

## **Quick Overview of Bill C-310**

Bill C-310 will amend the *Criminal Code* of Canada to make two important changes regarding human trafficking.

### **Extraterritorial Offence**

First, Bill C-310 will amend the *Criminal Code* to add the current trafficking in persons offences [s.279.01 and s.279.011] to the list of offences which, if committed outside Canada by a Canadian or permanent resident, could be prosecuted in Canada. The current list of extraterritorial offences includes serious crimes such as child sexual exploitation, hostage taking and terrorism.

Human trafficking is an egregious crime that is often carried out across international borders. While Canada has adopted stiff penalties for criminals who traffic victims into, through, and from Canada, it is important that we also take responsibility for Canadians who traffic or enslave vulnerable populations in other countries. This amendment will also compliment steps being taken by other countries.

### **Enhancing Definition of Exploitation**

The second amendment will enhance the current definition of exploitation in the trafficking in persons offence [s.279.04 of the *Criminal Code*]. Currently the definition does not provide specific examples of exploitive conduct. This amendment will add an instructive aid for the Court to provide clear examples of exploitation such as the use of threats, violence, coercion, and fraudulent means. Examples of similar instructive aids can be found in s.153 (1.2) and s.467.11 (3) of the *Criminal Code*.

This amendment has stemmed from consultations with law enforcement, lawyers, and prosecutors who have faced challenges demonstrating exploitation in trafficking in persons cases under the current definition.

## **Backgrounder – Extraterritorial offences**

### **Extraterritorial Laws**

Extraterritorial laws refer to laws that a country will enact which regard an offence committed abroad as an offence committed within its borders. Canada has designated a number of serious *Criminal Code* offences as extraterritorial offences, especially those related to the sexual abuse of children by Canadian sex tourists. These can be found in Section 7.4 of the *Criminal Code*.

Extraterritorial laws are guided by a number of principles under international law. Bill C-310's amendment falls under the nationality principle which can be defined as: 'States may assert jurisdiction over acts of their nationals, wherever the act might take place.'<sup>1</sup>

### **Purpose of designating Section 279.01 & 279.011 as extraterritorial offences**

1. An extraterritorial human trafficking offence will allow Canada to arrest Canadians who have left the country where they engaged in human trafficking in an attempt to avoid punishment.
2. An extraterritorial human trafficking offence will ensure justice in cases where the offence was committed in a country without strong anti-human trafficking laws or judicial system.
3. An extraterritorial human trafficking offence will clearly indicate that Canada will not tolerate its own citizens engaging in human trafficking anywhere.

### **International Precedent**

A number of countries, such as the United States, Germany, Cyprus, and Cambodia, have applied international jurisdiction to their domestic human trafficking offences so that they can prosecute their own citizens regardless of where the offence took place.

#### **Cyprus, Law on Combating of Trafficking in Persons and Sexual Exploitation of Children of 2000, Article 13**

*"Offences committed by any person in any country outside of the Republic, which if they were committed in the Republic should be considered [sexual exploitation, pornography and trafficking in persons], shall be triable by an appropriate Court of the Republic exercising criminal jurisdiction."*

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<sup>1</sup> Coughlan, Currie, Kindred, and T. Scassa. "Global Reach, Local Grasp: Constructing Extraterritorial Jurisdiction in the Age of Globalization." *Law Commission of Canada* (2006) :31

## **Backgrounder – Extraterritorial offences (cont'd)**

### **Cambodia, Law on Suppression of Human Trafficking and Sexual Exploitation of 2008, Article 3**

*“This law shall apply to any felonies or misdemeanors committed outside the territory of the Kingdom of Cambodia by a Khmer citizen.”*

### **UN 2009 – Combating Trafficking in Persons: A Handbook for Parliamentarians (excerpts)**

- “Since trafficking in persons often has a transnational dimension, addressing it effectively requires transnational responses.”
- “The Organized Crime Convention requires the States parties to establish jurisdiction to investigate, prosecute and punish all offences established by the Convention and the Trafficking in Persons Protocol (Art. 15). However, the Organized Crime Convention also *encourages*, but does not require, the establishment of jurisdiction on an extraterritorial basis.”

