



Canada - Petra E. Newton

Remarks

Petra Newton

It is an honour and privilege to participate in this inspiring and historic summit on a significant issue that is critical to the safety and security of women and girls.

Although I have been involved in the criminal justice system for over 40 years as a prosecutor, defence counsel and judge for 28 years, I have not had direct experience with a human trafficking case. I have had considerable experience with cases which involve the exploitation of women and girls, which is of course the essence of human trafficking.

As a prosecutor, I saw women addicts who were in abusive relationships recruited to participate in drug trafficking organizations.

As a criminal defence counsel, my first client was a heroin addict who did what addicts do, robbed and prostituted herself to feed her insidious habit – a perfect target – ripe for exploitation.

As a judge, presiding exclusively in criminal matters in an inner city courthouse in Toronto, dealing with all women in custody, I am exposed daily to women who are the subject of physical, sexual and emotional abuse. The women I see are often the victims of the feminization and criminalization of poverty who are involved in prostitution and human trafficking to support families to cope – to survive.

I frequently preside in a dedicated Aboriginal Court. Aboriginal women have unique, multiple rehabilitative needs as a result of the ongoing effects of cycles of violence and abuse, alcohol and substance addiction, economic and social deprivation and pejorative stereotyping. Aboriginal women are unfortunately frequently exploited by both individual traffickers and human trafficking organizations.

It is in this context that I am pleased to address you with respect to Canada's progressive initiatives, particularly as they pertain to victims of human trafficking and the enhanced evidentiary provisions.

In 2002 Canada ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. In response, Canada enacted federal legislation to combat and prevent trafficking in persons. In terms of criminal law, the *Criminal Code* specifically targets trafficking in persons. These provisions came into force in 2005 and were updated in 2010 and 2012.

There is a global prohibition on trafficking in persons. A victim's consent is never valid as exploitation is the essence of the offence. The appellate decisions make it clear that the legislative intent behind the *Criminal Code* provisions was to criminalize exploitation which is assessed on an objective standard. Exploitation is defined and does not require direct exploitation.

The legislation outlines factors that a court may consider when determining exploitation, including whether the accused:

- (a) Used or threatened to use force or coercion.
- (b) Used deception.
- (c) Abused a position of trust, power or authority.
- (d) Organ or tissue removal.

The primary trafficking offence is punishable with a maximum of 14 years or life imprisonment under aggravating circumstances (with mandatory minimum sentences for offences involving children).

There are also prohibitions with respect to receipt of financial or material benefits, and withholding or destroying documents to facilitate a trafficking offence.

Offences of trafficking in persons were added to the list of offences committed outside Canada for which Canadian citizens or permanent residents may be prosecuted in Canada.

Trafficking may now form the basis of a warrant to intercept private communications and to take bodily samples for DNA analysis. Convicted traffickers are permitted inclusion in the sex offender registry and can be declared dangerous offenders.

There are a number of evidentiary and remedial provisions in the *Criminal Code* designed to foster witness protection, including the ability to provide restitution to victims who are subjected to bodily or psychological harm, and provisions extending witness protection to children who are testifying in trafficking cases.

Judges may exclude the public from a courtroom where a witness is under 18 in proceedings where an accused is charged with a trafficking offence. Judges may permit testimony from outside the courtroom or behind a screen.

Outside the *Criminal Code*, the *Immigration and Refugee Protection Act* targets cross-border trafficking in persons.

Since Canada ratified the UN Trafficking Protocol significant progress has been made at the domestic level to prevent trafficking and to prosecute traffickers, as well as to protect those trafficked across and within Canadian borders. Canada is recognized as a "Tier 1" country in the annual US Department of State Report on trafficking in persons. I have briefly outlined the relevant sections with respect to the prosecution of traffickers and propose to highlight Federal initiatives with respect to the protection of Victims of Human Trafficking.

The Federal Victims Fund supports projects that provide services to trafficked persons, and underscores the need to identify and protect at risk individuals. The Government of Canada released a National Action Plan to Combat Human Trafficking to "introduce aggressive new initiatives to prevent human trafficking, identify victims, protect the most vulnerable and prosecute perpetrators".

