

**Submission to the Senate Standing Committee on Legal and Constitutional Affairs
on Bill C-5, *An Act to Amend the Criminal Code and the Controlled Drugs and Substances Act***

June 22, 2022

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 study on Bill C-5 and its changes to the *Criminal Code*. Although this bill deals with various areas of the *Criminal Code*, our focus is on the provision that relates to human trafficking.

Our approach is based on the biblical principles of respect for human life and dignity, and care for those who are vulnerable. 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.

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 a human trafficking offence to be considered for conditional sentencing, commonly known as house arrest.

Human trafficking, and all forms of sexual exploitation, are a serious violation of human rights. According to the U.S. State Department's 2021 Trafficking in Persons Report, "As reported over the past five years, human traffickers exploit domestic and foreign victims in Canada, and traffickers

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

exploit victims from Canada abroad.... Traffickers exploit Canadian victims within and across the country, and sometimes abroad, mainly in the United States.”²

While the trafficking of humans is multi- faceted, international sources indicate trafficking for sexual exploitation is the most detected form of trafficking in North America. The UNODC report also found the vast majority (94%) of sex trafficking victims detected in 2016 were female: 68% women and 26% girls.³ In 2019, police reported 511 human trafficking incidents, a 44% increase from 2018. From 2009 to 2019, there were 2,468 police-reported incidents in Canada where human trafficking was the most serious violation related to the incident.⁴

Canada has been at the forefront of taking action to address human trafficking, both domestically and internationally. As *the National Strategy to Combat Human Trafficking 2019-2024* notes, human trafficking is a complex crime and vulnerable populations are at higher risk.⁵ It is one of the fastest-growing crimes globally and can be a low-risk, high-reward endeavour for traffickers. They maintain control over their victims and prey on their victims’ vulnerabilities.

In terms of the toll on victims, the *National Strategy* states, “Victims often suffer physical, sexual, financial, emotional and psychological abuse, and often live and work in horrific conditions. Due to the harm and violence inflicted on victims, human trafficking is associated with substantial trauma, and recovery from its impacts can take a lifetime.”⁶

There is a very high bar for prosecuting human trafficking offences and few perpetrators are convicted. As the *National Strategy* points out, “While the number of police-reported incidents of human trafficking increases every year, the number of human trafficking related convictions remains relatively low.”⁷ Allowing conditional sentences, or house arrest, for a human trafficking offence reduces the risk for traffickers even further.

The *National Strategy* goal of prosecution is described as *Increasing criminal justice system capacity to identify and prosecute human trafficking cases*. It commits,
Actions will be taken to strengthen the knowledge of law enforcement and prosecutors on the scope, scale and sensitivities around human trafficking to better identify cases and enhance consistency in prosecution. New initiatives under the *National Strategy* will

² U.S. State Department, Trafficking in Persons Report, 2021, accessed April 13, 2022, <https://www.state.gov/reports/2021-trafficking-in-persons-report/canada/>

³ United Nations Office on Drugs and Crime, https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf

⁴ Dyna Ibrahim, *Trafficking in persons in Canada, 2019*, Juristat bulletin, May 4, 2021, <https://www150.statcan.gc.ca/n1/pub/85-005-x/2021001/article/00001-eng.htm>

⁵ National Strategy to Combat Human Trafficking 2019-2024, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2019-ntnl-strtg-hmnn-trffc/index-en.aspx>

⁶ National Strategy to Combat Human Trafficking 2019-2024, Appendix A, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2019-ntnl-strtg-hmnn-trffc/index-en.aspx>

⁷ National Strategy to Combat Human Trafficking 2019-2024, Appendix A, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2019-ntnl-strtg-hmnn-trffc/index-en.aspx>

focus on promoting a victim-centric criminal justice system, while building on ongoing efforts to prosecute offenders.⁸

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.

It is important that Canada's legal framework align with the "3 P's" identified by the UN: prevention, prosecution and protection; as well as align with current international legal definitions and conventions.⁹ Canadian legislation needs to prevent human trafficking, prosecute traffickers, and protect victims and those who are vulnerable to exploitation.

Canada was one of the first countries to ratify the *Palermo Protocol* in 2002. As the Preamble of the protocol notes,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights....¹⁰

With respect, the EFC suggests that to allow conditional sentencing for a human trafficking offence would be contrary to the spirit and intent of the *Palermo Protocol*, and to Canada's international commitments as a signatory.

It is essential that the gravity of human trafficking offences be consistently reflected in our laws and policies. Currently the *Criminal Code* precludes conditional sentencing for some offences, including the trafficking of persons for material benefit (section 279.02). Bill C-5 proposes to remove this provision.

One of the foundational principles of sentencing in Canada, as the Parliamentary Secretary to the Minister of Justice pointed out at second reading of this bill, is that sanctions are to be proportionate to the degree of responsibility of the offender and the seriousness of the offence.¹¹ He pointed out that the 1996 reforms directed judges to take into account

⁸ National Strategy to Combat Human Trafficking 2019-2024, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2019-ntnl-strtyg-hmnn-trffc/index-en.aspx>

⁹ Michelle A Clark, "Vulnerability, prevention and human trafficking: the need for a new paradigm", in *An Introduction to Human Trafficking: Vulnerability, Action and Impact* through the United Nations Office on Drugs and Crime, (New York, 2008), 59.

¹⁰ <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

¹¹ *House of Commons Debates*, December 13, 2021, <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-16/hansard#11456271>

sentencing principles, including the idea that in sentencing less serious crimes, imprisonment is often ineffective, unduly punitive and to be discouraged.

However, human trafficking is a grave violation of human rights. This is a serious offence that does not fit within the criteria for conditional sentencing.

When Bill C-5 proposes to allow conditional sentencing for someone convicted of trafficking of persons for material benefit, it sends the message – to traffickers, to Canadian society, and, importantly, to victims – that this offence is of lesser concern. It suggests that this 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 those who are vulnerable to exploitation.

This move is particularly troubling following the hybridization of the same offence in Bill C-75. We must not establish a pattern of downgrading the consequences for human trafficking offences; we must follow through on our domestic and international commitments to treat human trafficking as the serious human rights violation that it is.

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 in their community.

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. Allowing trafficking-related offences to be eligible for conditional sentences, or “house arrest,” does not send this important and reassuring message to victims.

Sexual exploitation offences constitute a grave violation of human rights, including the rights of women and children to live free from violence. We recommend that this committee ensure that no human trafficking- related offence is eligible for conditional sentencing.

Recommendation:

- Please amend clause 14(2) of Bill C-5 so that no human trafficking-related offence is eligible for conditional sentencing.