Submission to the Standing Committee on Justice and Human Rights on Bill C-75

September 1, 2018

Introduction

The Evangelical Fellowship of Canada (EFC) is the national association of evangelical Christians in Canada. Our affiliates include 45 denominations, more than 65 ministry organizations and 35 post-secondary institutions. Established in 1964, the EFC provides a national forum for Canada's four million Evangelicals and a constructive voice for biblical principles in life and society.

The EFC appreciates the opportunity to participate in this Justice Committee study on changes to the *Criminal Code*.

Our approach to the issues we will address in Bill C-75 is based on the biblical principles of respect for human life and dignity, care for the vulnerable and freedom of religion. We note that these principles are also reflected in Canadian law and public policy.

It has been said that the criminal law is a nation's fundamental statement of applied morality and justice. It is a moral system.[1] Its legitimacy lies in it being a reflection of the sentiments and valuation of Canadians.

The *Criminal Code* is the application of core principles which frame our collective understanding of justice and public morality, principles such as human dignity. Amendments to the *Criminal Code* imply a shift in these principles or in their interpretation and we must carefully consider the implications of amendments to the *Code*.

Criminal laws give expression to the norms that undergird a society. They both express and reinforce the basic commitments that bind a society together. In a very real sense, the law is a teacher.

Hybridization suggests that an offence is now to be considered less of a violation of human dignity, less of a threat to human society and social cohesion and, in particular, less harmful to the vulnerable amongst us. The onus is on those advocating change to explain why these offences should now be considered lesser offences.

[1] Law Commission of Canada, Report No. 3 "Our Criminal Law" (1976).

Hybridization of offences

Bill C-75 proposes a significant number of changes to the *Criminal Code of Canada*, and various other aspects of the criminal justice system. This is lengthy, complex legislation and we will address only a few specific elements.

Our primary concern in this submission is with the hybridization of certain offences, which will allow some serious indictable offences to be treated as relatively minor summary offences, at the discretion of the Crown.

The categorization of a criminal offence tends to indicate the degree of seriousness of the conduct covered by the offence. We are very concerned that it sends the wrong message to make some of these lesser offences. When Bill C-75 proposes a greater maximum penalty for repeated intimate partner violence, it communicates that this is an offence the government considers to be very serious and that it should be dealt with more severely. And this is a move we support.

Conversely, when the bill proposes to hybridize an offence dealing specifically with the assault of religious officiants, it sends the message that this offence is of lesser concern.

Obstructing or violence to clergy

Bill C-75 s. 61(1) proposes to make s. 176(1) of the *Criminal Code,* which deals with obstructing or violence to officiating clergy, a hybrid offence.

The *Criminal Code* does allow for the consideration of aggravating factors in sentencing if an offence was motivated by bias, prejudice, or hate based on religion. This means that an attack against a religious person motivated by hatred of the religion could receive a higher sentence.

But it is our submission that obstructing or assaulting a religious official about to perform religious duties strikes directly at the heart of religious belief and practice. Religious officials are not merely individuals when they are carrying out religious duties, they are also representatives of the broader community of faith.

During the hearings last year on Bill C-51, which proposed repealing s. 176, the EFC and many other religious groups expressed deep concern that this protection might be removed.

As a letter to the Minister of Justice on Bill C-51, signed by the EFC President and more than 65 interfaith leaders, including Muslim, Buddhist, Sikh, Jewish and Christian leaders, explained:

> An attack against a religious assembly or the deliberate assault of a religious official outside a house of worship is a different kind of offence from other public disturbances, assaults, threats or incitement to hatred. An offence against a people at worship reverberates through the community and touches every member. An offence against one particular person or community at worship has an impact on all religious adherents.

> In a climate of increasing incidents against faith communities across Canada, and in view of the role of the *Criminal Code* in serving as a deterrent and educational guide to society, we believe it is essential to maintain the specific protections that section 176 affords to religious gatherings and to those who lead them.[2]

As our brief on Bill C-51 to this Committee stated:

> Religious gatherings are distinct in character and purpose. They are not just like any other public gathering or assemblage of persons. And an attack on a religious official or religious gathering is also distinct in character and purpose. It is our submission that offences against religious officials and people at worship are unique in character, in significance and in motivation, and therefore it is not only valid, but an important objective for Parliament and the Criminal Code to continue to treat them as such.
>
> The specific protection offered by section 176 recognizes that there is something different, distinct and valuable about religious practice. It recognizes that there is a good that makes it worthy of specific and explicit protection. However unintentional it may be, to remove this protection would erode that recognition, and undermine the value and place of religious belief and practice in Canada.
>
> Particularly now, in a time of growing concern about intolerance toward religious minorities in Canada, Parliament's duty to ensure the protection of religious officials and communities is especially significant.[3]

This Committee heard the concerns of many religious Canadians, and in November 2017, its report on Bill C-51 did not repeal, but instead made minor revisions to s. 176.

