
Two Private Member's Bills that made Canadian History

Joy Smith MP

Bill C-268, An Act to Amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years), was only the fifteenth Private Member's Bill to change the Criminal Code since 1867 and the sponsor of the Bill made history with Bill C-310, becoming the first MP in history to change the Criminal Code twice. This article looks at the background and content of these two Bills.



I was first drawn to the issue of human trafficking in Canada through the work of my son, who was a member of the RCMP and served in the Integrated Child Exploitation Unit (ICE). Overnight, I noticed a huge change in him; his hair turned grey and I could tell things weighed heavily on him. I

was appalled to find out that children in Canada were being bought and sold in exchange for sex and money and even more horrified that this issue was completely off the public's radar screen. As I became more aware of the magnitude of the problem, I realized this exploitation was happening in communities all across our nation. Gradually I began working with victims of human trafficking and not only saw, but felt their pain and humiliation. Perpetrators used coercion and manipulation to gain control of these innocent victims. The victims were and are subjected to every imaginable sexual, physical and mental abuse, involuntary drug use and even threats against their victim's families.

First Steps – Getting the Word Out

When I came to Parliament in 2004, I wanted to stop the business of human trafficking. Unfortunately, I faced an uphill battle in trying to change the channel and focus Canadians' attention on this heinous crime happening in their own backyards. Few

Parliamentarians were aware of the depth of this issue in Canada and struggled to believe that this was a reality in our nation ... let alone one we had to confront. I began my work as a Member of Parliament to bring greater awareness about human trafficking in Canada and greater attention to what we must all do to stop it.

The first step in fighting this crime was calling on the Standing Committee on the Status of Women to initiate a study of human trafficking in Canada. On September 28, 2005, I first raised the need to address the sexual slavery occurring in North America. I presented this issue to the Committee to give voice to the thousands of women, both Canadian born and others arriving on Canadian soil from other countries, who suffered at the hands of human traffickers.

Turning Outrage into Action

My motion to study human trafficking in Canada was passed by the Committee on September 26, 2006 and the study then began on October 3, 2006. The Standing Committee on the Status of Women's February 2007 Report, *Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada*, was tabled in Parliament on February 27, 2007. The key priorities of the report focused on the prevention of trafficking, protection of victims, and prosecution of offenders. This report prompted all parliamentarians, and all Canadians, to stand up for victims who are trafficked for the purpose of sexual exploitation, support the proposed recommendations and take whatever steps necessary to implement them. In March 2007, my motion M-153, which I introduced to the House of Commons in 2006, was unanimously passed. It stated:

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The trafficking of women and children across international borders for the purposes of sexual exploitation should be condemned, and that the House call on the government to immediately adopt a comprehensive strategy to combat the trafficking of persons worldwide.

Bill C-268

The passing of this motion led to my work on Bill C-268, *An Act to Amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years)*, which I introduced in 2009. Canada's *Criminal Code* currently provides for a mandatory minimum sentence of five years for the aggravated offence of living off the avails of prostitution of a person under the age of eighteen years. The trafficking of children is similar to this offence but often has much more severe consequences for the victim. Bill C-268 contained amendments to Canada's *Criminal Code* to provide a five year minimum sentence for the trafficking of minors in Canada and a six year minimum sentence for cases involving aggravated offences like assault or death. In June 2010, the bill was passed and successfully amended Section 279.01 of Canada's *Criminal Code* to create a new offence for child trafficking with a five-year mandatory penalty. This was only the 15th time in Canadian history that a Private Member's Bill amended the *Criminal Code*.

National Action Plan

Despite the success of Bill C-268, I felt there was a gap and a need for a National Action Plan in Canada. So in 2010, I drafted a proposal titled, *Connecting the Dots*. This piece provided key recommendations that should be included in a National Action Plan, some of which included providing adequate funding for NGOs to deliver care, counselling, shelter and assistance to victims; developing policies and regulations to combat forced labour and child labour abroad; and creating regional human trafficking taskforces.

