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## **Position Paper on Human Trafficking for Sexual Exploitation October 2009\***

### **Introduction**

Over this past year, the issue of human trafficking has received renewed and focused attention. Parliament is currently considering three different pieces of proposed legislation aimed at combating human trafficking. With the approach of the 2010 Olympic Games, the Vancouver community has been debating the issue of whether human trafficking, and in particular, sex trafficking, will increase around the 2010 Games, as has been predicted by some commentators. Without diminishing the importance of this debate, West Coast LEAF believes that regardless of whether the level of trafficking increases during the Olympics, trafficking is of serious concern and more must be done to address it. Governmental and non-governmental agencies alike have been working on developing measures to address the issue of human trafficking, and West Coast LEAF believes that any initiatives undertaken to prevent and combat human trafficking must be focused on the vulnerabilities of victims and must adequately provide for their protection.

The issue of human trafficking is broad, and a thorough examination of all aspects of human trafficking is beyond the scope of this paper. Therefore, we limit our discussion here to an understanding of trafficking as the recruitment and transportation of an individual by means of either actual or threatened force for the purpose of sexual exploitation.<sup>1</sup>

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Disclaimer: Although we do our best to keep all information up to date, since the law changes so often, West Coast LEAF cannot guarantee the legal accuracy or completeness of this document or its contents. This document provides general information only. It is not meant to be used as legal advice for specific legal problems. If you need

## **The Problem: Trafficking in women and girls for purposes of sexual exploitation**

Human trafficking in Canada, and in Vancouver in particular, has been observed to be an ongoing problem.<sup>2</sup> The *2009 Trafficking in Persons Report*, issued by the U.S. State Department, cites Canada as a “source, transit and destination country for men, women and children trafficked for the purposes of commercial sexual exploitation and forced labour.”<sup>3</sup> The State Department notes that Canadian women and girls, many of whom are aboriginal, are trafficked domestically within Canada for purposes of sexual exploitation. In Western Canada, women and girls from Asian countries such as Thailand, Cambodia, Malaysia, Vietnam, China, South Korea and the Philippines are trafficked through Vancouver for purposes of commercial sexual exploitation.<sup>4</sup>

There has also been concern that trafficking – and in particular, sex trafficking – will increase during the 2010 Olympic Games in Vancouver.<sup>5</sup> According to a recent report, international sporting events have the potential for establishing conditions which give rise to a greater risk of human trafficking by contributing to an increase in demand for prostitution for the duration of the event and by facilitating entry of trafficked persons as “visitors” into the host country.<sup>6</sup> British Columbia’s Office to Combat Trafficking in Persons has remarked that there is a “demonstrated increase in the exploitation of women in relation to these events.”<sup>7</sup> Increased concern about human trafficking at this time creates the ideal opportunity for law makers and service providers to re-evaluate their approaches to preventing trafficking, protecting victims and punishing perpetrators.

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legal help, please contact a lawyer or advocate.

<sup>1</sup> For reference, we refer to the definition of trafficking set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime, to which Canada is a signatory. Article 3 of the Protocol defines trafficking in persons as:

[t]he 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.

While there continues to be debate over the meaning of “coercion” and “exploitation”, we limit our discussion here to an understanding of “coercion” as involving either actual or threatened force, and “exploitation” as involving forced labour, debt-bondage, or slavery. We focus in particular on the sexual exploitation of trafficked individuals, and consider beyond the scope of our discussion here issues related to persons trafficked for organ harvesting.

<sup>2</sup> See *Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada, Report of the Standing Committee on the Status of Women* (“*Report of the Standing Committee*”), 39th Parliament, 1st Session (February 2007); *Faster, Higher, Stronger: Preventing Human Trafficking at the 2010 Olympics* (“*Faster, Higher, Stronger*”), The Future Group (November 2007).

<sup>3</sup> U.S. State Department, *2009 Trafficking in Persons Report* (June 2009), at pg. 98-99.

<sup>4</sup> *Id.* at pg. 98-99.

<sup>5</sup> The question of whether sex trafficking will actually increase around the 2010 Games is not without controversy. See, for example, the Global Alliance Against Traffic in Women’s February 2009 briefing paper, entitled *Trafficking in Persons and the 2010 Olympics*, which argues that “[d]ata from previous sporting events indicates that an increase of trafficking in persons into forced prostitution *does not* occur around sporting events” (emphasis added).

<sup>6</sup> *Faster, Higher, Stronger, supra* note 2, at pg. 9.