### **UN 2003 – Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices (excerpts)**

- “The adoption of extraterritorial criminal laws against human trafficking is one of the many intersectoral and interdisciplinary measures required to effectively combat this phenomenon.”
- “Extraterritorial laws should be appreciated realistically as one of the many complementary measures needed to eliminate human trafficking, coupled ultimately with the political and social will and cooperation to overcome this global phenomena.”

### **Case Study – John Wrenshall**

- John Wrenshall is a Canadian serving 25 years in an American prison for running a child brothel in Thailand. He was trafficking young boys and arranging for international tourists to visit his brothel. The U.S. arrested Mr. Wrenshall in the UK after he left Thailand for aiding and abetting an American to sexually abuse children abroad.
- However, had Mr. Wrenshall managed to return to Canada, authorities would not have been able to prosecute him for child trafficking since Canada’s trafficking in persons offences are not extraterritorial.

## **Backgrounder – Amending the Definition of Exploitation**

### **Current definition of Exploitation in Section 279.04**

*For the purposes of sections 279.01 to 279.03, a person exploits another person if they*

*(a) cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or*

*(b) cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.*

### **Proposed amendment in C-310**

*(2) In determining what constitutes exploitation under subsection (1), the Court may consider, among other factors, whether the accused*

*(a) used or threatened to use violence;*

*(b) used or threatened to use force;*

*(c) used or threatened another form of coercion; or*

*(d) used fraudulent misrepresentation or other fraudulent means.*

### **Purpose of amending Section 279.04**

- Law enforcement, prosecutors, human trafficking experts, and non-governmental organizations have expressed concerns that the current wording is vague and does not provide clear guidance to the courts.
- Provide clear examples of the means used to exploit someone according to the definition of human trafficking in the UN Palermo Protocol.
- This instructive aid recognizes that there may be forms of coercion such as psychological coercion that are not easily understood or recognized in the current definition.
- This will result in more cases being prosecuted and ultimately more convictions.

## **Backgrounder – Amending the Definition of Exploitation (cont'd)**

### **Canadian Precedent**

- Similar instructive aids can be found in s.153 (1.2) and s.467.11 (3) of the *Criminal Code*.
- Section 153 (1.2) states:
  - Inference of sexual exploitation*
  - (1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including*
    - (a) the age of the young person;*
    - (b) the age difference between the person and the young person;*
    - (c) the evolution of the relationship; and*
    - (d) the degree of control or influence by the person over the young person.*
- Section 467.11(3) states:
  - Factors*
  - (3) In determining whether an accused participates in or contributes to any activity of a criminal organization, the Court may consider, among other factors, whether the accused*
    - (a) uses a name, word, symbol or other representation that identifies, or is associated with, the criminal organization;*
    - (b) frequently associates with any of the persons who constitute the criminal organization;*
    - (c) receives any benefit from the criminal organization; or*
    - (d) repeatedly engages in activities at the instruction of any of the persons who constitute the criminal organization.*

### **International Precedent - UN Palermo Protocol – Article 3**

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

## List of Supporting Organizations

- ✓ Canadian Resource Centre for Victims of Crime
- ✓ Canadian Women's Foundation
- ✓ International Justice Mission Canada
- ✓ Ratanak International
- ✓ The Salvation Army
- ✓ Beyond Borders
- ✓ World Vision
- ✓ CEASE: Centre to End All Sexual Exploitation
- ✓ Ukrainian World Congress Taskforce to Stop Human Trafficking
- ✓ National Council of Jewish Women of Canada
- ✓ **The Canadian Federation of Business and Professional Women**
- ✓ Help Us Help The Children Anti-Trafficking Initiative(HUHTC-ATI)
- ✓ Walk With Me
- ✓ [free-them]
- ✓ Hope For The Sold
- ✓ Sextrade 101
- ✓ MAST (Men Against Sex Trafficking)
- ✓ LAHT (London Anti-Human Trafficking Committee)
- ✓ Evangelical Fellowship of Canada
- ✓ Temple Committee Against Human Trafficking
- ✓ Defend Dignity
- ✓ Christian and Missionary Alliance

## **Statements of Support**

**Prof. Benjamin Perrin, University of British Columbia, Faculty of Law, and author of *Invisible Chains: Canada's Underground World of Human Trafficking* (Penguin, 2011)**

“Human traffickers have evaded prosecution for their heinous crimes, in part, because Canada’s criminal laws are not explicit enough to clearly encompass the range of tactics employed by these serial exploiters. Member of Parliament Joy Smith is again responding to concerns by police and victims’ groups in seeking to amend our human trafficking laws to hold traffickers accountable and protect victims. I call on all Parliamentarians to support this initiative.”

