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Bill 96

**An Act to enact the Human Trafficking Awareness Day Act, 2017
and the Prevention of and Remedies for Human Trafficking Act, 2017**

The Hon. I. Naidoo-Harris
Minister of the Status of Women

Government Bill

1st Reading February 22, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Human Trafficking Awareness Day Act, 2017* and the *Prevention of and Remedies for Human Trafficking Act, 2017*.

SCHEDULE 1 HUMAN TRAFFICKING AWARENESS DAY ACT, 2017

Schedule 1 to the Bill enacts the *Human Trafficking Awareness Day Act, 2017*. The Act proclaims February 22 in each year as Human Trafficking Awareness Day.

SCHEDULE 2 PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING ACT, 2017

Schedule 2 to the Bill enacts the *Prevention of and Remedies for Human Trafficking Act, 2017*. The Act consists of four Parts.

Part I sets out a definition of human trafficking for the purposes of the Act.

Part II provides a process for obtaining restraining orders in the human trafficking context. Section 3 sets out that in order to obtain a restraining order, an applicant may make an application to the Ontario Court of Justice. An applicant may be a victim (or potential victim) of human trafficking, a person with lawful custody of a victim who is a child or any person set out in the regulations, and an applicant may act through an agent.

Section 4 sets out the powers of the court on an application for a restraining order. The court may make such an order if the court determines, on reasonable grounds, that the person against whom the restraining order is sought has engaged or may engage in the human trafficking of the victim. The section sets out factors that the court may consider on the application, as well as examples of conditions that may apply under the restraining order, including a prohibition on the possession of a weapon.

Section 5 requires that the court specify an expiry date for the restraining order, which may not be a date later than the anniversary of the day on which the order is made. However, a process is set out to permit a court to extend the operation of a restraining order for up to one year, which it may do, on application, multiple times.

Section 6 provides that an application for a restraining order may be made without notice in specified circumstances. However, an order obtained without notice is not effective against a person until it has been served on him or her in accordance with regulations made under the Act. The section sets out a process for setting aside or varying a restraining order made on application without notice. Section 7 sets out a process for setting aside or varying a restraining order if there has been a material change in circumstances.

Sections 8 to 10 deal with procedural matters. Section 8 provides for the application of special evidentiary rules. Section 9 sets out rules respecting legal representation that apply if a party to an application under the Part is a child. Section 10 establishes where the court is required to, and where it may, make an order directing that identifying information respecting a party or witness shall not be published, broadcast or transmitted.

Section 11 provides that orders of the Ontario Court of Justice under the Part may be appealed to the Superior Court of Justice. A judgment of the Superior Court of Justice on such an appeal may be appealed, with leave, to the Court of Appeal, on a question that is not a question of fact alone.

Sections 12 and 13 address the interaction between the Act and the *Courts of Justice Act* and rules of court made under that Act. Under section 14, court fees are not payable with respect to applications or appeals under the Part unless the regulations provide otherwise. Section 15 gives regulation-making authority to the minister responsible for the administration of the Act, including authority to make regulations respecting procedures on applications and appeals under the Part.

Part III establishes a tort of human trafficking. A civil action may be brought by a victim of human trafficking against any person who engaged in the human trafficking, and no proof of damage is required. Section 17 sets out powers of the court and specific considerations respecting damages and other compensation in such an action.

Part IV provides that Parts I and III come into force on the day the Bill receives Royal Assent, and that Part II comes into force on proclamation of the Lieutenant Governor.

**An Act to enact the Human Trafficking Awareness Day Act, 2017
and the Prevention of and Remedies for Human Trafficking Act, 2017**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Anti-Human Trafficking Act, 2017*.

SCHEDULE 1
HUMAN TRAFFICKING AWARENESS DAY ACT, 2017

Preamble

On February 22, 2007, the House of Commons of Canada passed a motion condemning the trafficking of women and children across international borders for the purposes of sexual exploitation.

Proclaiming February 22 as Human Trafficking Awareness Day helps bring awareness to the magnitude of modern day slavery in Canada and abroad and will encourage us to take steps to combat human trafficking.

Human Trafficking Awareness Day

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

Commencement

2 The Act set out in this Schedule comes into force on the day the *Anti-Human Trafficking Act, 2017* receives Royal Assent.

Short title

3 The short title of the Act set out in this Schedule is the *Human Trafficking Awareness Day Act, 2017*.

**SCHEDULE 2
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**PART I
INTERPRETATION**

Definition

1 In this Act,

“human trafficking” means conduct described in section 279.01, 279.011, 279.02 or 279.03 of the *Criminal Code* (Canada), taking into account any evidentiary or other rules set out in those sections respecting the determination of the conduct.