<sup>7</sup> “Will Olympics Be Magnet for Human Traffickers?” *The Tyee*, Jan. 23, 2009, available at <http://thetyee.ca/News/2008/09/04/HumanTraffic>.

While victims of trafficking come from varying backgrounds and circumstances, they are often poor and socially marginalized. Statistics on the number of victims of trafficking in Canada are difficult to accurately determine, and while the RCMP has variously estimated there are between 800 to 1200 victims of trafficking in Canada, some non-governmental organizations report estimates of 15,000 victims of trafficking in Canada.<sup>8</sup> Non-governmental organizations working with women note that the trafficking of aboriginal women and girls from reserves to urban centres is of particular and persistent concern.<sup>9</sup>

### **The Law: Criminal and refugee protections**

There are two pieces of legislation that prohibit trafficking in persons: the *Criminal Code*<sup>10</sup> and the *Immigration and Refugee Protection Act*<sup>11</sup> (“IRPA”). Section 279 of the *Criminal Code* sets out a fairly comprehensive scheme for criminalizing much of the conduct associated with the trafficking of individuals, while section 118 of the *IRPA* sets out similar prohibitions against human smuggling and trafficking.

The government has had modest success in securing trafficking convictions under the *Criminal Code*, though it appears that it has not been able to obtain any convictions under the *IRPA*, as far as West Coast LEAF has been able to determine. According to the *2009 Trafficking in Persons Report*, Canada secured five trafficking-specific convictions under the *Criminal Code* during the past year, and as of late April 2009, there were an additional 12 anti-trafficking prosecutions pending in the provincial courts, involving 15 accused offenders, though it is unclear from the State Department’s report whether these prosecutions proceeded under the anti-trafficking provisions of the *Criminal Code* or the *IRPA*.

In the immigration context, the current Temporary Resident Permit (“TRP”) provides a measure of protection for victims who have been trafficked into Canada from abroad. The TRP permits victims to stay in Canada for up to 180 days, and may be renewed at the end of the 180-day period. Victims of trafficking who receive a TRP are also eligible for health-care benefits and trauma counseling, and may also apply for a work permit.

There are three bills on human trafficking currently working their way through the legislative process. Each bill seeks to amend the current protections in different ways.

**Bill C-268** seeks to amend the *Criminal Code* to establish a five-year mandatory minimum term of imprisonment for trafficking in persons under 18 years of age.

**Bill S-223** proposes a *Victims of Human Trafficking Protection Act*, which is an attempt to remedy some of the current gaps in victim protection. Bill S-223 seeks to amend the *IRPA* to establish, *inter alia*, an extended victim protection permit that would allow a

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<sup>8</sup> “Canadian Traffic”, Alia Dharssi, *Ubysssey Online*, Mar. 24, 2009, accessed from: <http://www.ubyssey.ca/?p=7868>, June 3, 2009.

<sup>9</sup> *Id.*

<sup>10</sup> *Criminal Code*, R.S. 1985, c. C-46

<sup>11</sup> *Immigration and Refugee Protection Act*, 2001, c.27

trafficked individual to stay in Canada for up to three years if there is a serious possibility that removal from Canada would be harmful to the individual, if the individual is willing to assist authorities in the investigation or prosecution of trafficking-related offences, or if the issuance of the permit is otherwise justified in the circumstances. Holders of a victim protection permit would be able to access the same health and social services available to permanent residents, and be permitted to work and study in Canada. Bill S-233 would also require the Minister of Health to establish within the Department of Health a telephone hotline to assist victims of human trafficking, and to provide for information services in the Department's regional offices to help trafficked individuals access available resources in the government and the community. The Bill also seeks to ensure that the availability of the hotline is well-publicized, and would require the Minister to develop and implement a public awareness campaign concerning human trafficking.

Finally, **Bill C-45** seeks to amend the *IRPA* by denying work or study authorizations to foreign nationals if the immigration officer reviewing the application for the authorization believes that the applicant is “at risk of being subjected to humiliating or degrading treatment, including sexual exploitation.”

### **West Coast LEAF’s Position: Proposed legislation and the importance of victim protection**

Proposed measures to prevent and combat human trafficking – particularly around the 2010 Games – include public awareness campaigns designed to deter potential commercial sex users, a call for increased prosecution of traffickers, expanded immigration protections for victims and proposed mandatory minimum sentences for individuals who traffic minors. West Coast LEAF supports measures designed to increase public awareness of human trafficking and sexual slavery, believes that the government must continue to lay charges against individuals involved in human trafficking (and work towards improving its ability to do so), and advocates for stronger victim protections.