**Jamie McIntosh, Executive Director, International Justice Mission Canada**

“The crime of human trafficking often transgresses international boundaries, with vulnerable men, women, and children subject to its devastating reach. Human traffickers, including those of Canadian nationality, will persist in their illicit trade if they believe their crimes will go unpunished. Extending authority to prosecute Canadians for human trafficking crimes committed abroad is an important step in the global fight against human trafficking. As a nation, we must commit to prosecuting Canadian nationals who commit these crimes, regardless of geographical location at the time of offence.”

**Timea Nagy, Program Director, Walk With Me**

“As an internationally trafficked survivor, who has been working with Canadian law enforcement to help human trafficking victims, I am absolutely thrilled to see this legislation presented by Mrs. Smith. It is clear, that Mrs. Smith has consulted professionals, experts from the field, and listened. This Bill will help Canadian law enforcement and prosecutors to be able to do their job and send a message to traffickers around the world, that Canada does not tolerate this crime against human dignity.”

**K. Brian McConaghy, Founding Director, Ratanak International**

“It is imperative that Canada continues to maintain and enhance a position of strength combating modern day slavery both domestic and international. It is a given that we must protect those weak among us who are at risk of being trafficked. It is no less important that we protect those in other countries from Canadian predators who would traffic in human lives. Such Canadians must be held fully accountable for their actions. This amendment, conforming to international legal norms, positions Canada to do just that and as such is to be commended.”

**Shae Invidiata, Founder, [free-them]**

“In conjunction with The Act and The Purpose, The United Nations deems a case to be human trafficking if ‘threatened of’ or ‘use of violence, force, coercions, fraudulent misrepresentation or fraudulent means’ is used. Without any hesitation these methods constitute exploitation and, in supporting Mrs. Smith’s Private Members Bill, should be amended into the Criminal Code of Canada.”

## **Statements of Support (cont't)**

### **Irena Soltys, Ukrainian World Congress Taskforce to Stop Human Trafficking**

"The amendments to Bill C-310 proposed by Member of Parliament Joy Smith are critical to the headway of combating human trafficking at both national and international levels. Bringing clarity to the definition of Exploitation will close the gaps that have allowed offenders to continuously sidestep the justice system and elude punishment for some of the most atrocious crimes known to mankind. At an international level, we as Canadians aspire to be respectable and virtuous global citizens which demands that we recognize and hold accountable those Canadians that disrupt the laws and ethics of our nation within or outside its borders, especially for acts of such monstrosity as human trafficking and exploitation."

### **Michelle Brock, CoFounder, Hope For The Sold**

"The current gap in the Criminal Code essentially tells the international community that Canada is not capable of holding its citizens accountable for exploiting vulnerability abroad. This is a stain on Canada's reputation. In addition to this, Canada's lacking definition of exploitation allows traffickers to play the system while law enforcement, lawyers, prosecutors, and victims lack the required tools with which to make their case. Bill C-310 is an absolute necessity if this country is to take the fight against human trafficking seriously."

### **The Evangelical Fellowship of Canada**

"The Evangelical Fellowship of Canada is pleased to support Bill C-310, An Act to amend the Criminal Code (trafficking in persons), another positive initiative by MP Joy Smith to combat human trafficking. We are hopeful that Bill C-310 will receive strong support in Parliament and become law in Canada. We also encourage the Government of Canada to take additional steps to develop a National Action Plan to combat trafficking."

### **Liliane Kohl and Peggy Sakow, Chairpersons, The Temple Committee Against Human Trafficking**

It is our position that any Canadian who is found trafficking in human beings must face charges at home. We believe there is a responsibility to being a Canadian citizen whether at home or abroad. Bill C-310 is yet another step forward in responding to the growing world scourge of sex trafficking. We are honoured to support Bill C-301.

### **4MY Canada**

"It is our great pleasure to wholeheartedly support Joy Smith's Private Members' bill, C-310. Joy Smith is one of Canada's modern day heroes both in Canada and abroad and we commend her for her tireless effort on behalf of those being exploited in the sex trade. We encourage Canadians everywhere to write their Members of Parliament and ask them to pass C-310 through the House of Commons as promptly as possible."