Legislative Summary **LS-571E**

BILL C-17: AN ACT TO AMEND THE IMMIGRATION AND REFUGEE PROTECTION ACT

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LEGISLATIVE HISTORY OF BILL C-17

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	1 November 2007	First Reading:	
Second Reading:	1 November 2007	Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

This bill did not become law before the 39th Parliament ended on 7 September 2008.

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print.**

Legislative history by Michel Bédard

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BILL C-17: AN ACT TO AMEND THE IMMIGRATION AND REFUGEE PROTECTION ACT*

Introduced in the House of Commons on 1 November 2007, Bill C-17 proposes amendments to the *Immigration and Refugee Protection Act* to allow immigration officers to refuse to authorize foreign nationals to work in Canada if they are judged to be at risk of exploitation. Bill C-17 was previously introduced in the 1st Session, 39th Parliament, as Bill C-57, which died on the *Order Paper* when Parliament was prorogued in September 2007. Pursuant to a motion adopted by the House of Commons on 25 October 2007, Bill C-17 was deemed to have been read a second time and was referred to the Standing Committee on Citizenship and Immigration.

BACKGROUND

A. Trafficking in Persons

In Canada, a number of laws exist to combat and prevent trafficking in persons. With respect to criminal law, Bill C-49(1) came into force on 25 November 2005, adding sections 279.01 to 279.04 to the *Criminal Code* to specifically prohibit trafficking in persons in Canada by means of new provisions that outline three prohibitions.

The first(2) of these is a global prohibition on trafficking in persons, defined as the recruitment, transport, transfer, receipt, concealment or harbouring of a person, or the exercise of

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) S.C. 2005, c. 43.

(2) 279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

> (*a*) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or
>
> (*b*) to imprisonment for a term of not more than fourteen years in any other case.

control, direction or influence over the movements of a person, for the purpose of exploitation. Key to this definition is the fact that the criminal offence of trafficking in persons does not require movement across an international border to be triggered; rather, any action in which a person is moved or concealed and is forced to provide or offer to provide labour, a service, or an organ or tissue is prohibited.

Section 279.02 prohibits a person from benefiting economically from trafficking and carries a maximum penalty of 10 years' imprisonment. For example, this offence covers those who harbour a victim of trafficking for a fee. Finally, section 279.03 outlaws the withholding or destroying of identity, immigration, or travel documents to facilitate trafficking in persons, and carries a maximum penalty of five years' imprisonment.

Further, the amendments to the *Criminal Code* ensure that trafficking may form the basis of a warrant to intercept private communications and to take bodily samples for DNA analysis, and permit inclusion of the offender in the sex offender registry. Passage of Bill C-49 also expanded the ability of victims who are subjected to bodily or psychological harm to seek restitution.

A number of generic provisions in the *Criminal Code* are also used to combat trafficking in persons by targeting specific forms of exploitation and abuse that are inherent in trafficking. These include offences such as fraudulent documentation, prostitution-related offences; causing physical harm; abduction and confinement; intimidation; conspiracy; and organized crime.

Outside the *Criminal Code*, the *Immigration and Refugee Protection Act* (IRPA) targets cross-border trafficking in persons. Section 118 of the IRPA defines the offence of trafficking: to knowingly organize one or more persons to come into Canada by means of abduction, fraud, deception, or the use of force or coercion. This offence includes the recruitment, transportation, receipt, and harbouring of such persons, and the maximum sentence is life imprisonment. Section 117 of the IRPA defines the offence of smuggling: to knowingly organize, induce, or assist one or more persons to enter Canada without a valid travel document. The maximum sentence for smuggling fewer than ten people is 14 years' imprisonment, while that for smuggling ten or more people is life imprisonment. Sections 122 and 123 outline the additional offence of using travel documents to contravene the IRPA, as well as the buying or selling of such travel documents. The maximum sentence for these offences is 14 years' imprisonment.

With respect to the policy framework, in May 2006 the Department of Citizenship and Immigration announced a new policy to provide temporary residence permits specifically for trafficked persons.(3) This policy was updated again in June 2007. Working within the existing legislative framework, immigration officers now have the ability to issue temporary resident permits to trafficked persons for up to 180 days. Recipients of such permits are exempt from the processing fee usually charged and are eligible for essential medical care, social counselling assistance and other health service benefits under the Interim Federal Health Program. Recipients may also apply for a work permit at the same time, and are exempt from the processing fee usually charged.

