

## **Comments of Michelle Ferguson to the Committee Studying Human Trafficking in Canada**

I want to thank you for taking the time to study this issue, for the invitation to attend your session in Edmonton, Alberta and for the opportunity to present further comments. I could not possibly put everything into this document, but I will try to highlight the areas I believe will help in Canada's fight against Human Trafficking.

### **Personal Views Expressed**

As you are aware, I am on a secondment right now, so I am not working as a Federal Prosecutor at this time. My comments are not on behalf of PPSC (I believe that you have met with PPSC and have their comments). My comments are made from a practical-on-the-ground perspective from my own experience.

I should also note that PPSC supported me as I developed my expertise in the area of human trafficking, and for that I am grateful.

### **Comments Directly for Mr. Nicholson**

Mr. Nicholson, you asked me to provide you with the case of Jennilyn Morris. I will attach the transcript of the decision to this email. I am also attaching the case of Ruby Sidhu from Red Deer, Alberta. Both were my cases and both test the capacity of our legislation and our prosecuting bodies to effectively bring these matters to trial.

### **Comments Directly for Mr. Housefather**

Mr. Housefather, you questioned me after about the need for interpreters because you have Filipino constituents who speak fluent English. I gave a hurried answer, but allow me to expand on that.

Imagine that English is your second language. Many of these people have recently arrived in Canada. Their English is passable. However, nuances are lost, words are often used as synonyms where the opposite meaning is meant. At the investigation stage, meaning of words and understanding the victim are critical in guiding the investigation. If a victim uses the word "torture" but really means they were verbally belittled and made to feel small, then the investigation takes a different tact depending on what the investigator understands the victim to mean.

Now I want you to imagine someone brought to court to testify. They are scared, they are facing the person that has exploited them, and English is their second language. In a court room, credibility is everything. Understanding both the question and the answer is imperative. A misunderstanding could mean the difference between being believed, and not being believed. So when English is the second language of a victim, it is almost always preferable to have an interpreter present. Some use the interpreter for every word. Some just use the interpreter for the occasional word they have "misplaced".

Interpreters and having documents translated is essential to prosecutions involving foreign nationals whether they are trafficked for sex or labour. Unfortunately, it is expensive and investigations have been stopped because no one will pay for the translations. This happened in the investigation of a Chinese foreign national in the sex trade, and also recently in a case involving Albanian workers. The tool of

translation is necessary for the investigation and for the prosecution. Without proper allocation of resources, these cases are lost.

I will now move on to my personal experiences in prosecuting human trafficking cases and what I have learned.

### **Human Trafficking is About Exploiting a Vulnerability**

At the root of all human trafficking is the manipulation of a vulnerability to get a person to do what you want them to do. The need could be emotional (“Daddy issues”), medical (addiction issues), financial (economic coercion) and/or any combination of these. The forced outcome can be to have the person dance in a club for the trafficker, perform sexual acts, work in a business (hotel, restaurant, farm) or a combination. The motivation for the crime is money.

### **Willingly Trafficked**

The biggest problem with combatting human trafficking is largely due to the perception that the victim is being **willingly trafficked**. This perception is pervasive among law enforcement, prosecutors, first responders and the victims themselves. Human Trafficking brings forth images of chains, locked doors and physical violence. When in reality that is the extreme and obvious type of human trafficking. The Hollywood version. The reality is that there is a spectrum of exploitation that takes place and these gray lines between levels of exploitation is what makes it hard to define. It makes understanding the vulnerability that was exploited, the essential piece of the puzzle.

#### **Example:**

A temporary foreign worker is brought to Canada through the Temporary Foreign Workers Program. On an approved Labour Market Opinion (LMO), the worker is promised \$12/hour, OT at time and half, 40 hours a week, and accommodations at \$350 a month for a private room in a shared house. Terms of the program are that the employer must pay the airfare (return) of all workers and cannot charge a recruitment fee or a fee for the LMO to the worker.

