



LIBRARY of PARLIAMENT
BIBLIOTHÈQUE du PARLEMENT

LEGISLATIVE SUMMARY



Bill C-56: An Act to amend the Immigration and Refugee Protection Act

**Publication No. 40-3-C56-E
30 December 2010
Revised 5 July 2011**

Julie Béchar

Social Affairs Division
Parliamentary Information and Research Service

Legislative Summary of Bill C-56

HTML and PDF versions of this publication are available on IntraParl (the parliamentary intranet) and on the Parliament of Canada website.

In the electronic versions, a number of the endnote entries contain hyperlinks to referenced resources.

Ce document est également publié en français.

Library of Parliament **Legislative Summaries** summarize government bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

CONTENTS

1	BACKGROUND.....	1
1.1	Trafficking in Persons.....	1
1.1.1	Present Legislation	1
1.1.2	Citizenship and Immigration Canada Policy.....	2
1.1.3	Efforts to Develop a Federal Strategy	3
1.1.4	Parliamentary Work	3
1.2	Exotic Dancer Visas	4
2	DESCRIPTION AND ANALYSIS	5
2.1	Protecting Foreign Nationals from Exploitation.....	5
2.1.1	New Discretion Available to Immigration Officers	5
2.1.2	Limits on the Discretion: Public Policy Considerations, to Be Defined in Instructions Published in the <i>Canada Gazette</i>	5
2.1.3	Annual Report to Parliament	6
2.2	Public Health	6

LEGISLATIVE SUMMARY OF BILL C-56: AN ACT TO AMEND THE IMMIGRATION AND REFUGEE PROTECTION ACT

1 BACKGROUND

Bill C-56: An Act to amend the Immigration and Refugee Protection Act (alternative title: Preventing the Trafficking, Abuse and Exploitation of Vulnerable Immigrants Act) was introduced in the House of Commons on 19 November 2010. Its purpose is to give immigration officers discretion to refuse to authorize foreign nationals to work in Canada if, in their opinion, the foreign national is at risk of being a victim of exploitation or abuse. The bill died on the *Order Paper* when Parliament was dissolved on 26 March 2011.

Earlier versions of the bill had been introduced on three occasions.

- The first was introduced in May 2007 during the 1st Session of the 39th Parliament as Bill C-57 and died on the *Order Paper* when Parliament was prorogued in September 2007.
- The second was introduced in the fall of 2007 during the 2nd Session of the 39th Parliament as Bill C-17 and was referred to the House of Commons Standing Committee on Citizenship and Immigration, which considered it on 30 January 2008 but did not report back to the House before the end of the session.
- The third was introduced in June 2009 during the 2nd Session of the 40th Parliament as Bill C-45 and died on the *Order Paper* at the end of the session in December 2009.

The present Bill C-56 includes an alternative title what was not in Bill C-45, but the substance of the bill is identical to the earlier versions.¹

1.1 TRAFFICKING IN PERSONS

1.1.1 PRESENT LEGISLATION

In Canada, the *Criminal Code* (the Code)² and the *Immigration and Refugee Protection Act* (IRPA)³ contain sections to combat and prevent trafficking in persons.

Sections 279.01 to 279.04 of the Code set out three prohibitions in relation to trafficking in persons.

- The first (section 279.01, and section 279.011 for persons under the age of 18 years) is a global prohibition on trafficking in persons, defined as recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person or exercising control, direction or influence over the movements of a person, for the purpose of exploiting them.⁴ Key to this definition is the fact that trafficking in persons is considered a criminal offence even if it occurs entirely within the

country, without movement across an international border. Any action in which a person is moved or concealed and is forced to provide or offer to provide labour, a service, or an organ or tissue is prohibited.

- Section 279.02 prohibits a person from benefiting economically from trafficking and carries a maximum penalty of 10 years' imprisonment. It targets in particular those who harbour a trafficked person for remuneration.
- Section 279.03 outlaws the withholding or destroying of identity, immigration, or travel documents to facilitate trafficking in persons, and carries a maximum penalty of 5 years' imprisonment.

A number of generic provisions in the *Criminal Code* are also used to combat trafficking in persons by targeting specific forms of exploitation and abuse that are inherent in trafficking. These include fraudulent documentation-related offences; prostitution-related offences; causing physical harm; abduction and confinement; intimidation; conspiracy; and organized crime.

The IRPA also addresses cross-border trafficking in persons.

