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Legislative Summary

BILL S-224: AN ACT TO AMEND THE CRIMINAL CODE (TRAFFICKING IN PERSONS)

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François Delisle

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AUTHORSHIP

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François Delisle

Legal and Social Affairs Division

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LEGISLATIVE SUMMARY OF BILL S-224: AN ACT TO AMEND THE CRIMINAL CODE (TRAFFICKING IN PERSONS)

1 BACKGROUND

Bill S-224, An Act to amend the Criminal Code (trafficking in persons), was introduced in the Senate by the Honourable Senator Salma Ataullahjan on 24 November 2021.¹ The bill was considered by the Standing Senate Committee on Human Rights, which reported it without amendment on 14 June 2022.² It passed third reading in the Senate on 6 October 2022. On 18 October 2022, Member of Parliament Colin Carrie introduced the bill in the House of Commons. After the bill was adopted at second reading on 22 March 2023, it was referred to the House of Commons Standing Committee on Justice and Human Rights.

Bill S-224 amends section 279.04 of the *Criminal Code* (the Code) in three ways:

- it repeals and replaces the definition of exploitation in subsection 279.04(1) of the Code as regards human trafficking to include language based on paragraph 3(a) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (the Palermo Protocol);³
- it deletes the criterion that the victim must have a reasonable apprehension of fear from the current definition; and
- it repeals the interpretive provision, subsection 279.04(2).

In 2021, an identical bill was introduced in the Senate, but died on the *Order Paper*.⁴ That same year, a bill making a similar amendment and amending the *Judges Act* was introduced in the House of Commons, but it too died on the *Order Paper*.⁵

1.1 SOCIAL CONTEXT OF HUMAN TRAFFICKING IN CANADA

According to the Department of Public Safety, Canada is “a source, destination and transit country for victims of human trafficking.”⁶ Statistics Canada reports that vulnerable individuals are disproportionately affected by human trafficking. Between 2010 and 2020, 96% of detected victims of police-reported human trafficking cases were women or girls. The risk is particularly high for Indigenous girls and LGBTQ2+ persons.⁷

1.2 LEGAL CONTEXT OF HUMAN TRAFFICKING IN CANADA

On the international front, Canada ratified the Palermo Protocol in 2002.⁸ Under paragraph 3(a) of the protocol, human trafficking has three elements: an action, the use of coercive means such as coercion, abduction, deception or abuse of a position of vulnerability while committing that action, and a specific goal of exploiting a person:

(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[.]⁹

While paragraph 3(a) does not define exploitation, its final sentence provides an illustrative, non-exhaustive list of forms of exploitation, which must involve coercive practices.

In Canada, human trafficking is prohibited by the Code¹⁰ and by the *Immigration and Refugee Protection Act*.¹¹ The Code contains specific offences, and section 279.04 defines the concept of exploitation.¹²

1.2.1 Wording of Section 279.04 of the *Criminal Code*

Subsection 279.04(1) of the Code defines exploitation as follows:

a person exploits another person if they 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.¹³

Subsection 279.04(2) provides a non-exhaustive list of factors, such as a threat, deception or abuse of power, that the court may consider in determining whether exploitation has occurred.

Subsection 279.04(3), which the bill does not affect, specifies that human trafficking for the purpose of human organ or tissue removal is included in the definition of exploitation.