Following the release of *Connecting the Dots*, Canada's first National Action Plan to Combat Human Trafficking was drafted. It is a comprehensive blueprint to guide the fight against the serious crime of human trafficking in our nation. On June 6, 2012, Canada's National Action Plan to combat the trafficking of persons was launched and it emphasized the need for awareness in vulnerable populations, support for victims, dedicated law enforcement efforts, and the need for all Canadians to prevent the trafficking of individuals. These new measures, totalling over \$25 million over four years, builds on and strengthens Canada's significant work to date to prevent, detect and prosecute human trafficking,

such as targeted training for law enforcement officials and front-line service providers, and enhanced public awareness measures. Canada's approach is guided by its international commitments contained in the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and is organized around four pillars, namely: prevention, protection, prosecution and partnerships.

Bill C-310

With the National Action Plan now in place, my second Bill, C-310, *An Act to Amend the Criminal Code (trafficking in Persons)*, was introduced on October 3, 2011. This bill adds the current trafficking in persons offences [s.279.01, s.279.011, s.279.02 & s.279.03] to the current 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. 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 falls under the nationality principle which is defined as: 'States may assert jurisdiction over acts of their nationals, wherever the act might take place.' There are three purposes of designating Sections 279.01 - 279.03 as extraterritorial offences. The first is that 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. The second is that 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 systems. Finally, an extraterritorial human trafficking offence will clearly indicate that Canada will not tolerate its own citizens engaging in human trafficking anywhere.

The second amendment of Bill C-310 enhances 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 added an evidentiary aid for the Court to provide clear examples of exploitation such as the use of threats,

deception or abuse of power or authority. Examples of similar interpretive aids can be found in s.153 (1.2) and s.467.11 (3) of the *Criminal Code*. Overall, this Bill allows the long arm of the Canadian law into other countries by allowing Canadian police to go abroad, handcuff a Canadian citizen or permanent resident suspected of trafficking people, and bring the suspect back to Canada for trial. Bill C-310 received Royal Assent and became law on June 28, 2012.

There was overwhelming support for Bill C-310 from law enforcement, victims' services, First Nations representatives, and religious and secular non-governmental organizations. Professor Benjamin Perrin, of the University of British Columbia, Faculty of Law, and author of *Invisible Chains: Canada's Underground World of Human Trafficking* stated:

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 of the International Justice Mission Canada also lent his support for the Bill:

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.

National Human Trafficking Awareness Day

But the fight is not over. On February 14, 2012, I introduced Motion M-317, which calls on the Government of Canada to establish February 22 as Canada's National Human Trafficking Awareness Day:

That, in the opinion of the House, the government should encourage Canadians to raise awareness of the magnitude of modern day slavery in Canada and abroad and to take steps to combat human trafficking, and should do so by designating the 22nd day of February each year as National Human Trafficking Awareness Day, to coincide with the anniversary of the unanimous declaration of the House to condemn all forms of human trafficking and slavery on February 22, 2007.

A National Human Trafficking Awareness Day will help rally Canadians together to effectively eliminate today's many forms of slavery and raise awareness across Canada. Government action alone will not end modern day slavery. Each Canadian must take steps to prevent human trafficking and end this brutal injustice. Until slavery has been eradicated, there is much to be done.

Next Steps for 2013

To further this cause, in 2013, I am working to develop a 'Target the Market' approach in Canada which will centre on bringing the perpetrators to justice and eliminating the demand for sex. The men and women who prey on innocent victims create a market that buys and sells our youth today in Canada. Men who pay to use the bodies of these young people fuel the profit and demand for this modern day slavery that is happening right here in our own communities. Countries such as Norway and Sweden have made substantive progress toward eliminating human trafficking by targeting the market, eliminating the demand, supporting victims, and placing the ownership for these crimes on the perpetrators. Canada needs a 'Target the Market' model so that our youth are no longer bought and sold.

To conclude, human trafficking is the second largest organized crime in the world today, a fact which focused my work as a Member of Parliament. Bills C-268 and C-310 are making a big difference for police officers across Canada. Just in Calgary, on February 6, 2013, *CTV Calgary* reported that Calgary Police Service laid their first charge of trafficking of a minor (new since 2010), carrying a minimum mandatory of five years imprisonment. Since the Conservative Government shone the spotlight on the heinous crime of human trafficking in our country, perpetrators are being apprehended and charges are being laid. Dedicated Parliamentarians can make a difference and change the course of a country's history. History has proven that.