In regard to Bill C-268, which aims at establish a five-year mandatory minimum prison terms for trafficking in minors<sup>12</sup>, West Coast LEAF has some concerns about the efficacy of minimum sentences but supports rigorous prosecution and serious penalties for persons who traffic in minors. We note, however, that all measures designed to prevent and prosecute trafficking must be implemented in conjunction with strong initiatives designed to protect victims. While West Coast LEAF notes that the co-operation of trafficked persons is often crucial to the success of investigations and prosecutions, we believe that the rights and needs of victims must be placed front and centre in all judicial proceedings on trafficking.

West Coast LEAF is concerned at the lack of convictions that have been achieved

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<sup>12</sup> For a thoughtful discussion of Bill C-268 and its implications under international law and the Charter, see “Bill C-268: Minimum Sentences for Child Trafficking Needed”, Benjamin Perrin, *Alberta Law Review Online Supplement*, Mar. 12, 2009, available at [http://ualbertalaw.typepad.com/alr\\_supplement/2009/03/bill-c-268-minimum-sentences-for-child-trafficking-needed.html](http://ualbertalaw.typepad.com/alr_supplement/2009/03/bill-c-268-minimum-sentences-for-child-trafficking-needed.html).

under both IRPA and the *Criminal Code*, and has identified several factors contributing to the apparent difficulty in obtaining convictions for human trafficking offences. First, as the Report of the Standing Committee on the Status of Women recognized, prosecutors may be unfamiliar with the *Criminal Code* and *IRPA* anti-trafficking provisions, which are relatively new amendments to the legislation.<sup>13</sup> This means that prosecutors may be reluctant to lay charges based on provisions with which they have little familiarity, or for which they have limited guidance in terms of judicial interpretation. Law enforcement officials may not be aware of the anti-trafficking provisions in the *Criminal Code*, either: indeed, in April 2009, the *Toronto Sun* reported that even the public information officer with the Toronto Police was unaware that human trafficking is an offence under the *Criminal Code*.<sup>14</sup> The Report of the Standing Committee on the Status of Women also indicated a concern that the judiciary may need additional training on human trafficking, particularly with respect to understanding victims of trafficking and their circumstances. Second, and perhaps more importantly, successful prosecutions often rely on the testimony of the victims of trafficking, and without adequate systems in place to ensure victim protection, trafficked persons may be reluctant to present themselves to governmental authorities or to participate in prosecutions.<sup>15</sup>

It is West Coast LEAF's view that any initiatives adopted as part of the government's anti-trafficking agenda must be sensitive to the particular vulnerabilities and needs of victims, and that existing legislation and resources available for victim protection must be better utilized and publicized. Trafficked persons typically have heightened vulnerability. Those who have been trafficked internationally may be in an environment where they do not speak the language, understand the culture, or have any awareness of the services available to victims of crime and abuse and therefore may be entirely dependent on their trafficker. They may fear retaliation from traffickers not only against themselves, but against family members in their home country. Victims of domestic trafficking likewise face particular vulnerabilities: the control, isolation, and exploitation that domestically-trafficked victims face are serious and severe. Given the disproportionate number of Aboriginal women and girls among the victims of domestic trafficking, it is important to appreciate that even though victims of domestic trafficking may be Canadian, they also come from a variety of backgrounds and cultures.<sup>16</sup>

Training and awareness for law enforcement and other government agents on issues of victim protection are crucial to ensuring that trafficking victims are not re-victimized when they come into contact with government agents, or when they seek help from the

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<sup>13</sup> Report of the Standing Committee, *supra* note 2, at pg. 29.

<sup>14</sup> "Pimps guilty of trafficking: Prof", Tamara Cherry, *Toronto Sun*, Apr. 30, 2009.

<sup>15</sup> Report of the Standing Committee, *supra* note 2, at pg. 32.

<sup>16</sup> It is important to note at this point that protecting victims of domestic trafficking and victims of international trafficking may differ in significant respects. Individuals who have been internationally trafficked face a variety of problems that domestically-trafficked individuals do not, such as access to health and social services and the threat of deportation, which we discuss further below. Nonetheless, it is also important to note that any health and social services provided to victims of trafficking -- be they Canadian citizens or foreign nationals -- should be culturally sensitive and relevant, given the disproportionate number of aboriginal women and girls among the victims of domestic trafficking.

authorities. The RCMP, for example, has incorporated training on human trafficking issues into its curriculum, including adding study of the *IRPA* to its coursework. Such training must also take place among law enforcement officials at the provincial and municipal levels. Moreover, such initiatives must be extended to all government agents who may come across a victim of human trafficking, including immigration officers, border officials, police, prosecutors, judges, and law enforcement advisors within the government. In particular, law enforcement officers must be trained to view trafficking victims from a human rights perspective, as opposed to an enforcement perspective. They need to be aware of the legal and community-based resources available to victims of trafficking, and be able to assist victims in obtaining necessary assistance.

