

PROTECTION



Proposal for legislative amendment to protect trafficked persons

FREQUENTLY ASKED QUESTIONS

What problem is this proposal trying to address?

Currently, women, children and men who are trafficked into or within Canada often fall between the cracks in the system. Detained and deported, they may be treated more as criminals than as victims of a crime. We need to change the law to make it clear that trafficked persons deserve protection.

Who are the trafficked persons who need protection?

Trafficking involves the exploitation of people, often through forced labour, and it happens in Canada. Those who are trafficked may be engaged in exploitative conditions in sex work, domestic work, in the service industry (e.g. restaurants) or in manufacturing. Children are among the trafficked (for example, they may be kept in homes to do domestic work and prevented from going to school). Women are particularly vulnerable to trafficking, but there are also trafficked men. Traffickers bring people into Canada so that they can take advantage of their social isolation and their lack of secure immigration status in Canada.



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Why do trafficked persons need protection in Canada? Wouldn't they want to return home?

People who have been victims of a crime such as trafficking often need some time in a secure environment to recover and reflect on what to do next. This is why the proposal includes provisions for immediate temporary protection. Some people will certainly choose to return home. However, for some trafficked persons returning home would involve significant hardship. They may face stigmatization as a result of having been trafficked (this is often the case if they have been involved in sex work). They may face retribution from the traffickers for having escaped. They may be at risk of being forced into a new situation of trafficking. Being trafficked means losing one's ability to make choices about one's life. Offering victims of trafficking the possibility of choosing whether to return or not is an important way of supporting them in taking back control of their lives.

What does the current law say about trafficking?

The law criminalizes trafficking, rightly treating it as a very serious crime and imposing heavy penalties on those found guilty of trafficking. The only place in the *Immigration and Refugee Protection Act* where trafficked persons are mentioned is in the regulation which includes having been trafficked as a factor **in favour** of detention, including for children. There is nothing in the law to protect the rights of trafficked persons specifically.

Are the Temporary Resident Permits for trafficked persons not an adequate solution for trafficked persons?

The government's announcement in May 2006 of guidelines for issuing Temporary Resident Permits to trafficked persons was a welcome step towards recognition of the protection needs of trafficked persons. However, they have proven inadequate: they are discretionary and are not always offered to trafficked persons; they impose an unreasonable burden of proof on the trafficked person; and the mandatory involvement of law enforcement agencies has deterred some trafficked persons from applying. Despite the introduction of the guidelines, we continue to hear of trafficked persons falling through the cracks and being detained and deported.

IN THE SUMMER OF 2007, A WOMAN WAS APPREHENDED AT THE US-CANADA BORDER. DESPITE BEING IDENTIFIED BY CANADIAN OFFICIALS AS A TRAFFICKED PERSON, SHE WAS NEVER OFFERED A TEMPORARY RESIDENT PERMIT. SHE WAS HELD IN DETENTION AND DEPORTED BEFORE SHE WAS ABLE TO MEET WITH A LAWYER.

Why are you proposing an amendment to the law?

An amendment to the *Immigration and Refugee Protection Act* is the best way to ensure there is a clear and permanent policy on offering protection to trafficked persons. Since measures to prosecute traffickers are in the law, it is appropriate that measures to protect their victims also be in the law. Guidelines can only go so far: they do not have the force of law and may be changed as easily as they are adopted.

Can't trafficked persons claim refugee status if they need protection?

Trafficked persons can and do claim refugee status. In some cases their situation will correspond to the refugee definition and they may be recognized as a refugee. However, others won't easily meet the narrow refugee definition, which focuses on fear of persecution in the home country, whereas their experience involves human rights abuses in Canada. We need protection measures that fit the particular experiences of persons trafficked into Canada.



The proposal does not require trafficked persons to cooperate in prosecuting the traffickers. Why?

Some countries have offered protection programs that are conditional on the trafficked persons providing testimony or other assistance in prosecution. This has proven to be a strong deterrent for the following reasons:

- Many trafficked persons are reluctant to assist in a prosecution because they fear severe retribution from the traffickers on themselves or their family members.
- If the State chooses not to prosecute, the trafficked person is denied protection.
- The trafficked person may not be considered an important witness and is denied protection.
- While some trafficked persons come through the experience with the strength and courage necessary to participate in the prosecution, others have been so deeply affected that they cannot face reliving the experience repeatedly through the prosecutorial process. Of the latter, some regain strength and determination with time. Others are simply too traumatized to be able to assist.
- For all trafficked persons, involvement in judicial proceedings is very intimidating.

How could this proposal be implemented?

The Canadian Council for Refugees encourages Parliamentarians to study this proposal and take action to have the principles turned into law.

The proposal provides the principles that could be made into a bill, for introduction, debate and adoption by Parliament.



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