The purpose of these permits is to provide trafficked persons with a reflection period to consider their options (such as returning home or assisting in the investigation of or criminal proceedings against the traffickers); to allow them to recover from physical or mental trauma; to allow them to escape the influence of the traffickers; to facilitate their participation in an investigation or prosecution; and to facilitate any other purpose the officer believes to be relevant. There is no obligation on the trafficked person to cooperate with an investigation in exchange for a temporary residence permit.

A trafficked person may also be granted a permit for a longer period or a subsequent temporary residence permit once an immigration officer examines the relevant factors, such as whether it is reasonably safe and possible for the individual to return and re-establish a life in his or her country of origin or last permanent residence, and whether the individual is needed and willing to assist the authorities in an investigation or prosecution. After some period of time, it may be possible for the trafficked person to obtain permanent residence status.

A significant component of the Canadian approach to trafficking in persons is the federal Interdepartmental Working Group on Trafficking in Persons. This Working Group is co-chaired by the departments of Justice and Foreign Affairs and includes many other federal departments and agencies. Its mission is to coordinate federal efforts to address trafficking in persons and to develop a federal strategy, in keeping with Canada's international commitments. The Working Group reviews existing laws, policies and programs that may have an impact on trafficking with a view to identifying best practices and areas for improvement.(4)

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(3) Citizenship and Immigration Canada, Temporary Resident Permits policy, 26 May 2006, pp. 23-29, http://www.cic.gc.ca/manuals-guides/english/ip/ip01e.pdf.

(4) More information on this Working Group is available at: http://www.justice.gc.ca/en/fs/ht/iwgtip.html.

In addition, in September 2005 the RCMP established a Human Trafficking National Coordination Centre, which is staffed by two RCMP officers and one analyst and assisted by six regional RCMP coordinators dealing with human trafficking. Housed in the immigration section, the Centre's role is to provide assistance to field investigators and to develop education and awareness campaigns.

Finally, two parliamentary committees have examined the issue of trafficking in persons. In December 2006, the Subcommittee on Solicitation Laws of the House of Commons Standing Committee on Justice and Human Rights released its report, entitled *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*.(5) In its broad study of Canada's laws on prostitution, this report emphasized the fact that trafficking in persons must be effectively prosecuted and that law enforcement officials should be provided with adequate resources and training, while victims should be provided with adequate assistance and services.

In February 2007, the House of Commons Standing Committee on the Status of Women released its report, entitled *Turning Outrage Into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada*.(6) This report highlighted the "three Ps" approach: protection of victims, prosecution of clients and traffickers, and prevention. The report's recommendations focused on prevention measures, including the establishment of a strategy to address poverty (with particular emphasis on Aboriginal peoples), removing barriers to immigration, and raising awareness of the risks of being trafficked. The Committee also emphasized the importance of improving the protection of victims by providing them with support services and programs, including safe interim housing and access to counselling and legal advice, and by revising the temporary resident permit guidelines so that victims can apply for a work permit. To coordinate Canada's efforts, the Committee proposed the creation of a Canadian Counter-Trafficking Office, through which stakeholders can share expertise and best practices to prevent trafficking, protect victims, and successfully prosecute those who exploit victims. The Committee also proposed the establishment of a National Rapporteur mandated to collect and analyze trafficking data and report these annually to Parliament.

In May 2007, Bill C-57 was introduced in the House of Commons and was referred to the House of Commons Standing Committee on Citizenship and Immigration on 5 June 2007. Bill C-57, which was identical to Bill C-17, died on the *Order Paper* when Parliament was prorogued in September 2007.

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(5) Available at: http://cmte.parl.gc.ca/Content/HOC/committee/391/just/reports/rp2599932/justrp06/sslrrp06-e.pdf.

(6) Available at: http://cmte.parl.gc.ca/Content/HOC/committee/391/fewo/reports/rp2738918/feworp12/feworp12-e.pdf.

