutive sentences will also be a contributing factor to victims continued reluctance to come forward and report a crime. It is an established fact that victims are often uncooperative with human trafficking investigations, primarily due to the immense fear and psychological control that traffickers have over their victims.⁷ If traffickers found guilty of numerous trafficking offences are only held accountable for one victim in sentencing and no sentencing for all other offences, victims, who already are fearful to come forward to report such crimes, will be further reluctant to come forward. They will recognize that the result of their reporting, which puts them at high risk of real harm from their perpetrators, could actually serve no real purpose.

Judicial Discretion and Indigenous Victims

It has been noted by numerous human trafficking studies that indigenous women are by far the highest represented victim group in human trafficking in Canada. It has also been reported that Indigenous women only make up 4% of the population of Canada but make up at least 50% of the victims of human trafficking in Canada.⁸ Indigenous women often face circumstances of extreme poverty, homelessness and have suffered violence, all of which are high-risk factors associated with human trafficking.⁹

Research into this topic has also established that systemic discrimination exists within the policing and judicial system, supported by years of colonialism, that has resulted in indigenous women victims of human trafficking and sexual and physical violence not reporting their crimes.¹⁰ Policing services racially stereotype indigenous women victims as individuals who are deserving of the abuse that they have endured and at times, instead of providing them with protection, further subjugate them to sexual violence.¹¹ As well, a Special Senate Report considering indigenous women as victims of crime, which included assaults, murder and sexual crimes, found that their offenders often receive lesser sentence than if the victim was a non-indigenous female. Such factors demonstrate that the proposed amendments providing discretionary prosecution of hybrid offences, based on the opinion of the prosecutor, will

⁶ Ibid, p.29.

⁷ Ibid, p.34.

⁸ Arina Roudometkina and Kim Wakeford, Native Women's Association of Canada, "Trafficking of Indigenous Women and Girls in Canada", Submission to the Standing Committee on Justice and Human Rights, June 15, 2018, p. 3.

⁹ Ibid, p.6.

¹⁰ Human Rights Watch, "THOSE WHO TAKE US AWAY, Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada, p.73.

¹¹ Public Safety Canada, "Trafficking of Aboriginal Women and Girls", May 2014, p.

significantly increase the likelihood that a human trafficking offence against an indigenous woman would likely proceed as a summary conviction offence.

Conclusion

Human trafficking in Canada is a criminal activity that is elusive, complex and under reported by its victims, primarily due to fear that victims have of their traffickers. As well, it is a low-risk, high-profit crime that can provide traffickers with a significant amount of money, and with little chance of being caught.

With the proposed amendments to sections 279.02(1) (material benefit — trafficking, subsection 279.03(1) (withholding or destroying documents — trafficking), and subsection 286.2(1) (material benefit from sexual services), the offence sentencing would provide for minimal punishment and deterrence to offenders who are found guilty of such offences. If we consider the fact that traffickers are currently at low-risk of being charged and prosecuted, such amendments further hinder any real efforts at addressing this growing societal problem.

Indigenous women are also over-represented in the human trafficking industry, and coupled with systemic racism and judicial discretion, the amendments will specifically contribute to their continued disadvantaged position in the criminal justice system.

Canadian social and criminal institutions have recently begun to focus their combined efforts on progressively decreasing human trafficking offences, but through the proposed amendments, justice will be increasingly denied for human trafficking victims.

We therefore recommend that section S.279.02(1), 279.03 (1) and 286.2(1) of the Criminal Code not be amended and remain as indictable offences.

We also recommend that the amendments proposed by Bill C-452 be brought into force as originally adopted by Parliament.

Sincerely,



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Member of Parliament
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