



Submission to the Senate Standing Committee on Legal and Constitutional Affairs on Bill C-75

May 2019

Introduction

The Evangelical Fellowship of Canada (EFC) is the national association of evangelical Christians in Canada. Our affiliates include 44 denominations, more than 70 ministry organizations and 36 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 the Legal and Constitutional Affairs 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 The *Criminal Code* is the application of core principles, such as human dignity, which frame our collective understanding of justice and public morality. Amendments to the *Criminal Code* imply a shift in these principles or in their interpretation. Therefore, 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 can 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, then, is on those advocating change to explain why these offences should now be considered as lesser offences.

We understand that one of the objectives of Bill C-75, in hybridizing more than 100 offences, is to reduce delays in the criminal justice system. But our goal should be to deliver justice in a

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

timely way, and in a way that is responsive to the public interest, to the needs of the victim and of the community generally. This means that serious offences must continue to be treated as such.

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 offenders and to victims - to make it possible for some of these to be considered as 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.

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 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 on Bill C-51 in 2017, 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 the House of Commons Justice 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

The Justice 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 carefully consider the message that is sent when obstruction or assault of clergy is made a hybrid offence, particularly in a time of increasing incidents and attacks against faith communities and religious officials.

² [https://www.evangelicalfellowship.ca/Communications/Outgoing-letters/October-2017/Interfaith-Letter-on-Bill-C-51-\(Legal-Protections](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](https://www.evangelicalfellowship.ca/Resources/Government/Bill-C-51-(2017)-Laws-on-disrupting-worship)

Statistics Canada reports increasing rates of hate crimes targeting religion. The latest statistics available, from 2017, found hate crimes against religion accounted for more than 40% of all hate crimes in Canada, and had increased 83% over the previous year.⁴

The horrific attack on Muslims in Quebec City in 2017 is an instance of violence against religious Canadians at prayer. And this year, in the month of March alone, there were attacks against Catholic priests who were performing their duties at St. Joseph's Oratory in Montreal and Our Lady Queen of Poland Parish in Edmonton, and an incident involving a priest during Mass at the Catholic Parish of the Holy Name in Vermillion.

All of these incidents point to a trend: an increase in attacks on officials in houses of worship and on communities at worship. Given the seriousness of this trend, it is not the time to remove protection, even if the offences haven't been, to date, used in great numbers.

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."⁵

While the trafficking of humans is multi-faceted, international sources suggest that upwards of 80% of all trafficking victims are subject to sexual exploitation.⁶ The majority of cases in which human trafficking specific charges have been laid in Canada primarily involved sexual exploitation.⁷ The RCMP has identified 531 cases where human trafficking specific charges were laid between 2005 – 2018. Of these cases, 510 were domestic trafficking and primarily involved sexual exploitation.⁸

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. It is essential that the gravity of these kinds of offences be consistently reflected in our laws and policies.

⁴ <https://www150.statcan.gc.ca/n1/daily-quotidien/181129/dq181129a-eng.htm>

⁵ 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>

⁶ 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.

⁷ RCMP Human Trafficking National Coordination Centre website, accessed April 2, 2018, <http://www.rcmpgrc.gc.ca/ht-tp/index-eng.htm>

⁸ RCMP Human Trafficking National Coordination Centre, <http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>

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. 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)

Pimps and traffickers exploit people, primarily women and girls, to gain a material benefit. That is the primary motivation for those who exploit. As a society, we want to significantly reduce this kind of exploitation, to deter and discourage it by all means possible, not open the door to lesser consequences for those who exploit others.

Section III, article 9 of the Palermo Protocol, which Canada ratified in 2002, says in point 5, that

States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.⁹

With respect, the EFC suggests that to hybridize the above offences would be contrary to the commitment laid out in the Palermo Protocol.

Further, it is important to recognize that one of the challenges with prosecuting human trafficking offences is that victims are often afraid to testify. They fear they will face retribution from their trafficker or an associate of their trafficker, who may not be convicted, or who may do minimal time in prison before being back on the streets.

We must be able to reassure victims with their very real safety concerns that we will do all we can to ensure they remain safe. Respectfully, we submit that allowing trafficking-related offences to be treated as summary offences, with lesser penalties and periods of incarceration, does not send this important and reassuring message to victims.