B. Exotic Dancer Visas

Although this is not explicitly stated in the Bill C-57, the Minister of Citizenship and Immigration, the Hon. Diane Finley, has made it clear that the bill was introduced to preclude situations in which temporary workers, particularly exotic dancers, may be exploited or become victims of human trafficking.

Currently, foreign exotic dancers may apply for temporary work permits to fill temporary shortages in the Canadian labour market. Historically, to fill this shortage, the applications of foreign exotic dancers were "fast tracked" without the case-by-case confirmation required of most temporary foreign workers. Foreign exotic dancers with job offers from Canadian employers could apply for and receive their work permit at a port of entry without detailed scrutiny of the circumstances underlying the demand for services or the labour shortage. Strip club owners did not need to seek job validations under the terms of the exotic dancer visa.(7)

Although foreign exotic dancers had traditionally come to Canada from the United States, by the late 1990s, when far greater numbers were arriving from Eastern Europe, concerns about human trafficking began to emerge. In 1997, the federal government announced its intention to revoke the labour validation exemption for exotic dancer visas. However, the Department of Human Resources Development issued a letter stating that employment opportunities for Canadians and permanent residents would not be adversely affected by the current level of foreign exotic dancers entering the country on a temporary basis. At the same time, Citizenship and Immigration Canada implemented a number of unofficial measures to ensure that few applicants for exotic dancer visas were actually accepted. These measures included refusing visas because of lack of work experience and also because it was found that applicants were unlikely to return home after their visa expired.(8)

The issue came to a head in 2004, when former Minister of Citizenship and Immigration Judy Sgro resigned amid accusations that she had granted a visa extension to a Romanian exotic dancer who had worked on her election campaign. Ms. Sgro was cleared of all

(7) Audrey Macklin, "Dancing Across Borders: 'Exotic Dancers,' Trafficking, and Canadian Immigration Policy," *International Migration Review*, Vol. 37, No. 2, 2003, p. 474; James Gordon, "Number of Strippers Coming to Canada Drops Dramatically," *National Post*, 26 May 2006, p. A6.

(8) Macklin, "Dancing Across Borders."

conflict-of-interest allegations by the then Ethics Commissioner,(9) but the policy allowing the fast-tracking of visas for foreign exotic dancers visas was abolished in December 2004, when the Department of Human Resources and Social Development rescinded its positive labour-market opinion of the exotic dancer industry. Since then, applications submitted by exotic dancers have been processed on a case-by-case basis. Immigration officials working at foreign missions require applicants for exotic dancer visas to present a valid work contract; the officials then verify that the employer is legitimate. They are trained to detect and screen out applicants who may be potential victims of trafficking. The officials also apply health and security criteria and ensure that arrangements have been made for the applicants to return to their country of origin once the visa has expired.(10)

Since 2004, the number of permits granted to foreign exotic dancers has declined dramatically. According to information provided by the Department of Citizenship and Immigration, 423 work permits and work permit extensions were issued to foreign exotic dancers in 2004, but this number had dropped to 17 by 2006.(11)

DESCRIPTION AND ANALYSIS

A. Protecting Foreign Nationals From Exploitation

Clauses 2 and 3 of Bill C-17 amend the *Immigration and Refugee Protection Act* to allow immigration officers to refuse to authorize foreign nationals to work in Canada if they are deemed to be at risk of exploitation. Clause 2 adds new provisions to section 30 of the Act. New sections 30(1.1) to 30(1.7) state that, notwithstanding an immigration officer's power to authorize a foreign national to work or study in Canada if he or she meets the conditions set out in the regulations, the officer must refuse to authorize an individual to work in Canada if the officer believes that public policy considerations specified in ministerial instructions justify such a refusal. These ministerial instructions will aim to protect foreign nationals who are at risk of being subjected to humiliating or degrading treatment, including sexual exploitation. All work permit refusals must be confirmed by a second immigration officer.

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(9) Bernard J. Shapiro, *The Sgro Inquiry: Many Shades of Grey*, Office of the Ethics Commissioner, Ottawa, June 2005.

(10) Senate, Standing Senate Committee on Legal and Constitutional Affairs, *Proceedings*, 1st Session, 38th Parliament, 23 November 2005, p. 25:54 (Ms. Carole Morency).

(11) Information provided by the Department of Citizenship and Immigration, 11 June 2007.