To address prevention, the Action Plan "places emphasis on having frontline service providers, awareness campaigns, community assistance to identify at risk individuals and locations and strengthening child protection systems in Canadian international development programs aimed at youth". Federal commitments under the National Action Plan utilize the internationally recognized 4Ps approach (prevention, protection, prosecution and partnerships).

As I live and preside in Ontario, my focus will be on the recent initiatives instituted by the Provincial Government to combat and eradicate human trafficking, as well as services for the unique and complex needs of victims.

Ontario is a major centre for human trafficking in Canada, accounting for more than 2/3 of the cases nationally. Of Ontario's reported cases of human trafficking, most are for the purpose of sexual exploitation, and the majority of survivors are Canadian citizens or permanent residents. In Ontario, indigenous women and girls are among the most targeted and overrepresented individuals.

In 2016 Ontario instituted an anti-trafficking strategy to increase awareness, enhance justice sector initiatives and improve survivor's access to services. The approach focuses on four discrete areas:

Prevention and community supports to increase awareness with respect to the causes of human trafficking, and improve victim services, Enhanced justice sector initiatives to support intelligence, identification, and investigation of human trafficking, Indigenous-led approaches;

As indicated Indigenous women are over-represented as victims of trafficking and require unique support. Culturally relevant services and responses have been designed, developed and delivered jointly with Indigenous partner organizations,

4. A Provincial Coordination and Leadership Office has been established to improve collaboration across law enforcement, justice, social, health, education and child welfare sectors.

The strategy is survivor-focused and provides a variety of programs, including the unique Support Dog program which provides support dog services for vulnerable victims in the courtroom with Judicial Authorization.

In May 2017 the *Anti-Human Trafficking Act* was enacted. Included in the Act are two Schedules which enact two other statutes:

Human Trafficking Awareness Day Act, which proclaims February 22 as the Annual Human Trafficking Awareness Day. The Prevention of and Remedies for Human Trafficking Act.

The sections which provide significant and innovative remedies for victims come into force on the same date as the regulations, which have as yet to be proclaimed. The legislation incorporates the definition of human trafficking and the enhanced evidentiary provisions of the *Criminal Code*. However, the legislative remedies

do not require either a charge or a conviction. The legislation creates a process for victims and others to apply for a Human Trafficking Restraining Order.

The potential applicants for a Human Trafficking Restraining Order are:

A victim. A person with lawful custody of a child victim. A person with consent. Any other prescribed person.

The court may make such an order if the court determines on reasonable grounds that the person against whom the restraining order is sought has engaged or may engage in trafficking of the victim.

The court may consider the following and any other relevant factors in determining whether to make a restraining order.

The respective ages of the victim and the respondent. The victim's immigration status. Whether the victim has a physical or mental disability. The nature of the relationship between the victim and the respondent. Whether the respondent is in a position of trust, power or authority. The use of threats or intimidation. The use of force. The use of deception, fraud or coercion. The provision of alcohol or a controlled substance to cause or compel the victim to provide labour or services. The respondent's control of access to alcohol or a controlled substance. The respondent's control or threatened control of the victim's finances. The respondent's control of the victim's personal effects or documents. The possession, making transmission, making available, selling, advertising or distribution of any visual recording of the victim's sexual organs or the depiction of sexual activity.

The legislation provides for the application of special evidentiary rules regarding witnesses. The Court may receive and base decisions on evidence considered trustworthy in the circumstances.

I am a proud Canadian and honoured to be a member of a justice system that serves as a beacon of hope to many jurisdictions globally. I have been inspired and enlightened by the insight and experience of my impressive International sisters many of whom I am fortunate to call my friends. Together, I am confident we will capture the spirit and purpose of the Summit. We will make changes and improvements in our respective countries, learn from each other's best practices and work collectively to improve the position of women and girls.

As Pope Francis eloquently stated in his memorable address to the UN General Assembly in September 2015, "many grave problems remain to be resolved". "The classic definition of justice contains as one of its essential elements a constant and perpetual will".

The women who have participated in this Summit have clearly demonstrated the will to address the grave problem of human Trafficking and Slavery.