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

For the same reasons, 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)

⁹ https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch_XVIII_12_ap.pdf

Bill C-452 – Coming into Force

We also welcome the coming into force in Bill C-75 of two measures from Bill C-452, which received Royal Assent in 2015. These measures are found in clause 1, the reverse burden of proof provisions, and clause 4, which adds s. 279.01 to s. 279.03 in the list of offences for which proceeds from criminal activity may be seized. These measures increase the possible consequences to traffickers and are intended to strike at their bottom line, which will hopefully serve to deter future offending.

We note with concern, however, that Bill C-75 also amends Bill C-452 so that consecutive sentencing for trafficking offences, found in clause 3, comes into force on a day to be fixed by order of the Governor in Council. We question this delay. Traffickers are typically charged with multiple offences, including multiple trafficking-related offences, prostitution-related offences, as well as other serious offences such as aggravated assault, forcible confinement and so on. And quite often, those charges may involve more than one victim.

Currently, the perception is that individuals convicted of trafficking offences serve fairly light sentences, something that will only be aggravated if the trafficking offences above are hybridized. This contributes to the reluctance of victims to come forward and follow through with testifying. The introduction of consecutive sentencing for trafficking offences would increase the severity of punishment for those convicted, more in line with the gravity of the crimes committed, and it would help reassure victims that the process of testifying is worth the risk.

Bawdy house provisions

Bill C-75 initially proposed hybridizing s. 210, keeping a common bawdy house. In its report on Bill C-75, the House of Commons Justice Committee went further, and repealed the bawdy house provisions in s. 210 and 211, as well as the definition of common bawdy house in s. 197(1) of the *Criminal Code*.

We recognize that application of this particular provision has a complicated and difficult history, in particular as it has been applied to the LGBT community, and that the government has an interest in remedying that history.

However, with respect, we suggest this is not the appropriate remedy.

Our interest in this provision is that it affords law enforcement another tool to address the ownership and operation of facilities like brothels, body rub parlours, massage parlours or holistic centres,¹⁰ in which individuals are frequently held, kept and exploited or trafficked for sexual services.

¹⁰ <https://toronto.citynews.ca/2017/10/26/25-per-cent-toronto-holistic-centres-offer-sexual-services-report/>

The naming and continued inclusion in the *Criminal Code* of such a ‘place’ is significant, because the existence and operation of these places can legitimize and reinforce the hold, power and influence of a pimp, trafficker or exploiter over the exploited.

Pimps and traffickers may own and operate facilities like holistic centres and massage parlours, or they may use them with the full knowledge of the owner. Placing the young women they exploit in a licensed facility legitimizes the pimp or trafficker as part of a business. Individuals who use these places to exploit do so with intention, forethought and planning.

We have many partner organizations across the country working with victims and on the front lines who confirm that trafficking in these kinds of facilities is rampant. Law enforcement, service providers and survivors themselves confirm this abuse is taking place. Provisions like the bawdy house offence provide additional access points to these places and offer another tool that allows law enforcement to monitor, to search, and to prosecute where needed.

A report by the City of Toronto’s Auditor General’s Office in 2017 found that more than 100 holistic centres in Toronto “offering unauthorized services could potentially pose an array of health, safety and community issues, including the risk of human trafficking. ... These centres advertised with sexually explicit photographs and had suggestive descriptions of services such as erotic massage.”

We note also that the RCMP National Coordination Centre’s data on human trafficking in Canada between 2005 – 2018 includes convictions for keeping a common bawdy house.¹¹

There is an ongoing case in British Columbia involving a couple alleged to have operated a brothel in which they prostituted a 13-year-old girl. According to media reports, they have been charged with keeping a common bawdy house.¹²

We recognize that in its decision in *R v. Bedford*, the Supreme Court found that the harms imposed by the inclusion of prostitution in s.210 were grossly disproportionate to the legislation’s objectives of preventing public nuisance or community disruption. Specifically, the Court found the prohibition prevented prostituted persons from working indoors, in collectives or having access to a safe house, and that this harm was grossly disproportionate to the laws’ objectives

¹¹ <http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>

¹² <https://www.thestar.com/vancouver/2019/04/03/cash-seized-from-alleged-richmond-bc-bawdy-house-could-be-forfeited.html>; <https://www.ctvnews.ca/canada/cash-seized-from-alleged-b-c-brothel-house-could-be-forfeited-1.4365345>

After *Bedford*, the definition of bawdy house in s. 197(1) was revised in the *Protection of Communities and Exploited Persons Act* (PCEPA), removing the words ‘for the purpose of prostitution.’ The current definition states: “*common bawdy-house* means, for the practice of acts of indecency, a place that is kept or occupied or resorted to by one or more persons.”