1.2.2 Interpretation of the Concept of Exploitation

Besides proof beyond a reasonable doubt of an action and of the fact that the accused caused the victim to provide or offer to provide labour or a service, the prosecution must also prove a reasonable apprehension of fear under the current definition.¹⁴

1.2.2.1 Reasonable Apprehension of Fear

The criterion that the victim have a reasonable apprehension of fear is found in the second part of subsection 279.04(1). It is an objective criterion that requires the prosecution to prove that a reasonable person, in the specific circumstances, would be caused to believe that their physical or psychological safety would be threatened if they failed to provide the labour or service. In *R. v. A.A.*, the Court of Appeal for Ontario made three findings on this point:

- i. the expectation of the specific belief engendered by the accused's conduct must be reasonable, thus introducing an objective element;
- ii. the determination of the expectation is to be made on the basis of all the circumstances; and
- iii. the person's safety need not actually be threatened.¹⁵

1.2.2.2 Analysis of the Circumstances

In *R. v. Sinclair*, the Court of Appeal for Ontario provided a non-exhaustive list of circumstances that might be relevant in assessing the question of a reasonable apprehension of fear. These circumstances include the presence or absence of violence or threats; coercion, including physical, emotional or psychological coercion; deception; abuse of trust; and vulnerability due to age or personal circumstances.¹⁶

Appearing before the Standing Senate Committee on Human Rights, the Department of Justice official, Natalie Levman, noted that victim testimony “is often an important part of the evidence put forward by the prosecution, as borne out in reported case law.”¹⁷ Also speaking to the Senate Committee, Janine Benedet, Professor of Law at the University of British Columbia, said that “the use of the reasonableness standard tends to allow stereotypes and myths about trafficking to enter the picture.”¹⁸ Professor Benedet proposed that the bill be amended by adding the phrase “abuse of a condition of vulnerability” to the list of factors in the definition of exploitation.

1.2.2.3 Legal Statistics

The vulnerability of victims and control, coercion and fear are some of the factors that make it difficult to obtain testimony in criminal proceedings.¹⁹ Statistics Canada's 2021 *Juristat* publication on human trafficking stated the following:

Research to date has indicated that there are many challenges to prosecuting human trafficking cases including an inability to rely on victim testimony as victims are often reluctant or afraid to take action against their traffickers and as such it can be difficult to prove guilt[.]²⁰

Human trafficking offences are not often criminally prosecuted in Canada. Statistics Canada data show that police reported 511 human trafficking incidents in 2019. This was the highest figure recorded since data were first published in 2009. Also in 2019, 89% of human trafficking charges brought before adult criminal courts were stayed, withdrawn, dismissed or discharged. Only 7% resulted in a guilty verdict.²¹

2 DESCRIPTION AND ANALYSIS

Bill S-224 consists of one clause amending the first two subsections of section 279.4 of the Code.

The proposed new definition of exploitation for subsection 279.04(1) has two components. First, new paragraph 279.04(1)(a) refers to the conduct that is at the root of the exploitation, namely, the actions that caused another person to provide their labour or a service. This aspect of the definition has been part of prior versions of this section.²² Second, new paragraph 279.04(1)(b) incorporates part of the international definition of “trafficking in persons” from paragraph 3(a) of the Palermo Protocol, namely, a person’s conduct that

involves, in relation to any person, the use or threatened use of force or another form of coercion, the use of deception or fraud, the abuse of a position of trust, power or authority, or any other similar act.²³

The bill also removes the criterion of a reasonable apprehension of fear from subsection 279.04(1). The current definition refers to

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.²⁴

In subsection 279.04(2), the bill repeals the interpretive provision that lists some of the factors that the court may consider in determining whether an accused exploited another person, such as a threat, deception or abuse of power. Current case law, as outlined in *Sinclair*, recognizes the existence of relevant circumstances, some of which have appeared in this subsection since 2012.²⁵

2.1 COMING INTO FORCE

The bill comes into force on the day that it receives Royal Assent.