In our example, the worker arrives in Canada with limited English and very little knowledge of the rights they have in Canada. The employer welcomes them by stating that the worker will have to pay the \$1900 return airfare back. The second thing they learn is that they will be charged \$3000 for the LMO. The worker receives their first pay and there are deductions for the \$4900 debt. And they realize they are only being paid \$9/hour. The private room turns out to be a shared mattress on the floor for the same amount of rent.

On its face, it looks like a contractual labour problem. This is an employment standards issue. In fact, some employers have the foreign workers sign a new “contract” agreeing to the new terms.

This looks like a debt of \$4900 and unfair wages. There are no locks keeping the employee. Why not walk away? And that is the key. The reasons depend on the worker and the vulnerability that makes them susceptible to “agreeing” to stay in those conditions. To understand that means understanding that economic coercion can be used as effectively as a chain.

Some examples of what those chains might look like –

- Recruiters – charge \$5000-\$15,000 for a job in Canada. The worker will almost always come with a debt.
- Workers almost always support family back home – sometimes they are the sole support for immediate family and often their parents.
- In some countries, like the Philippines, the wage can be as low as \$12/day (\$3000 a year). So applying a \$3000 debt to that person is a staggering debt – if they leave the job, how will they pay that back
- Most foreign nationals do not know what their rights are when they get here. They depend on the employer to help them navigate Canada
- Another “chain” may be knowing that in some countries, like Guatemala, the program sending farm workers to Canada seasonally is hard to get into and once in the program being sent back to Canada the following year means not “causing problems”. Those that complain often lose the opportunity to work in Canada the following year. That seasonal work may be their only employment and only source of income for their families.
  - So when the farmer in Ontario pays you .12 cents a pound for mushrooms you pick rather than \$12/hour he promised in the LMO – you don’t complain because the pressure is coming from the program that sent you here.
- Or as defence counsel has said to me in numerous cases – “they are better off here even at those lower wages, so what are they complaining of.”

The fact that it looks like someone is “better off” or “willing to work for less” has little to do with the fact that someone has manipulated their circumstance to get free labour for themselves or labour at a considerable cost savings.

If an employer charges a worker \$3000 + \$1900 for the airfare, the employer has bought themselves 13.6 weeks of free labour (based on the reduced wage paid of \$9/hour). Now multiply that times each worker.

After slavery was abolished we went through a time when people could indenture themselves to employers in exchange for room and board and the promise of a payment at the conclusion of the contract. This was declared illegal by the United Nations. And yet, what we see happening across Canada is very similar. Desperate foreign workers who have little, come to Canada hoping to make money for their families and perhaps with hope that they may obtain Permanent Residence status. And unscrupulous employers willing to build their businesses on the backs of these workers manipulate the workers vulnerabilities to exploit them for their labour by holding out a promise of something more.

In sex trafficking how many girls claim they are “independent” even though the trafficker takes all of their earnings, makes all of their bookings and travels with them place to place. You have to just read “The Game” or any other manual written by human traffickers in how to manipulate your victim. They are available on the internet. Traffickers training traffickers. It is a business.

In sex trafficking cases of foreign nationals (often here in Canada on visitor visas), the girls refer to a “gambling debt” that they have to work until it is paid. Traffickers will often pay off this “debt” to one trafficker and then the girl will have to pay the new trafficker the amount of the debt. This term “gambling debt” is essentially the price the trafficker pays for the girl and then he essentially “owns” her until the debt is paid off. Whether the woman has actually incurred the debt is immaterial. What is the vulnerability (financial) and how is the trafficker manipulating that vulnerability to extract free labour.

### Some Answers or Rather a Wish-list

Why do I feel like we can make a dent when people have been enslaving people since the beginning of time? Because I believe in Canada. I believe in the people here and the fact that we can stop it within our borders. Because I got tired of victim impact statements that kept lamenting “I didn’t think this could happen in Canada”.