We ask this Committee to consider the message being sent by making obstruction or assault of clergy a hybrid offence.

Sexual exploitation

Human trafficking, and all forms of sexual exploitation, are a serious violation of human rights. According to the U.S. State Department's 2017 *Trafficking in Persons Report,* "Canada is a source, transit, and destination country for men, women, and children subjected to sex trafficking, and a destination country for men and women subjected to forced labor.*"*[4]

---

[2] https://www.evangelicalfellowship.ca/Communications/Outgoing-letters/October-2017/Interfaith-Letter-on-Bill-C-51-(Legal-Protections

[3] https://www.evangelicalfellowship.ca/Resources/Government/Bill-C-51-(2017)-Laws-on-disrupting-worship

[4] U.S. State Department, *Trafficking in Persons Report*, 2017, accessed April 2, 2018, https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271161.htm

While the trafficking of humans is multi- faceted, international sources suggest that upwards of 80% of all trafficking victims are subject to sexual exploitation.[5] The majority of cases in which human trafficking specific charges have been laid in Canada primarily involved sexual exploitation.[6]

In many ways, Canada has shown itself to be a leader in fighting sexual exploitation, passing a number of broadly supported initiatives throughout the last two decades.

Sexual exploitation offences constitute a grave violation of human rights, including the rights of women and children to live free from violence, and it is important that the gravity of these kinds of offences be consistently reflected in our laws and policies.

We are concerned, then, that hybridizing the following offences sends the message that they are less serious. In particular, we note Bill C-75's hybridization of the following sections in the *Criminal Code*:

- s. 210 keeping common bawdy-house (Bill C-75, s. 75)
- s. 279.02(1) material benefit – trafficking (Bill C-75, s. 106)
- s. 279.03(1) withholding or destroying documents – trafficking (Bill C-75, s. 107)
- s. 286.2(1) material benefit from sexual services (Bill C-75, s. 111)

We recommend that these offences not be hybridized, but remain indictable offences, as a reflection of the seriousness of the crimes.

For the same reason, we welcome the increased maximum penalties for the following *Criminal Code* offences:

- s. 286.1(1)(b) obtaining sexual services for consideration (Bill C-75, s. 110)
- s. 286.4(b) advertising sexual services (Bill C-75, s. 112)

MAID

The practices of euthanasia and assisted suicide are fraught with risk, particularly for the vulnerable. The Supreme Court decision in *Carter v. Canada* quoted the lower court's conclusion that the "risks inherent in permitting physician-assisted death can be identified and very substantially minimized."[7] Yet it also noted the trial judge's acknowledgement that some evidence on the effectiveness of safeguards was weak, and there was evidence of a lack of compliance with safeguards in permissive jurisdictions. (par. 108). Our review of studies of the effectiveness of safeguards used in permissive jurisdictions indicates that no safeguards are completely effective.

---

[5] United Nations Office on Drugs and Crime, A Global Report on Trafficking in Persons, prepared by the Policy and Analysis and Research Department of UNODC, February 2009, http://www.unodc.org/documents/Global_Report_on_TIP.pdf, 6.

[6] RCMP Human Trafficking National Coordination Centre website, accessed April 2, 2018, http://www.rcmpgrc.gc.ca/ht-tp/index-eng.htm

[7] *Carter v. Canada* [2015] 1 SCR 331 paragraph 105

In *Carter*, the Supreme Court agreed with the trial judge that the risks associated with physician-assisted suicide "can be limited through a carefully designed and monitored system of safeguards." (para. 117). The Court envisioned stringent safeguards because these were necessary in the balancing of autonomy and protection of life.

It is essential that very strict safeguards be put and kept in place to minimize the harm to our societal commitment to the respect for life and to protect the vulnerable; both those made vulnerable because of a grievous medical condition and those whose vulnerability pre-existed any grievous medical condition.

