

2020 Bill 8

Second Session, 30th Legislature, 69 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 8

PROTECTING SURVIVORS OF HUMAN TRAFFICKING ACT

THE MINISTER OF JUSTICE AND SOLICITOR GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 8

2020

PROTECTING SURVIVORS OF HUMAN TRAFFICKING ACT

(Assented to , 2020)

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Preamble

WHEREAS human trafficking is a serious crime that exploits people of all ages, genders and ethnicities;

WHEREAS human traffickers use violence and threats to coerce victims to provide labour, sexual services or human organs and tissues against the victims' will;

WHEREAS human trafficking is a violation of human rights and the dignity of persons;

WHEREAS a wide range of barriers and challenges deter human trafficking victims from seeking assistance, including legal assistance; and

WHEREAS this Act is intended to empower and protect survivors of human trafficking, and provide additional remedies against human traffickers;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

**Part 1
Interpretation**

Interpretation

1(1) In this Act,

- (a) “child” means a person who is under the age of 18 years;
- (b) “controlled substance” means

- (i) a controlled substance as defined in the *Controlled Drugs and Substances Act* (Canada),
 - (ii) an intoxicating substance as defined in the *Safer Communities and Neighbourhoods Act*, or
 - (iii) liquor as defined in the *Gaming, Liquor and Cannabis Act*;
- (c) “court” means the Provincial Court;
- (d) “human trafficking” means the recruitment, transportation, transfer, holding, concealing, harbouring or receipt of a person by means of
- (i) the threat or use of force or other forms of coercion, abduction, fraud or deception,
 - (ii) repeated provision of a controlled substance,
 - (iii) the abuse of power or of a position of vulnerability, or
 - (iv) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,
- for the purpose of taking advantage of or exploiting that person, including any form of sexual exploitation, forced labour or services, including slavery or practices similar to slavery, or the removal of a human organ or tissue;
- (e) “human trafficking protection order” means an order under section 3;
- (f) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (g) “police officer” means a police officer as defined in the *Police Act*;
- (h) “respondent” means a person against whom a human trafficking protection order is sought;
- (i) “sexual exploitation” means the actual or attempted abuse of the vulnerable position of a person, or of differential

power or trust, to obtain sexual favours, including, but not limited to, by offering money or other social, economic or political advantages;

- (j) “telecommunication” includes the use of a telephone, email, facsimile or other electronic means of transmission;
- (k) “victim” means a victim of human trafficking and includes a person who may be a victim of human trafficking.

(2) Subject to subsection (3), the consent of the victim to the intended exploitation referred to in subsection (1)(d) or (i) is irrelevant.

(3) For the purposes of this Act, human trafficking and sexual exploitation include a broad range of exploitative activities, that may occur in person or through electronic and digital means, including the non-consensual recording and distribution of intimate images or audio.

Part 2 Human Trafficking Protection Orders

Application for order

2(1) The following persons may apply to the court, in accordance with the regulations, for a human trafficking protection order without notice to the respondent:

- (a) a victim;
- (b) if the victim is a child, a person with lawful custody of the victim;
- (c) a director designated under the *Child, Youth and Family Enhancement Act*;
- (d) a police officer;
- (e) a person or a member of a category of persons designated in the regulations, acting on behalf and with the consent of a person referred to in clause (a).

(2) An application under this section may be submitted in person or by telecommunication or videoconference by any of the persons referred to in subsection (1).

(3) Evidence adduced in support of an application for an order under this section must be given under oath.

Human trafficking protection order

3(1) A human trafficking protection order may be granted by a judge of the court or a justice of the peace, on application under section 2, without notice to the respondent, if the judge or justice, as the case may be, determines that the respondent has engaged or may engage in the human trafficking of the victim.