- Under section 118 of the IRPA, anyone who knowingly organizes one or more persons to come into Canada by means of abduction, fraud, deception, or the use or threat of force or coercion is guilty of human trafficking. This offence includes the recruitment, transportation, receipt, and harbouring of such persons, and the maximum sentence is life imprisonment.
- Section 117 of the IRPA deals with smuggling. It states that it is illegal to knowingly organize the entry into Canada of one or more persons who do not have a valid travel document. The maximum sentence for organizing the illegal entry of fewer than 10 people is 14 years' imprisonment, while that for organizing the illegal entry of 10 or more people is life imprisonment.
- Sections 122 and 123 create the additional offence of using travel documents to contravene the IRPA, as well as the selling or buying of such travel documents. The maximum sentence for these offences is 14 years' imprisonment.

1.1.2 CITIZENSHIP AND IMMIGRATION CANADA POLICY

In May 2006, the Department of Citizenship and Immigration announced a new policy to provide temporary resident permits specifically for trafficked persons. This policy was updated in June 2007.⁵ Working within the existing legislative framework, immigration officers now have the ability to issue to trafficked persons temporary resident permits lasting up to 180 days. Recipients of such permits are exempt from the processing fee usually charged, may request a work permit and are eligible to receive health service benefits under the Interim Federal Health Program.

This approach has the following objectives:

- to provide victims of trafficking in persons with time to consider their options (such as returning home or assisting in the investigation of the smugglers or traffickers or in criminal proceedings against them);
- to allow them to recover from physical or mental trauma;

- to allow them to escape the influence of the smugglers or traffickers;
- to facilitate their participation in an investigation or prosecution;
- for any other purpose the officer may find relevant.

There is no obligation for the trafficked person to assist with an investigation in exchange for a temporary resident permit.

A trafficked person may also be granted a permit for a longer period or a subsequent temporary resident permit once an immigration officer examines the relevant factors, such as whether it is possible for the individual to return and re-establish a life – under reasonably safe conditions – in his or her country of origin or last permanent residence, and whether the individual is needed and willing to assist the authorities in an investigation or a prosecution. After a certain period, it may be possible for the trafficked person to obtain permanent resident status.

1.1.3 EFFORTS TO DEVELOP A FEDERAL STRATEGY

A significant component of the Canadian approach to trafficking in persons is the federal Interdepartmental Working Group on Trafficking in Persons. The working group is co-chaired by representatives from the departments of Justice and Public Safety and 17 other federal departments and agencies. Its mission is to coordinate federal efforts to address trafficking in persons and to develop a federal strategy, in keeping with Canada's international commitments. The working group reviews existing laws, policies and programs that may have an impact on trafficking with a view to identifying best practices and areas for improvement.⁶

Since September 2005, the Royal Canadian Mounted Police has headed the Human Trafficking National Coordination Centre. The centre is housed at the Immigration and Passport Branch and its role is to provide assistance to field investigators and develop education and awareness campaigns. In March 2010, the centre published a study conducted between 2005 and 2009 in a report entitled *Human Trafficking in Canada*. One of the first comments in the report is that human trafficking is a growing sector of organized crime worldwide.⁷

1.1.4 PARLIAMENTARY WORK

Two parliamentary committees have examined the issue of trafficking in persons in Canada.

In December 2006, the Subcommittee on Solicitation Laws of the House of Commons Standing Committee on Justice and Human Rights released its report, entitled *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*.⁸ In this broad study of Canada's laws on prostitution, the subcommittee emphasized the fact that those who traffic in persons must be effectively prosecuted and that law enforcement officials must be provided with adequate resources and training, while victims must be provided with appropriate assistance and services.

In February 2007, the House of Commons Standing Committee on the Status of Women released its report, entitled *Turning Outrage Into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada*.⁹ This report highlighted the “three Ps” approach: protection of victims, prosecution of clients and traffickers, and prevention. The report’s recommendations focused on prevention measures, in particular the development of a strategy to address poverty (with particular emphasis on Aboriginal peoples), removing barriers to immigration, and raising the public’s awareness of the risks of being trafficked.

The committee also emphasized the importance of improving the protection of victims by providing them with support services and programs, including safe interim housing and access to counselling and legal advice, and by revising the temporary resident permit guidelines so that victims can apply for a work permit.