In providing a rationale for this amendment, the Department of Citizenship and Immigration indicates that, currently, immigration officials have little discretion to refuse a work permit to an individual who may fit the technical requirements of the Act, even though there may be a public policy reason – such as fear of human trafficking – to refuse admittance. Bill C-17 explicitly provides the minister and immigration officials with such discretion. The bill does not specify what will be contained in the ministerial instructions, but the Department indicates that these instructions could help identify individuals who may be vulnerable to human trafficking.(12) The Department states that decisions will be made by immigration officials on a case-by-case basis, and that the instructions will be "based on clear evidence of risk, support the objectives of the Act, and conform with the *Charter*."(13) Elaborating on this point at second reading in the House of Commons, the Parliamentary Secretary to the Minister of Citizenship and Immigration stated that such decisions "will be based on a nexus between the occupation that is proposed and the potential for abuse, the potential for degradation, and the potential for humiliating treatment. That will be shown to exist by a causal connection."(14)

The ministerial instructions will be published in the *Canada Gazette* and come into effect on the day they are published (or any later day specified in the instructions) and will apply to all applications for work permits filed before that day, for which a final decision has not been made. The instructions will cease to have effect when a notice of revocation is published in the *Canada Gazette*. Clause 3 amends section 94(2) of the Act to require reference to the ministerial instructions in the minister of Citizenship and Immigration's annual report to Parliament.

It is important to note that this detailed reference to the ministerial instructions is unique in the *Immigration and Refugee Protection Act*. Although ministerial instructions are referenced elsewhere, this is the only section to establish explicit and detailed requirements as to how those instructions must be published and included in the annual report. This amendment brings an enhanced sense of accountability to the implementation of the instructions and future refusal of temporary work permits based on a risk of exploitation.

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(12) Department of Citizenship and Immigration, "Canada's New Government Introduces Amendments to Deny Work Permits to Foreign Strippers – News Release," 16 May 2007, http://www.cic.gc.ca/english/press/07/2007-05-16.html; Department of Citizenship and Immigration, "Backgrounder: Proposed Discretionary Authority Under IRPA," 16 May 2007, http://www.cic.gc.ca/english/press/backgrounders/2007-05-16.html.

(13) Department of Justice, "Backgrounder," http://www.cic.gc.ca/english/press/backgrounders/2007-05-16.html. See also House of Commons, *Debates*, 5 June 2007, 1120 (Mr. Ed Komarnicki).

(14) Komarnicki testimony, 1135.

B. Public Health

Clause 1 of Bill C-17 amends the objectives of the *Immigration and Refugee Protection Act* with respect to immigration to add the word "public" to the reference to the protection of health and safety currently specified in section 3(1)(h) of the Act. The amended Act will, in the context of immigration, aim to protect *public* health and safety and to maintain the security of Canadian society.

No information from either the Minister or Citizenship and Immigration Canada provides background for the rationale behind this change, although it is a significant one, given that health and safety form part of the criteria against which applicants for temporary work permits are assessed and the Department has stated that ministerial instructions must support the objectives of the Act.

The Public Health Agency of Canada distinguishes between the concepts of public health and health care, noting that public health provides a proactive and preventative approach to promoting the health of the Canadian population. Although health care is concerned with after-the-fact care, public health policies intend to protect Canadians "from injury and disease and [help] them stay healthy."(15)

It is important to note that Bill C-17 amends only section 3(1), on the objectives of the Act with respect to immigration, and not section 3(2), on the objectives of the Act with respect to refugees, which will continue to refer to the "the health and safety of Canadians" rather than to public health.

COMMENTARY

Although anti-trafficking organizations such as the Stop the Trafficking Coalition and the Future Group have expressed support for this bill, a number of migrant and exotic dancer advocacy groups have expressed concern with the proposed amendments. Responding to the public comments of the Minister, organizations such as the Canadian Council for Refugees, the Adult Entertainment Association of Canada, Dancers' Equal Rights Association, Stella,

(15) Public Health Agency of Canada, "The Federal Strategy," http://www.phac-aspc.gc.ca/about_apropos/federal_strategy_e.html#a.