(2) In determining whether to grant an order under subsection (1), the court may consider the following and any other relevant factors:

- (a) the respective ages of the victim and the respondent;
- (b) the victim's immigration status;
- (c) whether the victim has a physical or mental disability;
- (d) the nature of the relationship between the victim and the respondent;
- (e) whether the respondent is in a position of trust, power or authority in relation to the victim;
- (f) the use of threats or other forms of intimidation by the respondent against the victim or a person or a pet known to the victim;
- (g) the use of force by the respondent against the victim or a person or a pet known to the victim, or against another person or a pet in the victim's presence;
- (h) the use of deception, fraud or other forms of coercion by the respondent in relation to the victim;
- (i) the provision to the victim of a controlled substance, by the respondent, in order to cause or compel the victim to provide labour or services, to engage in sexual conduct or to allow an organ or tissue to be removed;

- (j) the respondent's control, including withholding, or threatened control of the victim's access to a controlled substance;
- (k) the respondent's control, including withholding money, or threatened control of the victim's finances;
- (l) the respondent's control, including withholding, destruction, concealment or removal, or threatened control of any of the victim's personal effects, property, including pets, documents, such as a passport, driver's licence, health card or other form of identification, bank cards, motor vehicles or keys;
- (m) the possession, creation, transmission, making available, selling, advertising or distribution by the respondent of any visual recording of the victim in which the victim is nude, is exposing the victim's genital organs, anal region or breasts or is engaged in or depicted as being engaged in explicit sexual activity.

(3) An order granted under subsection (1) is not effective against the respondent until the respondent is served with the order, including by substitutional service, in accordance with the regulations.

Contents of order

4(1) A human trafficking protection order may contain any reasonable condition that the court considers necessary or advisable for the protection of the victim, including the following:

- (a) a provision prohibiting the respondent from following the victim, a family member of the victim or a specified person from place to place;
- (b) a provision prohibiting the respondent from, directly or indirectly, communicating with or contacting the victim or a specified person;
- (c) a provision prohibiting the respondent from attending at or within a specified distance from any place that the victim or a specified person attends regularly, which may include a school, shelter, youth facility, place of residence, place of worship, place of employment or any other place where the victim or specified person is reasonably known by the respondent to be;

- (d) a provision requiring the respondent to return to the victim a pet in the care of the victim, or specified personal effects, property or documents belonging to the victim, such as a passport, driver's licence, health card or other form of identification, bank cards, motor vehicles or keys, in the manner specified in the order;
- (e) a provision requiring the respondent to return to the victim the original and any copies of any visual recording of the victim;
- (f) a provision prohibiting the respondent from possessing, creating, transmitting, making available, selling, advertising or distributing any photographs, film, video, electronic image or other visual representation of the victim;
- (g) as an exception to a restraining order under clause (b) or (c), a provision that permits the respondent to attend, where the victim is present, any court proceeding in which the respondent is a party or an accused person.

(2) If, in granting a human trafficking protection order, the court determines that it is necessary or advisable for the protection of the victim to prohibit the respondent from possessing any weapon, as defined in section 2 of the *Criminal Code* (Canada), the court shall include the prohibition as a condition in the order and shall specify

- (a) the period during which the condition applies, and
- (b) the manner in which the weapon and any related authorizations, licences or certifications that are held by the respondent shall be surrendered, disposed of, detained, stored or otherwise dealt with.

Expiry and extension of order

5(1) Subject to subsection (2), a human trafficking protection order expires 3 years after the date it is granted.

(2) The court may, on application, in accordance with the regulations, before the expiry of a human trafficking protection order, extend the expiry date of the order for a period of up to 3 years, if the court determines that there is a continuing need for the order.

(3) An order granted under subsection (2) is not effective against the respondent until the respondent is served with the order, including by substitutional service.

(4) For the purposes of subsection (2), the respondent's compliance with the order does not in itself mean that there is no continuing need for the order.

(5) The expiry date of an order may be extended under subsection (2) more than once.

Effect of order on property

6 A human trafficking protection order does not in any manner affect the title to or an ownership interest in any real or personal property held jointly by the victim and the respondent or held solely by one of them.

Warrant permitting entry

7(1) Subject to subsection (2), a judge of the court or a justice of the peace may

- (a) issue a warrant, on application by a person designated in the regulations, without notice to the respondent, or
- (b) issue a warrant, on application by a police officer through telecommunication, without notice to the respondent.