To coordinate Canada’s efforts, the committee proposed the creation of a Canadian Counter-Trafficking Office, through which stakeholders could share expertise and best practices to prevent trafficking, protect victims, and successfully prosecute those who exploit victims. The committee also proposed the establishment of a national rapporteur mandated to collect and analyze human trafficking data and report these annually to Parliament.

1.2 EXOTIC DANCER VISAS

When announcing – along with Joy Smith, Member of Parliament for Kildonan–St. Paul – the introduction of Bill C-56 on behalf of the Minister of Citizenship, Immigration and Multiculturalism, the Honourable Rona Ambrose, Minister of Public Works and Government Services Canada and Minister for the Status of Women, said that the bill should help to preclude situations in which women might be exploited or become victims of human trafficking:

This legislation will introduce important legislative changes to help close the doors to the dangerous victimization of girls and women, and we urge Parliament to join us in this serious matter and support the bill. As Canadians, we believe women in all communities should be treated with the full respect and dignity they deserve and oppose situations in which women and girls face violence, abuse or exploitation.¹⁰

These situations include the ones experienced by foreign exotic dancers, who may apply for temporary work permits to alleviate a temporary shortage in the Canadian labour market.¹¹ The terms on which exotic dancer visas are issued require that strip club owners have the job offer validated.¹² In 2009, for Canada as a whole, this occupational group had the eighth highest incidence of validated offers. The group had a total of 1,836; each validated job offer might cover more than one position.¹³ As well, starting 11 January 2011, every contract between an employer and an exotic dancer who comes to work temporarily in Canada must contain two new clauses confirming that transportation costs and health care insurance costs are the employer’s responsibility.¹⁴

Although foreign exotic dancers had traditionally come to Canada from the United States, by the late 1990s, many more were from Eastern Europe. It was at that time that concerns about human trafficking began to emerge. For that reason, immigration officers working at foreign missions require applicants for exotic dancer visas to present a valid employment contract; they then verify that the employer is legitimate. The officers are trained to detect and screen out applicants who may be potential victims of human trafficking. They also apply health and safety criteria and ensure that arrangements have been made for the applicants to return to their country of origin once the visa has expired, as in the case of any other temporary worker.¹⁵

Between 2004 and 2007, the number of permits granted to foreign exotic dancers in Canada seems to have declined dramatically. According to information provided by the Department of Citizenship and Immigration, 342 work permits and work permit extensions were issued to foreign exotic dancers in 2004, but that number dropped to 17 in 2006¹⁶ and stood at six in 2010.¹⁷

2 DESCRIPTION AND ANALYSIS

2.1 PROTECTING FOREIGN NATIONALS FROM EXPLOITATION

Clause 1 sets out the alternative title of the bill: Preventing the Trafficking, Abuse and Exploitation of Vulnerable Immigrants Act.

Clauses 3 and 4 of the bill amend the IRPA to allow immigration officers to refuse to authorize foreign nationals to work in Canada if they believe them to be at risk of exploitation.

2.1.1 NEW DISCRETION AVAILABLE TO IMMIGRATION OFFICERS

Clause 3 of the bill adds a new provision to the IRPA. Section 30(1.1) states that an immigration officer “may” authorize a foreign national to come to work or study in Canada if the applicant meets the conditions set out in the regulations. This gives immigration officers discretion to refuse to authorize an applicant to work or study in Canada, even if the applicant meets the conditions set out in the regulations.

2.1.2 LIMITS ON THE DISCRETION: PUBLIC POLICY CONSIDERATIONS, TO BE DEFINED IN INSTRUCTIONS PUBLISHED IN THE *CANADA GAZETTE*

Clause 3 also adds sections 30(1.2) to 30(1.7) to the IRPA.

Section 30(1.2) states that an officer must refuse to authorize a foreign national to work in Canada if he or she believes that the public policy considerations, set out in instructions from the minister, justify such a refusal. This discretionary power is somewhat limited by section 30(1.3), which states that any refusal to give authorization to work in Canada requires the concurrence of a second officer.

Section 30(1.4) states that the minister's instructions will set out what constitutes the public policy considerations and that they will aim to protect foreign nationals who are at risk of being subjected to humiliating or degrading treatment, particularly sexual exploitation.

Sections 30(1.5) to 30(1.7) state that the ministerial instructions will be published in the *Canada Gazette*. They will take effect on the day on which they are published (or on any later specified date). Once they are in force, they will also apply to all applications for work permits made before that day and for which a final decision has not been made. The instructions will cease to have effect when a notice of revocation is published in the *Canada Gazette*.

