



Legislative Summary

BILL S-223: AN ACT TO AMEND THE CRIMINAL CODE AND THE IMMIGRATION AND REFUGEE PROTECTION ACT (TRAFFICKING IN HUMAN ORGANS)

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL S-223: AN ACT TO AMEND THE CRIMINAL CODE AND THE IMMIGRATION AND REFUGEE PROTECTION ACT (TRAFFICKING IN HUMAN ORGANS)

1 BACKGROUND

Bill S-223, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs) was introduced in the Senate by Senator Salma Ataullahjan on 24 November 2021 and received Royal Assent on 15 December 2022.¹ Bill S-223 creates specific offences in the *Criminal Code* (the Code) that cover trafficking in human organs, including what is known as “transplant tourism.” It also amends the *Immigration and Refugee Protection Act* (IRPA) to make inadmissible to Canada permanent residents or foreign nationals who, in the opinion of the appropriate minister, have engaged in any activity related to trafficking in human organs.

1.1 BACKGROUND ON ORGAN TRAFFICKING IN CANADA AND ABROAD

Organ trafficking is commonly understood as trafficking in persons for the removal of their organs, and it is prohibited by international law as part of a general prohibition on human trafficking which includes exploitation for the removal of organs.² Governmental and non-governmental organizations, including medical associations, have interpreted this prohibition to include any transplantation where the organ provider benefits or profits from the transaction.³

Conservative estimates indicate that the organ trafficking industry generates from US\$840 million to US\$1.7 billion in revenue annually from around 12,000 illegal transplants.⁴ One factor that contributes to this trade is global demand for organs that far exceeds organ availability. In Canada in 2019, for example, 4,352 people were awaiting organ transplants; in that year, 3,084 organs were transplanted and 249 people died while they waited.⁵

Canada is a country of origin, rather than a country of destination, for patients seeking to purchase organs.⁶ Canada does not currently have a law that bans Canadians from travelling abroad to receive a transplant. This practice, known as “transplant tourism,” is widely condemned for both ethical and health reasons by the international community and medical professionals.⁷

1.2 TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL
AND THE *CRIMINAL CODE*

Trafficking in persons is prohibited under the Code.⁸ Sections 279.01 and 279.011 (concerning persons under the age of 18) criminalize recruiting, moving, harbouring or exercising control over a person with intent to exploit that person. An individual cannot give consent to being trafficked.

Section 279.04 of the Code describes exploitation as follows:

(1) ... a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

Factors

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused

- (a) used or threatened to use force or another form of coercion;
- (b) used deception; or
- (c) abused a position of trust, power or authority.

Section 279.04(3) of the Code clarifies that exploitation also includes causing a person to have an organ or tissue removed by means of deception or coercion.

Trafficking in persons is an indictable offence punishable by a maximum term of 14 years of imprisonment and a minimum term of four years (five years if the victim is younger than 18). If an offender commits aggravated assault, sexual assault or kidnapping, or causes the victim's death during the commission of an offence, the offence is punishable by a maximum term of life imprisonment; the mandatory minimum sentence is five years of imprisonment (six years if the victim is younger than 18) (sections 279.01 and 279.011 of the Code). It is also an offence to receive a financial or other material benefit knowing that it was obtained through human trafficking. The maximum sentence for this offence is 10 years if the victim is an adult. If the victim is younger than 18, the maximum sentence is 14 years and the mandatory minimum sentence is two years (section 279.02 of the Code).

The offence of withholding or destroying documents that relate to trafficking is defined in the Code at section 279.03.

Under section 7(4.11) of the Code, a Canadian citizen or permanent resident who commits an offence described at sections 279.01 to 279.03 outside of Canada is deemed to have committed the offence in Canada. This section ensures that the offence of trafficking in persons applies extraterritorially.

Notably, the United Nations Office on Drugs and Crime makes a distinction between organ trafficking (or trafficking in organs) and trafficking in persons for organ removal. In its *Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal*, it explains:

Trafficking in organs and trafficking in persons for organ removal are different crimes, though frequently confused in public debate and among the legal and scientific communities. In the case of trafficking in organs, the object of the crime is the organ, whereas in the case of human trafficking for organ removal, the object of the crime is the person. Trafficking in organs may have its origin in cases of human trafficking for organ removal, but organ trafficking will also frequently occur with no link to a case of human trafficking. The mixing up of these two phenomena could hinder efforts to combat both phenomena and provide comprehensive victim protection and assistance.⁹

1.3 OTHER LEGISLATION RELATED TO TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL

Several attempts have been made in the last decade to amend the Code by adding sections in Senate public bills and through legislation introduced by private members in the House of Commons that deal explicitly with the trafficking of human organs and other body parts.¹⁰ The most recent of these was Bill S-204, *An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs)*, also introduced by Senator Ataullahjan on 30 September 2020.¹¹

Bill S-204 was adopted by the Senate on 6 May 2021. The bill then progressed to the House of Commons, where it died on the *Order Paper* after first reading with the dissolution of the 43rd Parliament.

2 DESCRIPTION AND ANALYSIS

Bill S-223 contains three clauses. The first two add new offences to the Code, while the third amends the IRPA.