**PART II
RESTRAINING ORDER, HUMAN TRAFFICKING**

Definitions

2 In this Part,

“child” means a person under the age of 18 years; (“enfant”)

“court” means the Ontario Court of Justice; (“tribunal”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Part; (“règlements”)

“victim” means a victim of human trafficking and includes a person who may be a victim of human trafficking. (“victime”)

Application for restraining order

3 (1) The following persons may apply to the court, in accordance with the regulations, for a restraining order under section 4 against a respondent:

1. A victim.
2. A person with lawful custody of a victim who is a child.
3. Any other person who is prescribed.

Agent

(2) An applicant under subsection (1) may act through an agent.

Parties

(3) The parties to an application under subsection (1) are the applicant, the victim if he or she is not the applicant, and the respondent.

Restraining order**Definition**

4 (1) In this section,

“visual recording” includes a photographic, film or video recording made by any means.

Order

(2) The court may, on application under section 3, make a restraining order against the respondent if the court determines, on reasonable grounds, that the respondent has engaged or may engage in the human trafficking of the victim.

Factors

(3) In determining whether to make a restraining order under subsection (2), the court may consider the following and any other relevant factors:

1. The respective ages of the victim and the respondent.
2. The victim’s immigration status.
3. Whether the victim has a physical or mental disability.
4. The nature of the relationship between the victim and the respondent.
5. Whether the respondent is in a position of trust, power or authority in relation to the victim.
6. The use of threats or other forms of intimidation by the respondent against the victim or a person known to the victim.
7. The use of force by the respondent against the victim or a person known to the victim, or against another person in the victim’s presence.
8. The use of deception, fraud or other forms of coercion by the respondent in relation to the victim.
9. The provision to the victim of alcohol or of a controlled substance, as defined in the *Controlled Drugs and Substances Act* (Canada), by the respondent, in order to cause or compel the victim to provide labour or services.
10. The respondent’s control, including withholding, or threatened control of the victim’s access to alcohol or to a controlled substance referred to in paragraph 9.
11. The respondent’s control or threatened control of the victim’s finances, including withholding money.
12. The respondent’s control, including withholding, destruction, concealment or removal, or threatened control of any of the victim’s personal effects or documents, such as a passport, driver’s licence, health card or other form of identification.
13. The possession, making, 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 his or her genital organs, anal region or breasts, or is engaged in or depicted as being engaged in explicit sexual activity.

Provisions of order

(4) A restraining order made under subsection (2) may contain any reasonable condition that the court considers necessary or advisable for the protection of the victim, including,

- (a) prohibiting the respondent from, directly or indirectly, communicating with or contacting the victim or any specified person;
- (b) 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;
- (c) requiring the respondent to return specified personal effects or documents belonging to the victim, such as a passport, driver’s licence, health card or other form of identification, in the manner specified in the order;
- (d) requiring the respondent to return to the victim the original and any copies of any visual recording of the victim; and

- (e) prohibiting the respondent from possessing, making, transmitting, making available, selling, advertising or distributing any visual recording of the victim.

Same, weapon

(5) If, in making a restraining order under subsection (2), 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

Expiry

5 (1) In making a restraining order under section 4, the court shall specify a date on which the order ceases to have effect, which shall be no later than the anniversary of the day on which the order is made.

Extension

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

Compliance not determinative

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

Multiple extensions

(4) The expiry date of a restraining order may be extended under subsection (2) more than once.

Application without notice, immediate or imminent danger

6 (1) A restraining order may be made under section 4 on an application that is brought without notice in accordance with the regulations, if the court determines that, in addition to the circumstances set out in subsection 4 (2) applying, the victim is in immediate or imminent danger from the respondent.

Order without notice not effective before service

(2) A restraining order made on application without notice is not effective against the respondent until he or she is served with the order in accordance with the regulations.

Setting aside, varying order without notice

(3) If a restraining order is made on application without notice, any party who was not given notice of the application may apply to the court, in accordance with the regulations, to have the order set aside or varied.

Same

(4) In an application under subsection (3),

- (a) the onus is on the person who applied for the restraining order to prove that that the order should continue without variation; and
- (b) the court may consider any evidence that was submitted on the application for the restraining order.

No stay

(5) An application under subsection (3) does not operate as a stay of the restraining order, unless the court orders otherwise.

Material change in circumstances

7 (1) The court may, on application in accordance with the regulations, set aside or vary a restraining order made under section 4 if the court is satisfied that there has been a material change in circumstances.

No stay

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

Evidence

8 (1) In an application under this Part, a court may receive and base decisions on evidence considered by the court to be trustworthy in the circumstances.

Application of special rules of evidence

(2) Sections 18.3 to 18.6 of the *Evidence Act* apply in respect of a witness in an application under this Part regardless of his or her age.

If party is a child

9 (1) An application under this Part may be commenced, continued or responded to by a party who is a child without any legal representation or a litigation guardian, and the child is deemed to have capacity to retain and instruct counsel.

Legal representation

(2) If a child who is a party to an application under this Part does not have legal representation, the court shall, at the first reasonable opportunity after the commencement of the application, determine whether legal representation is desirable to protect the child's interests, and may make such a determination at any later stage.