2.1.3 ANNUAL REPORT TO PARLIAMENT

Clause 4 of the bill amends subsection 94(2) of the Act to require the minister of Citizenship, Immigration and Multiculturalism to include the ministerial instructions in the annual report to Parliament.

It is important to note that this is the only place in the IRPA where the ministerial instructions are referred to in this detailed manner. Although ministerial instructions on a variety of issues are referenced elsewhere, this is the only section to establish explicit and detailed requirements as to how those instructions must be published and included in the annual report. This amendment increases the accountability that comes with the implementation of the instructions and any potential refusal of temporary work permits based on an assessed risk of exploitation.

2.2 PUBLIC HEALTH

Clause 2 of the bill amends the objectives of the IRPA with respect to immigration by adding the word "public" to the reference to the protection of health and safety currently specified in section 3(1)(h) of the IRPA. The amended IRPA is intended to protect public health and safety and maintain the security of Canadian society in immigration matters.

Sections 31 and 33 of the *Immigration and Refugee Protection Regulations*¹⁸ already used that terminology to explain potential dangers to public health if a foreign national suffered from a communicable disease and to public safety if a foreign national's health made the person likely to engage in violent behaviour, for example.

It is important to note that Bill C-56 amends only section 3(1), which deals with the objectives of the IRPA with respect to immigration. Section 3(2), concerning the Act's objectives with respect to refugees, and which states that it aims to "protect the health and safety of Canadians," remains unchanged.

NOTES

1. This publication is based largely on the legislative summary of Bill C-45, the version that preceded Bill C-56. See Daphne Keevil Harrold, *Bill C-45: An Act to amend the Immigration and Refugee Protection Act*, Publication no. LS-657E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 25 August 2009.
2. [Criminal Code](#) (the Code), R.S.C. 1985, c. C-46.
3. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27.
4. Section 279.01(1) of the Code reads as follows:

Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years in any other case.
5. Department of Citizenship and Immigration, [IP1 – Temporary Resident Permits](#), Operational Manual (Inland Processing) IP 1, 19 June 2007, s. 16 and Appendices F–I.
6. More information on the [Interdepartmental Working Group on Trafficking in Persons](#) is available at the Justice Canada website.
7. “At any given time, a country can be a source, destination or transit country, or all three.” (Royal Canadian Mounted Police, Project Seclusion, [Human Trafficking in Canada](#), March 2010, p. 4).
8. House of Commons, Standing Committee on Justice and Human Rights, [The Challenge of Change: A Study of Canada’s Criminal Prostitution Laws](#), 1st Session, 39th Parliament, December 2006.
9. House of Commons, Standing Committee on the Status of Women, [Turning Outrage Into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada](#), 1st Session, 39th Parliament, February 2007.
10. Citizenship and Immigration Canada, [“Government of Canada introduces the Preventing Trafficking, Abuse and Exploitation of Vulnerable Immigrants Act,”](#) News release, 19 November 2010.
11. In a letter to the Standing Committee on Citizenship and Immigration dated 10 January 2008, the [Adult Entertainment Association](#) presented the following figures: about 23 million Canadians attend adult entertainment establishments every year; there are over 500 such establishments in Canada; and 40% of the association members hire foreign workers.
12. Audrey Macklin, “Dancing Across Borders: ‘Exotic Dancers,’ Trafficking, and Canadian Immigration Policy,” *International Migration Review*, Vol. 37, No. 2, 2003, p. 474; James Gordon, “Number of Strippers Coming to Canada Drops Dramatically,” *National Post*, 26 May 2006, p. A6.
13. Human Resources and Skills Development Canada, [Temporary Foreign Worker Program. Labour Market Opinion \(LMO\) Statistics. Annual Statistics 2007–2010](#), 30 June 2011.

14. Human Resources and Skills Development Canada, "[Notice for employers hiring temporary foreign workers to work as exotic dancers in Canada](#)," *Temporary Foreign Worker Program*, 1 December 2010.
15. Senate, Standing Committee on Legal and Constitutional Affairs, *Proceedings*, 1st Session, 38th Parliament, 23 November 2005, p. 25:54 (Carole Morency).
16. Information provided by the Department of Citizenship and Immigration (CIC) on 11 June 2007.
17. Information provided by the CIC on 4 July 2011.
18. [Immigration and Refugee Protection Regulations](#), SOR/2002-227.