We note that the objectives of the *PCEPA*, as described in the preamble, include reducing demand for sexual services, and protecting individuals who are exploited. This objective is also clearly evident in the name of the legislation, the *Protection of Communities and Exploited Persons Act*.

We do not suggest that the provision should prohibit prostituted persons from working from their home or other safe space, or from working in a true co-op or collective - the situations envisioned in *Bedford*. We do suggest, however, that the provision should continue to apply to the far more common scenario in which an individual is controlling or managing others in exploitive relationships - making the rules, setting the rates, deciding who will see what client and what services they will perform, and typically charging substantial fees that sometimes approach or equal what may be earned. This provision should clearly apply to places where an individual or individuals are benefiting materially from the sexual exploitation of others.

Rather than repealing this section as the Justice Committee has called for, we ask this Committee to consider clarifying the bawdy house provisions and definition in the *Criminal Code* to clearly target situations of sexual exploitation where individuals are held or kept in a place where someone else is in control of their movements, their activities and quite often their finances.

For example, s.210(1) Keeping common bawdy-house could be amended to read: Every one who, *for the purpose of exploiting or facilitating the exploitation of one or more persons*, keeps a common bawdy-house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

S. 211, Transporting person to bawdy house, could be amended to read: Every one who knowingly takes, transports, directs, or offers to take, transport or direct, any other person to a common bawdy-house *for the purpose of exploiting them or facilitating their exploitation* is guilty of an indictable offence and liable is guilty of an offence punishable on summary conviction.

The definition of “Common bawdy-house” could be amended to read: “Common bawdy-house” means a place that is kept or occupied or resorted to by one or more persons, *for the purpose of exploiting or facilitating the exploitation of one or more persons*.

In our view, to clarify the provision and definition in this way would not only ensure consistency with the rest of the offences included in the *Protection of Communities and Exploited Persons Act*, it would also be constitutionally valid, given the clear and distinct objectives of *PCEPA*.

We understand that the Committee may not be able to amend the bawdy house provisions and definition due to time constraints. In that case, we recommend the Committee leave them in the *Criminal Code* unamended, rather than repeal them.

We recommend that s. 210 and 211 not be repealed in their entirety, as proposed by the Justice Committee. Section 210(2)(a) and (b) could be repealed, but s. 210(1) and s.210(2)(c) should be retained to hold accountable those who are knowingly permitting a place to be used for the purposes of human trafficking or commercial sexual exploitation.

Further, we suggest that this Committee recommend back to the House that the bawdy house provisions and the definition of common bawdy house in the *Criminal Code* be amended either in Bill C-75 or at a future date, to clearly reference places where commercial sexual exploitation or human trafficking are taking place.

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."¹³ 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 there are no safeguards that are completely effective.

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 protect those who are vulnerable and to minimize the harm to our societal commitment to the respect for life. We must protect 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 the EFC remains 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)

¹³ *Carter v. Canada* [2015] 1 SCR 331 paragraph 105

- 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 everything we can to protect children and promote their well-being.

We are very concerned 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 necessities of life (Bill C-75, s. 76)
- s. 218 (b) abandoning a child (Bill C-75, s. 77)

Summary of Recommendations

- We recommend that the following *Criminal Code* offences not be hybridized, as proposed in this legislation, but remain indictable to reflect the gravity of the offences:
 - S. 176(1) obstructing or violence to clergy (Bill C-75, s. 61(1))
 - 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 recommend that s. 210 and 211 not be repealed in their entirety, as proposed by the Justice Committee. Section 210(2)(a) and (b) could be repealed, but s. 210(1) and s.210(2)(c) should be retained to hold accountable those who are knowingly permitting a place to be used for the purposes of human trafficking or commercial sexual exploitation.
- We recommend further that the provisions on keeping a common bawdy house and the definition of common bawdy house be retained and revised to clearly reflect their

application in situations of exploitation so that they address locations in which people are knowingly allowing or taking part in commercial sexual exploitation or human trafficking.

- 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 necessities of life (Bill C-75, s. 76)
 - s. 218 (b) abandoning a child (Bill C-75, s. 77)

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