Deemed to be in the child's best interest

(3) If the child is a victim who is not the applicant in an application under section 3, and the court is of the opinion that there is a difference of views between the child and the applicant, legal representation of the child is deemed to be desirable to protect the child's interests unless the court is satisfied, taking into account the child's views and wishes if they can be reasonably ascertained, that the child's interests are otherwise adequately protected.

Direction by court

(4) If the court determines that legal representation is desirable to protect the child's interests, the court shall direct a person or entity prescribed for the purposes of this section to arrange for legal representation to be provided for the child.

Order restricting publication, etc.

Person who is a child

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

Person who is not a child

(2) If a victim or witness in an application under this Part is not a child, the court may, on application in accordance with the regulations, make an order directing that any information that could identify the person shall 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.

Duty to inform

(3) If the victim or witness is not a child, the court shall, at the first reasonable opportunity after the commencement of an application under this Part, inform the person that the court may make an order under subsection (2).

Conditions

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

Appeals

Superior Court of Justice

11 (1) An order made under this Part may be appealed to the Superior Court of Justice in accordance with the regulations.

Timing

(2) An appeal under subsection (1) must be brought no later than 30 days after the order being appealed from is made, or such later time as the Superior Court of Justice may specify.

Court of Appeal

(3) A judgment of the Superior Court of Justice on an appeal under subsection (1) may be appealed to the Court of Appeal in accordance with the regulations, with leave of a judge of that Court in accordance with the regulations, on any question that is not a question of fact alone.

Grounds for leave

(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.

No appeal, review re leave

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

No stay

(6) An appeal under this section does not operate as a stay of proceedings under this Part or of the operation of a restraining order made under section 4, unless the court hearing the appeal orders otherwise.

Extension of expiry

(7) The court hearing an appeal may extend the expiry date of a restraining order made under section 4 until the determination of the appeal or such other date as the court may specify.

Courts of Justice Act

12 In the event of a conflict between this Part and the *Courts of Justice Act*, this Part prevails to the extent of the conflict.

Rules of court

13 The rules of court do not apply to an application or appeal under this Part, except as may be provided by the regulations.

No court fees payable

14 No fees are payable under the *Administration of Justice Act* with respect to an application or appeal under this Part, unless otherwise provided by the regulations.

Regulations

15 (1) The Minister responsible for the administration of this Act may make regulations,

- (a) respecting anything that, under this Part, may or must be prescribed or done by regulation;
- (b) governing procedures respecting applications and appeals under this Part, including procedures in relation to,
 - (i) the mode and conduct of applications, including requiring the filing of documents,
 - (ii) the commencement of applications, representation of parties and service of documents in or outside Ontario,
 - (iii) pleadings,
 - (iv) the use of documents and other evidence in applications, including discovery and other forms of disclosure,
 - (v) the examination of witnesses,
 - (vi) appeals and motions for appeal, including their mode and conduct,
 - (vii) the mode and conduct of hearings,
 - (viii) the disposition of applications, appeals and motions for appeal without a hearing and its effect.

Same

(2) Regulations made under clause (1) (b) may provide,

- (a) that any of the rules of court apply to an application or appeal under this Part, with such changes as the regulations may specify;
- (b) that an application under this Part may be made by way of a motion or other process, as specified by the regulations; and
- (c) that, in the event of a failure to comply with any of the prescribed procedures, the court may grant relief regardless, set aside any procedural step in whole or in part, or exercise any other power specified by the regulations with respect to the failure to comply, in such circumstances or with such limitations or conditions as may be specified by the regulations.

**PART III
TORT OF HUMAN TRAFFICKING**

Action

16 (1) A victim of human trafficking may bring an action against any person who engaged in the human trafficking.

Proof of damage not required

(2) The action may be brought without proof of damage.

Standard of proof

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

Powers of court

17 (1) In an action under section 16, the court 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 a result of the human trafficking;

- (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 reasonable in the circumstances.

Considerations

- (2) In awarding damages under clause (1) (a), the court shall have regard to all of the circumstances of the case, including,
 - (a) any particular vulnerabilities of the plaintiff;
 - (b) all aspects of the defendant's conduct; and
 - (c) the nature of any existing relationship between the plaintiff and the defendant.

Accounting not relevant to damages

- (3) The court shall not take into account any order made under clause (1) (b) when awarding damages.

No double compensation

- (4) When assessing damages or any other compensation in an action under section 16 respecting conduct that is the subject of another civil proceeding, the court shall take into account any damages or compensation awarded in the other proceeding in respect of the same conduct.

**PART IV
COMMENCEMENT AND SHORT TITLE**

Commencement

18 (1) Subject to subsection (2), the Act set out in this Schedule comes into force on the day the *Anti-Human Trafficking Act, 2017* receives Royal Assent.

(2) Sections 2 to 15 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

19 The short title of the Act set out in this Schedule is the *Prevention of and Remedies for Human Trafficking Act, 2017*.