Bill C-75 allows for an increased maximum penalty in two offences dealing with the safeguards for MAID. Although we remain deeply opposed to the practices of euthanasia and assisted suicide, we support the most stringent possible safeguards for vulnerable Canadians.

Therefore, we support Bill C-75's proposal to increase the maximum penalty for the following *Criminal Code* offences:

- s. 241.3 failure to comply with safeguards (Bill C-75, s. 82)
- s. 241.4(3) forgery/destruction of documents (Bill C-75, s. 83)

Child protection

Children are among the most vulnerable members of Canadian society. Children and youth are particularly vulnerable to mistreatment and exploitation due to their size and stage of development. It is especially important that we do all we can to protect them and promote their well-being.

We are very concerned then that making these grave offences against children and youth into hybrid offences sends the message that they are less serious. It communicates that these are relatively minor offences:

- s. 237 infanticide (Bill C-75, s. 81)
- s. 242 neglect to obtain assistance in childbirth (Bill C-75, s. 84)
- s. 280(1) abduction of person under 16 (Bill C-75, s. 108)
- s. 281 abduction of person under 14 (Bill C-75, s. 109)

With the objective of increasing protection for children, we support the increased maximum penalties for the following *Criminal Code* offences:

- s. 215 (3)(b) providing necessaries of life (Bill C-75, s. 76)
- s. 218 (b) abandoning a child (Bill C-75, s. 77)

Abortion

Bill C-75 repeals s. 287 of the *Criminal Code* on abortion, which was struck down in 1988 by the Supreme Court of Canada decision in *R. v. Morgentaler*. In its decision, the Supreme Court agreed that there is a state interest in protecting the foetus. The Court struck down this provision because access to a therapeutic abortion committee was not equally available across

the country. As well, the decision found that the administrative process could cause delays, which could endanger the woman's life or health.

The court saw the legislature as the appropriate forum for developing legislation to protect the foetus. As Justice Wilson wrote in the *Morgentaler* decision, "The precise point in the development of the foetus at which the state's interest in its protection becomes 'compelling' I leave to the informed judgment of the legislature which is in a position to receive guidance on the subject from all the relevant disciplines."[8]

As s. 287 has already been struck down by the Supreme Court, its repeal in Bill C-75 does not change the status of the law. We take this opportunity to note, however, that this section was not struck down because the court found a positive right to abortion, but because the administrative process was uneven.

Canada has no criminal laws regulating or prohibiting abortion. Canada is the only western nation and one of the few nations in the world without any legal restrictions on abortion. The courts have said that protection of the foetus is a legitimate legislative objective and should be pursued. There is a role for the legislature in protecting the foetus and in clearly defining its legal standing.

Summary of Recommendations

- Do not hybridize the following *Criminal Code* offences, as proposed in this legislation, but retain them as indictable to reflect the gravity of the offences:
    - S. 176(1) obstructing or violence to clergy (Bill C-75, s. 61(1))
    - s. 210 keeping common bawdy-house (Bill C-75, s. 75)
    - s. 279.02(1) material benefit – trafficking (Bill C-75, s. 106)
    - s. 279.03(1) withholding or destroying documents – trafficking (Bill C-75, s. 107)
    - s. 286.2(1) material benefit from sexual services (Bill C-75, s. 111)
    - s. 237 infanticide (Bill C-75, s. 81)
    - s. 242 neglect to obtain assistance in childbirth (Bill C-75, s. 84)
    - s. 280(1) abduction of person under 16 (Bill C-75, s. 108)
    - s. 281 abduction of person under 14 (Bill C-75, s. 109)

- We support the increased maximum penalties for the following *Criminal Code* offences, as proposed in this legislation:
    - s. 286.1(1)(b) obtaining sexual services for consideration (Bill C-75, s. 110)
    - s. 286.4(b) advertising sexual services (Bill C-75, s. 112)
    - s. 241.3 failure to comply with safeguards (Bill C-75, s. 82)
    - s. 241.4(3) forgery/destruction of documents (Bill C-75, s. 83)
    - s. 215 (3)(b) providing necessaries of life (Bill C-75, s. 76)
    - s. 218 (b) abandoning a child (Bill C-75, s. 77)

[8] *R. v. Morgentaler*, [1988] 1 SCR 30 page 183.