Related to ensuring adequate training and awareness for those who come into direct contact with victims of trafficking is similarly ensuring that victims are not criminalized. One of the most repeated concerns relating to victim protection is the fear that many victims have of detainment or deportation, should they approach law enforcement officials to seek protection.<sup>17</sup> Traffickers themselves will use the risk of exposure, either to the police or to the immigration authorities, as a means of maintaining and enforcing control over their victims. Victims may also come from countries where there is an expectation that the police force itself is corrupt and complicit in trafficking rings.<sup>18</sup> Accordingly, many victims are reluctant to identify themselves as victims of trafficking, for fear of being considered criminals themselves. It is of paramount importance that law enforcement efforts and prosecutions must focus on targeting the traffickers, not on criminalizing the victims, and that victims of sex trafficking not be charged with criminal offences. It is also crucial that immigration officers not automatically detain victims of trafficking if they are apprehended with suspected traffickers or smugglers at border crossings. As the *2009 Trafficking in Persons Report* notes, there have been reports that victims of international trafficking have been arrested and deported without first being identified as victims.

Victims of trafficking are not required to assist authorities in investigations relating to the trafficker, either under the existing or the proposed legislation. However, reports from non-governmental organizations working with victims of trafficking report that because the availability of the TRP is poorly publicized, many victims are unaware that they would not be required to testify against their traffickers in order to obtain a TRP. The availability of the TRP is not effective without public and targeted awareness programs. Thus, while a recent report notes that of the 31 foreign nationals who were brought to the attention of immigration officials between May 2006 and May 2008 as potential human trafficking victims, only 12 were granted TRPs, while seven were refused TRPs, and one victim's TRP was cancelled.<sup>19</sup>

Moreover, while the TRP scheme provides short-term immigration status to

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<sup>17</sup> *Report of the Standing Committee* at 30.

<sup>18</sup> *Trafficking in Persons*, Laura Barnett, Library of Parliament PRB 06-24E, revised July 18, 2008.

<sup>19</sup> "UBC Legal Expert Releases Canada's First Stats on Foreign Human Trafficking Victims", Oct. 28, 2008, available at <http://www.publicaffairs.ubc.ca/media/releases/2008/mr-08-143.html>; accessed on Sept. 14, 2009. It is unclear from the report what type of relief, if any, was sought by the remaining individuals.

internationally-trafficked persons, provision of social services and support remains inconsistent and poorly-funded. Most victims of trafficking receive front-line support from non-governmental organizations, as many do not qualify for provincially-funded social services, such as welfare or housing assistance. And as reports suggest, adequate funding remains the most significant barrier to the provision of social services at the grass-roots, non-governmental level. There remains a need for a comprehensive system of social services to be established and consistently offered to all victims of trafficking, both domestic and international. While the specific needs of each individual victim vary, certain key areas have been identified as important for ensuring adequate protection, such as the following<sup>20</sup>:

- Protection services (police protection similar to that offered to victims of domestic violence);
- Shelter (emergency shelter and independent housing);
- Health services (including access to public health care, mental health services, detoxification and addiction recovery services);
- Long-term counseling; and
- Economic services (access to welfare, employment, education and skill development, language training).

Both the federal and provincial governments must devote financial resources to develop a comprehensive system to help protect trafficked individuals. At present, governmental victim support is administered at the provincial level, leading to an inconsistent provision of services across the country. While British Columbia, has established an agency for trafficked individuals to assist them to access social services, others provinces such as Ontario and Quebec have yet to do so.

Thus, while existing legislation and policies provide some measure of protection to victims of trafficking, more must be done. Trafficked individuals must be made aware of the resources that are available to them, and that by identifying themselves as trafficking victims, they will not expose themselves to criminal prosecution or deportation.

West Coast LEAF believes that the proposed measures in Bill S-223 are an improvement upon the current victim protection regime. In particular, West Coast LEAF supports extending the term of TRPs to three years. However, in certain respects, this bill does not go far enough to ensure that victims are adequately protected.