(2) Before issuing a warrant under subsection (1), the judge or justice, as the case may be, must be satisfied by information on oath that there are reasonable grounds to believe that

- (a) a person has been a victim,
- (b) the applicant has been refused access to the victim, and
- (c) the victim will be found at the place to be searched.

(3) A warrant issued under subsection (1) authorizes the person named in the warrant

- (a) to enter the place named in the warrant and any other structure or building used in connection with the place,
- (b) to search for, assist or examine the victim, and

- (c) with the victim's consent, unless the victim is a child, to remove the victim from the premises for safety reasons or for the purpose of assisting or examining the victim.

Setting aside, varying order

8(1) If a human trafficking protection order is granted, the respondent may apply to the court within 20 days after being served with the order, or such further time as the court may allow, in accordance with the regulations, to have the order set aside or varied.

(2) In an application under subsection (1),

- (a) the onus is on the person who applied for the human trafficking protection order to prove that the order should continue without variation, and
- (b) the court may consider any evidence that was submitted on the application made under section 2 for the order.

(3) The court hearing the application under this section may confirm, vary or set aside the human trafficking protection order.

(4) An application under subsection (1) does not operate as a stay of the human trafficking protection order unless the court orders otherwise.

Material change in circumstances

9(1) The court may, on application in accordance with the regulations, set aside or vary a human trafficking protection order if the court is satisfied that there has been a material change in circumstances.

(2) An application under subsection (1) does not operate as a stay of the human trafficking protection order unless the court orders otherwise.

Order restricting publication, etc.

10(1) If the victim or any witness in an application under this Act is a child, the court must make an order directing that any information that could identify the child must not be published in any document or broadcast or transmitted in any way.

(2) If the victim or any witness in an application under this Act is not a child, the court may, on its own or on application in accordance with the regulations, make an order directing that any

information that could identify the victim or the witness, as the case may be, must not be published in any document or broadcast or transmitted in any way, if the court is satisfied that the order is necessary for the proper administration of justice.

(3) If the victim or any witness in an application under this Act is not a child, the court shall, at the first reasonable opportunity after the commencement of the application, inform the applicant, or the victim if the victim is not the applicant, and any witnesses that the court may make an order under subsection (2).

(4) An order made under this section may be subject to such conditions as the court thinks fit.

Confidentiality

11(1) The clerks of the court must keep confidential any information relating to the location of a victim unless the victim or a person acting on the victim's behalf consents to the release of the information.

(2) Despite subsection (1), if the court orders that the respondent be restrained from attending at or entering the residence of the victim or another family member, the area in which the victim or the family member resides may be disclosed by the clerk of the court as part of the order or in the transcript of the proceedings that resulted in the order being granted.

(3) The court may order that all or any members of the public, other than the victim and the respondent, may be excluded from any hearing under this Act.

(4) The court may, on its own, or on the request of the victim, make an order prohibiting the publication of a report of a hearing or any part of a hearing if the court is satisfied that the publication of the report would have an adverse effect on or cause undue hardship to the victim.

Appeals

12(1) The respondent may appeal an order made under section 8 to the Court of Queen's Bench in accordance with the regulations.

(2) An appeal under subsection (1) must be brought no later than 30 days after the order is made, or such later time as the Court of Queen's Bench may specify.

(3) A judgment of the Court of Queen’s Bench on an appeal under subsection (1) may be appealed to the Court of Appeal, with leave of a judge of that Court, in accordance with the regulations, on a question of law or jurisdiction.

(4) Leave may not be granted under subsection (3) unless the judge determines that, in the particular circumstances of the case, it is essential in the public interest or for the due administration of justice that leave be granted.

(5) No appeal or review lies from a decision on a motion for leave to appeal under subsection (3).

(6) An appeal under this section does not operate as a stay of proceedings under this Part or of the operation of a human trafficking protection order, unless the Court hearing the appeal orders otherwise.

(7) The Court hearing an appeal under subsection (1) may extend the expiry date of a human trafficking protection order until the determination of the appeal or such other date as the Court may specify.

