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Citation Details

Benjamin Perrin, "Bill C-268: Minimum Sentences for Child Trafficking Needed" ([forthcoming in 2009])
Alta L Rev - Online Supplement.

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Bill C-268: Minimum Sentences for Child Trafficking Needed

Assistant Professor Benjamin Perrin^[1] (Faculty of Law, University of British Columbia)

I. INTRODUCTION

Under-aged girls as young as 12 years old are being subjected to sexual exploitation by traffickers according to a Criminal Intelligence Service of Canada (CISC) strategic intelligence brief entitled "[Organized Crime and Domestic Trafficking in Persons in Canada.](#)"^[2] Younger victims are more impressionable and easier for traffickers to control. The CISC also sounded the alarm that this is a pressing national problem: "Across the country, organized crime networks are actively trafficking Canadian-born women and under-age girls inter- and intra-provincially, and in some instances to the United States (US), destined for the sex trade."^[3]

Law enforcement agencies are beginning to investigate and lay human trafficking charges under [s. 279.01](#) of the *Criminal Code*, which came into force in November 2005.^[4] This offence carries a maximum term of imprisonment of 14 years, and up to life imprisonment if the accused kidnaps the victim, subjects them to aggravated assault or aggravated sexual assault, or causes the death of the victim during the commission of the offence. However, there are currently no minimum sentences provided, even when the victim is a child. This has proven to be a serious gap in the current law, which [Bill C-268](#) aims to address by introducing a five-year mandatory minimum term of imprisonment for trafficking in persons under 18 years of age.^[5]

The Peel Regional Police and Montreal Police Service have rescued child victims of sex trafficking and secured convictions against their traffickers. However, exceedingly inadequate sentences have been handed down by sentencing judges in the first set of convictions. Bill C-268 arose directly from consultations with these officers who are concerned about the safety of children. Parliament must give the police a stronger tool against child trafficking in order to shut down the domestic sex trafficking networks that are spreading out across the country.

Imani Nakpangi, Canada's first convicted child trafficker earned a total of over \$360,000 over a two and a half year period by selling "Eve" (her real name has been protected) – a 15-year-old girl who had been homeless – for sex. His illicit profits were used to purchase a BMW and a large home in Niagara Falls for himself.

Nakpangi brutally controlled Eve by assaulting her, threatening her, and threatening to kidnap her brother. Nakpangi was convicted of human trafficking on 24 June 2008 by Atwood J. in Brampton, Ontario, and sentenced to just three years on that count.^[6] Factoring in his pre-trial custody credit, Nakpangi will spend less time in jail for this conviction than he spent exploiting this vulnerable girl whose life he has destroyed. In her own words, here is an excerpt from Eve's Victim Impact Statement that was read into the court record. It reveals just a glimpse of her ongoing trauma and fear:

[I am c]onstantly looking over my shoulder afraid either Imani or his friends are going to come after me for putting him in jail. I don't feel safe at home. He knows where I live and what my family looks like, and where they live I have nightmares about him. I have low self esteem. Feel like I'm only good for one thing, sex. I don't see why someone, a man, would be interested in me and try to get to know me because I feel unworthy, dirty, tainted, nothing; basically lost two and a half to three years of my life being with Imani.^[7]

Eve continues in her statement by describing her emotional, health, and financial problems from having been enslaved by her trafficker. However, the Nakpangi case is just the beginning.

In Montreal, the sentence handed down in the case of Michael Lennox Mark is even more appalling. Mark was convicted of human trafficking in November 2008 for forcing a 17-year-old Canadian girl to be sold for sex.^[8] He was sentenced to two years imprisonment, but was given “two for one” credit for his one year of pre-trial custody. As a result, he served only a single week in prison after conviction. This sentence represents a monumental failure of our criminal justice system and demands parliamentary intervention in the form of Bill C-268.

II. BILL C-268 IS CONSISTENT WITH CANADA’S INTERNATIONAL OBLIGATIONS

Canada’s inadequate sentences for child trafficking have already attracted international scrutiny. In October 2008, the [Report of the Canada-United States Consultation in Preparation for World Congress III Against Sexual Exploitation of Children and Adolescents](#) recommended that Canada enact a “mandatory minimum penalty for child trafficking.”^[9]

The passage of Bill C-268 is also consistent with Canada’s international obligations to protect children. Canada signed the [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#) on 10 November 2001 and ratified it on 14 September 2005.^[10] Article 3(3) states: “Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.”^[11] Currently, s. 279.01 of the *Criminal Code* (trafficking in persons) fails to satisfy this obligation.^[12]

Conversely, other countries have singled out child trafficking as a particularly heinous crime that warrants a more serious penalty. In the U.S., there are strong mandatory minimum sentences in place for sex trafficking involving children in [U.S. Code](#).^[13] If the victim was under the age of 14 at the time of offence, the punishment is a fine and mandatory minimum term of imprisonment of 15 years, up to life. If the victim was between the ages of 14 and 18 at the time of offence, the punishment is a fine and mandatory minimum term of imprisonment of 10 years, up to life.