First, among the factors for granting victim protection permits is whether the applicant is willing to participate in the prosecution or investigation of trafficking offences. While this is not a requirement for granting of the permits, it nonetheless evidences a bias towards

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<sup>20</sup> *Trafficking in Persons* at 16-17.

protecting individuals who are willing to expose themselves to the risks involved in cooperating with law enforcement officials. As discussed above, there are many reasons why a victim of trafficking may be concerned or fearful about cooperating with law enforcement agencies, and her willingness to do so should not be a condition for protection. Moreover, if trafficking victims should choose to cooperate with law enforcement agencies, witness protection services must be made available to them and their families. From a prosecutorial perspective, there may be concerns that the strength of a victim's testimony may be diluted if she is viewed to have provided testimony in exchange for a residency permit. West Coast LEAF recommends that the public awareness component of the bill be strengthened, to ensure that trafficking victims are aware that their legislative protections do not hinge on their participation in the prosecution of their abusers. West Coast LEAF also urges the government to ensure that immigration and refugee determination officers are aware that this requirement is optional.

Second, under Bill S-223, as under the current TRP regime, an individual who is out of status (or otherwise in violation of the *IRPA*) and is found *not* to be a victim of trafficking will face removal from Canada. It is unclear from the *IRPA*'s implementing regulations and guidelines whether there is a process for appealing the determination that an individual is not a victim of trafficking, and this lack of provision for appropriate procedural safeguards is of substantial concern to West Coast LEAF. Any revision to *IRPA* and the TRP regime will need to ensure that victims of trafficking facing deportation from Canada are provided with the same procedural protections as any other individuals facing removal orders under like circumstances, and that they are fully apprised of the other legislative and administrative measures available to them, such as refugee protection claims and applications for humanitarian and compassionate consideration.

Accordingly, while West Coast LEAF endorses the improvements upon the current regime offered by Bill S-223, it believes that the proposed legislation can be improved upon.

In regard to Bill C-45, West Coast LEAF does not believe that this proposed amendment addresses the issue of victim protection. Rather than criminalizing the conduct of traffickers, it seeks to make victims of trafficking (or potential victims of trafficking) "illegal" (under immigration law) and to return them to a place of vulnerability. That is, those who are suspected of being victims of human trafficking will not be able to obtain legal immigration status in Canada. Instead of protecting victims, this Bill both punishes victims for their involvement in trafficking and heightens their exposure to violence and further trafficking in their countries of origin. Immigration law, like criminal law, should be focused on ensuring that traffickers are identified and punished and that victims are provided with protection and access to social services; instead, this proposed provision denies the victims any rights in Canada at all.

Furthermore, the provisions of the proposed bill are overly broad, therefore leaving the door open to discretionary decision making that may have a particularly negative impact on immigrant women. The wording of the bill is focused on denying work or study

authorizations based on the immigration officer's assessment of whether the applicant is subject to humiliating or degrading treatment, including sexual exploitation; since women are more likely to be perceived to be in positions of subjugation, particularly sexual exploitation, this provision will most likely be used to deny visas to immigrant women. The potential for discrimination is high.

Accordingly, West Coast LEAF strongly opposes passage of Bill C-45.

### **West Coast LEAF Recommendations: Focus on victims**

Victim protection is the cornerstone to successfully combating human trafficking. Because of the clandestine nature of trafficking, victim co-operation is crucial in exposing trafficking and in mounting successful prosecutions of traffickers. Victims need to know that they will not be further re-victimized if they attempt to seek help, and the immigration and criminal justice systems need to ensure that victims will not be criminalized. Our recommendations for enhancing victim protection are as follows:

1. Ensure that all front-line workers, government agents and participants in the legal system (including prosecutors and judges) coming into contact with trafficking victims receive adequate and appropriate training on human trafficking and the particular vulnerabilities facing victims of trafficking.
2. Ensure that trafficking victims are not criminalized, and engage in an awareness campaign to communicate to victims of trafficking that they will not face arrest or detention if they choose to identify themselves.
3. Publicize available resources for victims of trafficking, and provide services that are culturally sensitive and relevant.
4. Ensure that adequate social services are available to trafficking victims, regardless of whether they have been domestically or internationally trafficked (and regardless of their immigration status in Canada).
5. Oppose passage of Bill C-268.
6. Enact Bill S-223, the *Victims of Human Trafficking Protection Act*, with the proposed modifications as discussed herein.
7. Oppose passage of Bill C-45.