

Proposal for Legislative Amendment to Protect Trafficked Persons

PURPOSE

The purpose of this proposal is to advocate for legislative changes to ensure that there is a permanent and fundamental change in policy so that trafficked persons in Canada are protected.

Currently the only provisions in the law relating to trafficking serve to a) criminalize trafficking, b) promote the detention of trafficked persons. There is nothing in the law to protect the human rights specifically of trafficked persons.

The Temporary Resident Permit guidelines announced by the Minister of Citizenship and Immigration in May 2006 are of limited usefulness in protecting trafficked persons. In particular, the guidelines impose an unreasonable burden of proof on the person who must convince an immigration officer that he/she is indeed a victim of trafficking in persons. Furthermore, the mandatory involvement of law enforcement agencies deters trafficked persons from applying because of concerns about the potential consequences of such involvement.

While their primary purpose is to protect trafficked persons, these proposals would also serve broader anti-trafficking objectives. Providing trafficked persons with alternatives undermines the traffickers who depend on victims that can be exploited. On the other hand, Canadian government policies that offer no protection to the trafficked serve the interests of traffickers because they give trafficked persons no viable alternatives other than remaining in a situation of exploitation and give credibility to the traffickers' threats about the consequences of failing to comply with them.

Finally, the proposal also serves the goal of promoting gender equality, given the gendered aspects of trafficking, which differentially impacts women and girls, exploiting their vulnerability within society, both in Canada and around the world.

PROPOSAL

1. Add to the **objectives of the Act** (s. 3) the objective of protecting the human rights of trafficked persons.
2. **Definition:** The definition of trafficking will be the internationally agreed definition in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol).
3. **Children:** Children are among those who are trafficked. In addition to the general provisions to protect them as trafficked persons, special measures are required to reflect their vulnerabilities and needs as children.
4. **Non-conditional protection:** Measures to protect the rights of trafficked persons will in no way be conditional on the person providing testimony or other assistance or cooperation in prosecution.
5. **Temporary protection:** Where an immigration officer has reasonable grounds to suspect that a person has been trafficked into or within Canada, the officer will issue the person a special temporary protection permit for trafficked persons, valid for a period of 6 months. This permit will entitle the holder to the same benefits as a refugee claimant (including access to Interim Federal Health program, work permit, study permit). If the person decides to apply for permanent protection, the temporary protection permit will be valid until a decision has been made on permanent status.

The following factors will be taken into account in deciding whether there are reasonable grounds for suspecting that a person has been trafficked:

- A. the person's allegations that they have experienced treatment that may correspond to the definition of trafficking;
- B. facts about the person's arrival in Canada or situation within Canada that suggest that the person may have been trafficked;
- C. representations from a credible non-governmental organization that believes that the person may have been trafficked;
- D. the fact that the person does not believe that they have been trafficked will not negate other evidence of trafficking (given that trafficked persons often deny that they have been trafficked);
- E. where the evidence establishes on a balance of probabilities that the person is a child, any evidence suggestive of trafficking will be sufficient to constitute reasonable grounds for suspecting that the child has been trafficked.



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The test of “reasonable grounds for suspecting” is a low standard and does not require that all the evidence be assessed, although there must be some credible evidence for believing that the person might have been trafficked. A single piece of evidence is enough to meet the standard, unless clearly contradicted by other evidence. The intention is to give the benefit of doubt to the potentially trafficked person with respect to temporary protection. The temporary status provides the conditions for a fuller evaluation to be made, if necessary.

In the case of a child, the immigration officer will be responsible for ensuring that the child is placed immediately under the protection of child protection services and has access to necessary services including counselling.

The immigration officer will have the discretion to extend the validity of the temporary permit for a further six months, if circumstances warrant (i.e. if there continue to be reasonable grounds for suspecting that the person has been trafficked and for any reason the person has not been able to make decisions for the future within the initial six months).

6. **Interviewing by enforcement:** Trafficked persons being considered for a temporary protection permit will not be interviewed by enforcement officers unless necessary for specific law enforcement purposes. Where interviews are necessary, enforcement officers will be guided by clear instructions on conducting such interviews, designed to ensure sensitivity to trafficked persons. The instructions will include a requirement that enforcement officers must clearly state that temporary protection is not contingent upon cooperation during the interview. The instructions will also direct officers to ensure that the person is accompanied by an NGO representative, if the person so wishes. Officers conducting such interviews will have undergone training on interviewing trafficked persons.
7. **Permanent protection:** Trafficked persons will be eligible for permanent residence in Canada through a special class. To meet the class, persons will:
 - establish on a balance of probabilities that they have been trafficked into, within or through Canada, and
 - face hardship if removed from Canada, taking into account the best interests of any child affected by such removal.

Factors to take into account in determining hardship include:

- A. risk of physical harm from traffickers
- B. risk of re-trafficking
- C. psychological and/or physical impacts of the experience of trafficking (including mental and physical health consequences)
- D. social isolation or stigmatization as a result of having been trafficked (e.g. marginalization of women who have done sex work)

- E. children who have been trafficked should be given permanent protection, unless it is shown that it is in the best interests of the child not to remain in Canada.
- F. where compelling reasons exist, arising out of the atrocious abuse suffered as a trafficked person, the applicant who expresses a desire to remain in Canada will be deemed to meet the test of hardship.
- G. persons who cooperate with Canadian authorities in regard to a prosecution of their traffickers are presumed to be at increased risk if removed from Canada and thus to face hardship. Cooperation means providing all information requested by the authorities except where disclosure of the information would place the trafficked person or other persons at risk of harm. The outcome of the prosecutorial process is irrelevant to the assessment of the person’s cooperation. The fact that a person chooses not to cooperate with a prosecution shall not count against the person in the evaluation of their application for permanent residence.

Applicants for permanent protection will not be refused without benefit of an interview and the right to counsel.

Members of the trafficked persons class will be exempt from the Right of Permanent Residence Fee and inadmissibility bars in the same way as Protected Persons.

8. **Family reunification:** Members of the trafficked persons class will have the right to include family members both inside Canada and outside Canada, as do Protected Persons.
9. **Non-prosecution of offences:** Amend s. 133 to protect trafficked persons from prosecution for offences related to entry into Canada (as currently for refugees).
10. **Detention:** Amend Regulations s. 245 (flight risk) and s. 249 (special considerations for minor children) to remove reference to trafficking connection as a factor in favour of detention.