1. Education - This is key. Front line people and workers need education to recognize what all forms of human trafficking look like. Airlines, bus ticket agents, train station personnel. Educate the police. Educate the RCMP. Educate the by-law officers. Educate CBSA investigators and Border Services Officers. EDUCATE THE PROSECUTORS – not only on what it looks like but a step by step of how to prove it, the challenges, etc. A breakdown at any one of these points of contact can stop a case.
2. SPECIALISTS NEEDED – there is a real push for generalists in all areas. Police, Prosecutors (Federal and Provincial), etc. The problem is that this a complex issue with complexities on top of more complexities. You need people trained in this area to help guide others in this area. A person they can call for advice when they are lost in the field.
  - Understanding the complexities of human trafficking of foreign nationals for sex or labour is a world unto itself. You are dealing with government programs, travel status, different languages, and documents in foreign jurisdictions, etc., translation of documents, citizenship status, etc.
3. Collaboration – you need to have people talking to one another. No one agency can tackle this on their own. CBSA needs to work with the RCMP and local police and by-law to tackle the labour and sex trafficking of foreign nationals. This is an international problem. It is also a multi-layered problem. It requires victim support, support for the people involved. It also involves Prosecutors to work together to make use of IRPA and the CC (Federal and Provincial prosecutors collaborating on the best way to prosecute these cases – which charges should be laid)
4. Coordination – It should not be that human trafficking is treated differently depending on where you live in Canada – city vs rural, BC vs Toronto vs Edmonton. There needs to be a national coordination of how we approach this problem. There needs to be a commitment from the Federal government and each province and territory to develop a consistent response to human trafficking. From investigation to prosecution. There needs to be oversight – both to ensure consistency but most importantly to reduce duplication and wasted effort.
  - In Alberta, after my first case, we started a Labour Trafficking Collaboration group. We brought together RCMP, local police, CBSA, CRA, Service Canada, Service Alberta, local by-law, CIC (IRCC) to discuss cases, strategies, resource pooling, information sharing and education
5. Statistics – This was also a question from your panel. The thought was that the statistics do not bear out what we are seeing in the real world. The problem, I believe, is that we are collecting

the wrong data and there is no one place that reporting is mandatory for everyone. So while the RCMP may collect some data, some police forces are not obligated to report. On top of that the data collected is for s.118 and s.279. We need different criteria and a different measuring stick for success. There are other offences (like s.127(b) in IRPA) that have been likened to “mini-trafficking” offences. There are more. There are also cases that are not prosecuted at all but there is still human trafficking. Resources were used to uncover it. Victims were rescued.

6. Recognizing or bringing in civil concepts – The one I mentioned is the unconscionable transaction. An unfair bargain between two people. The foreign worker who comes to Canada and enters “willingly” into a new contract to work for below minimum wage and for hours that are beyond the Canadian standard. Because if you truly had a choice, would you work 16-22 hours a day for \$8 an hour and come home to share a mattress on the floor with 4 other people? Because if your “boyfriend” promises to supply you with drugs to feed your addiction and to take care of you if you make him \$1000 a day by offering yourself for sex then have you willingly entered into that deal?
7. Pre-charge review – Because of the complexity of these cases, because of the victims and because of the amount of disclosure that is sometimes involved, pre-charge review of charges related to human trafficking can allow investigators and prosecutors to ensure the case is court ready before it gets started. Pre-charge approval requires the case to be ready, allows the prosecution and the courts to manage the case more effectively and allows for the management of victims/witnesses and disclosure.
8. Go after the money – use existing procedures – offence related property, proceeds of crime, civil forfeiture, and restitution.
9. Some jurisdictions have a separate charge for labour trafficking vs. sex trafficking. It is something to consider given the different complexities of each type of offence.

Overall, we need a more holistic approach to how we handle human trafficking cases – from investigation to prosecution. We have to work in teams. We have to recognize the victim and ways to rehabilitate that person so they don't fall victim to someone else again.

This is a very quick summary of my thoughts on this very real Canadian problem based solely on my observations and experiences working in this field. My views are not reflective of any organization and are thoughts of my vision on how we can better manage the resources we have to coordinate a better response to combatting human trafficking. Thank you for the opportunity.