

PROPOSED ANTI-HUMAN TRAFFICKING LEGISLATION

Discussion Paper

I. Background

Human trafficking, or trafficking in persons, is one of the most serious crimes imaginable, often described as a modern form of slavery. Human trafficking involves the recruitment, transportation, harbouring and/or exercising control, direction or influence over the movements of a person in order to exploit that person, typically through sexual exploitation or forced labour. Victims, mostly women and children, are deprived of their normal lives and compelled to provide labour or sexual services, through a variety of coercive practices, all for the direct profit of their perpetrators.¹

Trafficking in persons is a criminal offence in Canada, and can be punished with a sentence of up to 14 years in prison. Human trafficking cases can be extremely complex, and the hidden nature of human trafficking means that some victims may not receive the help that they need to break out of the cycle of exploitation and abuse.

The Government of Saskatchewan currently provides assistance and support to victims of human trafficking on a number of fronts, including through government funded shelters and victims' services supports. The Minister of Justice and Attorney General has indicated his interest in expanding this support by developing provincial legislation that will serve as an additional tool to assist victims.

Accordingly, the introduction of new legislation that is proposed would be aimed at preventing human trafficking, and assisting trafficking victims to restore their freedom and reclaim control over their own lives. Manitoba, Ontario, and most recently Alberta have established legislation which provides civil remedies to victims of human trafficking. These remedies provide more options for human trafficking victims to get the help and protection they require.

The Government of Saskatchewan is seeking the input of interested parties and organizations to obtain their views respecting the core elements of such legislation, as discussed below, with a view to making the legislation as comprehensive and effective as possible.

II. Criminal Offences vs. Civil Remedies

As a matter of jurisdiction, any legislation proposed by the Government of Saskatchewan will exclusively deal with civil remedies to human trafficking. This is because the *Criminal Code of Canada* ("Criminal Code") and *Immigration and Refugee Protection Act* ("IRPA") fall exclusively under federal jurisdiction. As a result, provincial legislation cannot address Criminal Code offences, criminal sentences for trafficking crimes, probation conditions, or offences under IRPA.

¹ Government of Canada, "National Action Plan to Combat Human Trafficking" (2012).
<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf>

Other provinces have established civil remedies for human trafficking victims in order to provide additional options and protections to prevent this awful crime. The central components of the anti-trafficking legislation in those provinces are:

1. Civil protection orders, also referred to as restraining orders, which prohibit traffickers from making contact with their victims and may require traffickers to return the victim's property, identification, and any recordings of the victim; and
2. A statutory cause of action (tort) of human trafficking which empowers trafficking victims to seek financial compensation from traffickers for the exploitation suffered. The purpose of the tort is to hold traffickers financially accountable for the exploitation of their victims.

The full text of the legislation in Alberta, Manitoba and Ontario can be found at the links below.

Alberta: https://www.qp.alberta.ca/1266.cfm?page=P26P87.cfm&leg_type=Acts&isbncIn=9780779817429

Manitoba: <https://web2.gov.mb.ca/laws/statutes/ccsm/c094e.php>

Ontario: <https://www.ontario.ca/laws/statute/17p12>

III. Proposed Legislation in Saskatchewan

Saskatchewan is considering a number of elements in potential legislation, including the following key proposals for which we seek your input:

- A. **Protection orders:** Alleged human traffickers who are the subject of criminal investigations and proceedings are often subject to conditions prohibiting them from contacting their victims; however, there may be barriers for trafficking victims who wish to have a protection order in place, but prefer to use a civil process. The Government of Saskatchewan is proposing the creation of a dedicated protection order through a simplified application process to assist victims seeking to escape the cycle of exploitation and abuse.
- B. **Tort of Human Trafficking:** At its core, human trafficking is a crime which exploits human beings for financial gain. The Government of Saskatchewan is proposing the creation of the tort of human trafficking in Saskatchewan that would empower victims of human trafficking to take civil action against their traffickers for the exploitation they suffered. This would provide a civil action for damages that would involve a lower standard of proof than required for a conviction under the Criminal Code.
- C. **Searches of Property:** The Government Saskatchewan is considering provisions that would authorize applications for search warrants where there are reasonable grounds to believe a victim of human trafficking may be found. These applications could be made on behalf of those seeking to assist victims including police services.

D. **Offences and Penalties:** The Government of Saskatchewan proposes creating a specific offence for breaching a human trafficking protection order that was made by the court. This would include a range of penalties, and would create a stronger deterrent for human traffickers to contact their victims.

IV. Conclusion

Thank you for taking the time to engage in this important initiative. We invite your comments on these core elements and any further suggestions you may have to improve legislative remedies for human trafficking and assist victims of this horrible crime.

Please provide any comments you may have prior to **September 23, 2020**:

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