NOTES

1. [Bill S-224, An Act to amend the Criminal Code \(trafficking in persons\)](#), 44th Parliament, 1st Session, (committee stage version, 22 March 2023).
2. Senate of Canada, [Journals](#), 14 June 2022.
3. The *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* is an international instrument that sets out the legal definition of human trafficking. It was adopted by United Nations General Assembly [Resolution A/RES/55/25](#) on 15 November 2000 and came into force on 25 December 2003. See United Nations, [Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#), 2000, para. 3(a).
4. [Bill S-228, An Act to amend the Criminal Code \(trafficking in persons\)](#), 43rd Parliament, 2nd Session.
5. [Bill C-461, An Act to amend the Criminal Code and the Judges Act \(trafficking in persons\)](#), 42nd Parliament, 1st Session.
6. Public Safety Canada, [Human Trafficking](#), 10 September 2020.
7. Shana Conroy and Danielle Sutton, "[Trafficking in persons in Canada, 2020](#)," *Juristat*, Statistics Canada, Catalogue no. 85-002-X, 9 June 2022.
8. Canada has also signed the *United Nations Convention against Transnational Organized Crime*, which is linked to the Palermo Protocol. United Nations, Office on Drugs and Crime, [United Nations Convention against Transnational Organized Crime and the Protocols Thereto](#), p. 42.
9. Ibid.
10. [Criminal Code](#), R.S.C. 1985, c. C-46. The first specific offences date back to 2005. See [An Act to amend the Criminal Code \(trafficking in persons\)](#), S.C. 2005, c. 43.
11. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 118. Section 118 prohibits organizing the coming into Canada of persons by means of abduction, fraud, deception or use or threat of force or coercion.
12. [Criminal Code](#), R.S.C. 1985, c. C-46, ss. 279.01–279.04.
13. [Criminal Code](#), R.S.C. 1985, c. C-46, s. 279.04.
14. [R. v. Sinclair](#), 2020 ONCA 61 (CanLII); and [Urizar c. R.](#), 2013 QCCA 46 (CanLII).
15. [R. v. A.A.](#), 2015 ONCA 558 (CanLII), reiterated in [Chahinian c. R.](#), 2022 QCCA 499 (CanLII).
16. [R. v. Sinclair](#), 2020 ONCA 61 (CanLII), para. 15.
17. Senate, Standing Committee on Human Rights, [Evidence](#), 6 June 2023 (Natalie Levman, Senior Counsel, Department of Justice Canada).

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18. Senate, Standing Committee on Human Rights, [Evidence](#), 6 June 2023 (Janine Benedet, Professor of Law, University of British Columbia, as an individual).
19. Public Safety Canada, [About Human Trafficking](#).
20. Dyna Ibrahim, "[Trafficking in persons in Canada, 2019](#)," *Juristat*, Statistics Canada, Catalogue no. 85-005-X, 4 May 2021, p. 9. In addition, during the consultations on a new national strategy to combat human trafficking held in 2018, participants spoke about the evidence required regarding the victim's fear and "indicated that this threshold was too limiting and narrowed the definition of human trafficking which, in turn, impacts prosecution and conviction rates." See Public Safety Canada, [2018 Human Trafficking Consultations Report](#), 2019, p. 11.
21. Dyna Ibrahim, "[Trafficking in persons in Canada, 2019](#)," *Juristat*, Statistics Canada, Catalogue no. 85-005-X, 4 May 2021, p. 3.
22. [An Act to amend the Criminal Code \(trafficking in persons\)](#), S.C. 2005, c. 43. In 2005, sections 279.01 to 279.04 were added to the *Criminal Code* to create specific human trafficking offences. The "offer to provide" wording previously appeared in the French version of the Code, but was removed when [An Act to amend the Criminal Code \(trafficking in persons\)](#), S.C. 2012, c. 15, came into force in 2012. This wording was restored following the entry into force of [An Act to amend the Criminal Code \(exploitation and trafficking in persons\)](#), S.C. 2015, c. 16.
23. [Bill S-224, An Act to amend the Criminal Code \(trafficking in persons\)](#), 44th Parliament, 1st Session, cl. 1.
24. [Criminal Code](#), R.S.C. 1985, c. C-46, s. 279.04(1).
25. [R. v. Sinclair](#), 2020 ONCA 61 (CanLII), para. 15.