III. BILL C-268 IS CONSTITUTIONALLY SOUND

Finally, Bill C-268 is constitutionally sound. The Supreme Court of Canada has recently affirmed the test for when a mandatory minimum sentence of imprisonment will constitute cruel and unusual punishment under s. 12 of the [Canadian Charter of Rights and Freedoms](#).^[14] In the unanimous reasons for judgment in [R. v. Ferguson](#), McLachlin C.J.C. held:

The test for whether a particular sentence constitutes cruel and unusual punishment is whether the sentence is grossly disproportionate: *R. v. Smith*, [1987] 1 S.C.R. 1045. As this Court has repeatedly held, to be considered grossly disproportionate, the sentence must be more than merely excessive. The sentence must be “so excessive as to outrage standards of decency” and disproportionate to the extent that Canadians “would find the punishment abhorrent or intolerable”: *R. v. Wiles*, [2005] 3 S.C.R. 895, 2005 SCC 84, at para. 4, citing *Smith*, at p. 1072, and *Morrissey*, at para. 26.^[15]

The imposition of a mandatory term of imprisonment of five years would not be grossly disproportionate for the offence of trafficking in minors. Bill C-268 serves the purposes of denunciation, specific and general deterrence, and protection of the public, specifically the

vulnerable population of young people who are targeted by traffickers including homeless and sexually exploited youth, children in protective care, and aboriginal girls.

The *Criminal Code* already recognizes that certain serious crimes involving child victims require more stringent penalties. Most notably, [s. 212\(2.1\)](#) imposes a five year mandatory minimum sentence for the aggravated offence of living on the avails of prostitution of a person under the age of 18 years.^[16] This provision has routinely been applied by the Courts and was endorsed by the Federal/Provincial/Territorial Working Group on Prostitution in its [Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities](#):

[I]t is difficult to imagine a case in which the minimum sentence would not be suitable.

...

[I]t definitely signals the community's abhorrence of such a crime by imposing a sentence commensurate with the gravity of the offence. Both public protection and the expression of public revulsion for such conduct require that the minimum time served in a correctional system be the subject of legislative rather than judicial or administrative control.^[17]

These arguments apply with equal, or even greater, force to Bill C-268 in respect of a mandatory minimum sentence for child trafficking. Bill C-268 would also bring parity between the trafficking in persons sentencing structure, and s. 212(2.1), with respect to child victims. This is important to provide Crown prosecutors with charging options that best suit the facts of particular cases of child sexual exploitation involving a pimp or trafficker.

IV. SUPPORT BILL C-268

As a Private Member's Bill, introduced by Member of Parliament (MP) [Joy Smith](#),^[18] Bill C-268 will not pass without the support of a majority of MPs. Supporting Bill C-268 will be a demonstration of Canada's commitment to hold perpetrators of child trafficking accountable for their horrific crimes. Children like Eve, and countless others, need to be protected from these predators.

More information about Bill C-268 is found on [Mrs. Smith's website](#).^[19]

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^[2] Criminal Intelligence Service Canada (CISC), Strategic Intelligence Brief, "Organized Crime and Domestic Trafficking in Persons in Canada" (August 2008), online: CISC <http://www.cisc.gc.ca/products_services/domestic_trafficking_persons/document/sib_web_en.pdf>.

^[3] *Ibid.* at 1 [footnotes omitted].

^[4] *Criminal Code*, R.S.C. 1985, c. C-46, s. 279.01.

- [5] Bill C-268, *An Act to amend the Criminal Code*, 2d Sess., 40th Parl., 2009.
- [6] *R. v. Imani Nakpangi* (24 June 2008), Brampton AG 0087 (Ont. Ct. J.), Atwood J.
- [7] *Ibid.* at 3-4.
- [8] Interview of Detective Sergeant Dominic Montchamp, Montreal Police Service (20 November 2008).
- [9] Shared Hope International, *Report of the Canada-United States Consultation in Preparation for World Congress III Against Sexual Exploitation of Children and Adolescents* Brooklyn at 6.>
- [10] *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, GA Res. 263, UN GAOR, 54th Sess., UN Doc. A/RES/54/263.
- [11] *Ibid.*, art. 3(3).
- [12] *Supra* note 4.
- [13] *Sex trafficking of children or by force, fraud, or coercion*, U.S.C. 18 § 1591 (2008).
- [14] *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96 at para. 14.
- [15] *Supra* note 4, s. 212(2.1).
- [16] Federal/Provincial/Territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities* (December 1998) online: Walnut <<http://www.walnet.org/csis/reports/consult.rtf>> at 21.
- [17] Joy Smith, "Bill C-268 Mandatory Minimums for Child Trafficking," online: Joy Smith <http://www.joysmith.ca/index.asp?ID=76&cat_ID=1>. Smith is the member of parliament for Kildonian-St. Paul, Manitoba.
- [18] Joy Smith, "Bill C-268 Mandatory Minimums for Child Trafficking: How You Can Help," online: Joy Smith <http://www.joysmith.ca/index.asp?ID=76&cat_ID=1&sub_ID=401>.