Exotic Dancers Association, and NakedTruth.ca have argued that Bill C-17 may harm the very people it is trying to help by driving foreign exotic dancers into underground establishments where they will be beyond the reach of those monitoring workplace health and safety standards or who are on the alert for other forms of exploitation.(16) University of Toronto law professor Audrey Macklin argues that it is unreasonable to suppose that Bill C-17 will actually prevent individuals from entering Canada.(17) Advocacy groups argue that to more effectively combat exploitation in strip clubs, the government should focus on ensuring health and safety standards in such establishments, investigate conditions in clubs that sponsor foreign exotic dancers, and carefully examine the reasons behind the apparent lack of Canadian women applying for such positions.(18) They say that the government should target exploitation in strip clubs by improving workplace standards in those environments rather than targeting the women who apply for those jobs; the outcome of the government's approach, they argue, will be to relegate Canadians to the jobs that it feels are too exploitative for foreign workers.(19) This point was also made during second reading of the Bill in the House of Commons.

The Canadian Council for Refugees and Members of Parliament speaking at second reading have also argued that having immigration officers decide that women should be kept out of Canada for their own good is paternalistic, and that women should have the freedom to make their own choices about their lives. They point out that keeping vulnerable people out of Canada is not the best approach to combat trafficking; rather, the government should focus on initiatives to help vulnerable individuals who are already in Canada.(20)

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(16) This point was also made during second reading of the bill in the House of Commons.

(17) Geoff Nixon, "Strippers Dress Down Ottawa Over New Rules," *The Globe and Mail*, 16 August 2007, p. A8.

(18) Such regulation would fall within provincial jurisdiction.

(19) Canadian Council of Refugees, "Government Bill Takes the Wrong Approach to the Problem of Trafficking," 22 May 2007; "Tories Move to Keep Out Foreign Strippers," *Canada Press Wire*, 16 May 2007; "Conservatives to Change Rules for Foreign Strippers," *CTV – CTV News*, 16 May 2007, 23h; "Canadian Strip Clubs and the Many Foreign Women Who Now Work in Them Have Caught the Attention of Parliament," *CBC Radio – World Report*, 17 May 2007; Kelly Cryderman, "'Alberta-bred' Strippers Save Clubs from Crackdown," *Calgary Herald*, 18 May 2007, p. B1; Émilie Côté, "Loi contre les effeuilleuses étrangères," *La Presse*, 18 May 2007, p. A11; Joe Warmington, "If You Peel Away The Truth, You'll See That Few Foreign Strippers Are Actually Showing Their Faces – Or Other Parts," *Toronto Sun*, 18 May 2007, p. 6; "Get Off Moral High Horse," *Sault Star*, 19 May 2007, p. B2.

(20) Canadian Council of Refugees (2007); Allan Thompson, "New Bill Misses Point," *Toronto Star*, 24 May 2007, p. R6.

Finally, strip club owners and the Adult Entertainment Association of Canada have expressed frustration with Bill C-17, claiming that it is difficult to find Canadian exotic dancers, and that, if the bill is passed, they intend to challenge the amendment in court on the grounds of discrimination.(21)

In addition to considering these issues, debate at second reading in the House of Commons focused on a number of concerns with the proposed legislation. The Liberal and Bloc Québécois parties indicated that they supported sending the bill to committee for further review, while the New Democratic Party did not support the bill. In expressing their concerns, some members touched on the question of accountability, arguing that despite the safeguards built into Bill C-17 the powers of the minister of Citizenship and Immigration to issue ministerial instructions were too broad and would not be subject to scrutiny. Others pointed to the need to increase women's ability to migrate safely and independently to Canada in order to prevent exploitation. Members expressed concern that Bill C-17 penalized individuals who were in need of help, and that vulnerable persons would find ways to come to Canada illegally if they were denied legal means. Finally, some members referred to the dramatic drop in the number of work permits issued to exotic dancers since 2004, arguing that the issue was already resolved and that Bill C-17 was unnecessary.

(21) *CBC Radio* (2007); *CTV* (2007); Tom Godfrey, "Migrant Peeler Law Ripped," *Toronto Sun*, 14 August 2007, p. 5; Justine Mercier, "Les danseuses nues veulent bloquer le projet C-57 du fédéral," *Le Droit*, 9 August 2007, p. 5.