No court fees payable

13 No fees are payable with respect to an application or appeal under this Part, unless otherwise provided for by the regulations.

Offences and penalties

14(1) A person who contravenes a human trafficking protection order is guilty of an offence and is liable on conviction to a fine of not more than \$50 000 or imprisonment for a term of not more than 2 years, or both.

(2) A person who contravenes an order made under section 10 is guilty of an offence and is liable on conviction,

(a) in the case of an individual, to a fine of not more than \$5000 or imprisonment for a term of not more than 2 years, or both, and

(b) in the case of a corporation, to a fine of not more than \$50 000.

(3) An officer, director, employee or agent of a corporation who directs, authorizes, assents to, permits, participates in or acquiesces in the contravention of an order made under section 10 may be

convicted of the offence, whether or not the corporation has been prosecuted or convicted.

Arrest without warrant

15 A peace officer may arrest without warrant a person the peace officer believes on reasonable grounds has committed an offence under section 14.

Part 3 Tort of Human Trafficking

Tort of human trafficking

16 A person who engages in human trafficking of a person commits a tort against that person.

Action without proof of damage

17(1) An action for human trafficking may be brought without proof of damage.

(2) Findings of fact in an action under this Part shall be made on the balance of probabilities.

(3) In an action for human trafficking, it is no defence that the plaintiff consented to any of the conduct in question.

Powers of Court

18(1) In an action for human trafficking, the Court of Queen's Bench may

- (a) award damages to the plaintiff, including general, special, aggravated and punitive damages,
- (b) order the defendant to account to the plaintiff for any profits that have accrued to the defendant as the result of the human trafficking of the plaintiff,
- (c) issue an injunction on such terms and with such conditions as the Court determines appropriate in the circumstances, and
- (d) make any other order that the Court considers just and reasonable in the circumstances.

(2) In awarding damages under subsection (1), the Court must have regard to all of the circumstances of the case, including

- (a) any particular vulnerabilities of the plaintiff,
- (b) all aspects of the conduct of the defendant, and
- (c) the nature of any existing relationship between the plaintiff and the defendant.

(3) In awarding damages under subsection (1), the Court must not have regard to any order made under subsection (1)(b).

(4) When assessing damages or compensation in an action for human trafficking that is the subject of another action or proceeding, the Court must have regard to any damages or compensation awarded in the other action or proceeding in respect of the same behaviour.

Part 4 Miscellaneous

Other rights not affected

19 A right of action or a remedy under this Act is in addition to, does not affect and is not affected by any other right of action or remedy available to a person under any other Act.

Regulations

20 The Lieutenant Governor in Council may make regulations

- (a) for the purposes of sections 2(1)(e) and 7(1), designating a person or members of a category of persons for making applications for human trafficking protection orders on behalf of the victim or for warrants permitting entry;
- (b) respecting the procedures to be followed for making applications and for hearing applications for human trafficking protection orders and warrants permitting entry, including the transmission of the applications;
- (c) respecting forms, including information to be contained on the form of human trafficking protection orders;
- (d) respecting the forwarding of human trafficking protection orders and other documents to the Court of Queen's Bench by a judge of the court or justice of the peace;
- (e) respecting the procedures to be followed for making and hearing applications and appeals under sections 8, 9, 10 and 12;

- (f) respecting the form and manner of serving notices and other documents required to be served or given under this Act, including substitutional service and the rebuttable presumption of service;
- (g) respecting the rules to be followed in a proceeding before the court under this Act;
- (h) respecting the fees to be payable with respect to an application or appeal under Part 2;
- (i) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purposes of this Act.

Human Trafficking Awareness Day

21 February 22 in each year is proclaimed as Human Trafficking Awareness Day.

Commencement

22 Part 2 comes into force on December 31, 2020.

RECORD OF DEBATE

Stage	Date	Member	From	To

Questions and Comments	From	To

Stage	Date	Member	From	To

Questions and Comments	From	To

Stage	Date	Member	From	To

Questions and Comments	From	To

Stage	Date	Member	From	To

Questions and Comments	From	To