2.1 NEW OFFENCES RELATED TO TRAFFICKING IN HUMAN ORGANS
(CLAUSE 2)

Clause 2 of the bill adds section 240.1 to the Code. New section 240.1(1) makes it an offence to:

- receive an organ transplant or obtain an organ for transplant into another person knowing that the person from whom the organ was removed or a person authorized to consent on their behalf has not given their informed consent, or be reckless as to whether or not such consent was given;
- carry out, participate in or facilitate the removal of an organ knowing the person from whom the organ was removed or a person authorized to consent on their behalf has not given their informed consent, or be reckless as to whether or not such consent was given; and
- do anything in connection with the removal of an organ from the body of another person on behalf of, at the direction of or in association with the person who removes the organ, knowing that the person from whom it was removed or a person authorized to consent on their behalf has not given their informed consent to the removal, or be reckless as to whether or not such consent was given.

In each case, for an offence to be committed, the accused must have actual knowledge that the person from whom the organ was removed did not give consent, or be willfully blind or reckless as to whether consent was given.

New section 240.1(2) makes it an offence to obtain, participate in or facilitate an organ transplant knowing the organ was obtained for consideration or being reckless as to whether or not it was obtained for consideration.

Lastly, new section 240.1(3) states that offences under new sections 240.1(1) and 240.1(2) are indictable offences punishable by a maximum term of imprisonment of 14 years.

2.2 EXTRATERRITORIAL JURISDICTION
(CLAUSE 1)

Clause 1(1) of the bill adds section 7(4.2) to the Code under which a Canadian citizen or permanent resident who commits an offence pursuant to new section 240.1 outside Canada is deemed to have committed that offence in Canada. In other words, Canada has extraterritorial jurisdiction over this offence.

Section 6(2) of the Code states that, subject to the Code or any other Act of Parliament, a person shall not be convicted or discharged of an offence committed outside Canada. As a result, extraterritorial jurisdiction provisions are often included in Canadian legislation that deals with international and transnational crime, including other offences related to trafficking in persons.

Clause 1(2) also amends section 7(4.3) of the Code to require the consent of the attorney general or the solicitor general of a province in order to initiate the prosecution of an offence that comes under new section 7(4.2).¹² No such consent is required for the extraterritorial prosecution of other human trafficking offences under the Code.

2.3 AMENDMENTS TO THE *IMMIGRATION AND REFUGEE PROTECTION ACT* (CLAUSE 3)

Section 35(1) of IRPA lists the grounds on which permanent residents and foreign nationals are inadmissible to Canada for human or international rights violations.¹³ Clause 3 amends section 35(1) by adding a new ground of inadmissibility: engaging in conduct that, in the opinion of the appropriate minister, would constitute an offence under section 240.1 of the *Criminal Code*.

NOTES

1. [Bill S-223, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking in human organs\)](#), 44th Parliament, 1st Session (S.C. 2022, c. 18).
2. The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (Palermo Protocol) is the human rights instrument that contains the international legal definition of human trafficking. It was adopted through General Assembly Resolution A/RES/55/25 of 15 November 2000 and ratified by Canada in May 2002. It entered into force on 25 December 2003. See United Nations (UN) General Assembly, [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime](#), 15 November 2000, art. 3(a).
3. See, for example, [The Declaration of Istanbul on Organ Trafficking and Transplant Tourism](#), May 2008. This declaration was updated in 2018 “in response to clinical, legal and social developments in the field.” See also, The Transplantation Society and International Society of Nephrology, [The Declaration of Istanbul on Organ Trafficking and Transplant Tourism \(2018 Edition\)](#).
4. Channing May, Global Financial Integrity, [Transnational Crime and the Developing World](#), March 2017, p. 29.
5. Canadian Institute for Health Information, [“Annual Statistics on Organ Replacement in Canada: Dialysis, Transplantation and Donation, 2010 to 2019,”](#) *CIHI Snapshot*, December 2020, p. 2.
6. Yosuke Shimazono, [“Public health reviews: The state of the international organ trade: a provisional picture based on integration of available information,”](#) *Bulletin of the World Health Organization*, Vol. 85, No. 12, December 2007, pp. 955–962. Other major countries of origin of patients going overseas to purchase organs for transplantation (organ-importing countries) include the Australia, Israel, Japan, Oman, Saudi Arabia and the United States. See also Lindsey McKay, [“Generating Ambivalence: Media Representations of Canadian Transplant Tourism,”](#) *Studies in Social Justice*, Vol. 10, No. 2, 2016, p. 323.
7. Royal Canadian Mounted Police, [“Just the facts: Illegal organ trade,”](#) *Gazette*, Vol. 76, No. 3, 3 October 2014.
8. [Criminal Code](#), R.S.C. 1985, c. C-46.
9. United Nations Office on Drugs and Crime, [Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal](#), 2015, p. 17.

10. See [Bill C-561, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking and transplanting human organs and other body parts\)](#), 41st Parliament, 2nd Session; [Bill C-381, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 40th Parliament, 3rd Session; [Bill C-381, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 40th Parliament, 2nd Session; and [Bill C-500, An Act to amend the Criminal Code \(trafficking and transplanting human organs and other body parts\)](#), 39th Parliament, 2nd Session.
11. [Bill S-204, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act \(trafficking in human organs\)](#), 43rd Parliament, 2nd Session.
12. The term “Attorney General” is defined in the *Criminal Code*. In Yukon, the Northwest Territories and Nunavut, consent would be given by the Attorney General of Canada or that person’s lawful deputy. See [Criminal Code](#), R.S.C. 1985, c. C-46, s. 2, definition of “Attorney General,” paras. (a) and (b).
13. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 35(1).