

Human Rights and Gender Equality – Towards a Comprehensive Approach to Human Security for Trafficked Persons

What does it mean to take a “human rights approach” to trafficking in persons issues? What is a “rights-based” approach and why is it important?

In Canada, when we speak of a “human rights approach” to situations and issues we generally mean that we want to work within a remedial framework which focuses on future prevention and a legal strategy that makes the victim whole. This is contrary to the punitive approach, which focuses on proving the guilt of a perpetrator, and determining appropriate discipline. So, in a remedial approach to trafficking in persons, although we are looking at a criminal act, we start with the assumption that the *human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.* (United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Trafficking)

Our domestic human rights legislation provides a means of redress for those persons who are discriminated against contrary to the legislation. The *BC Human Rights Code*, in Section 37 – Remedies – provides for a victim of discrimination by permitting the Human Rights Tribunal to order one or more of the following:

- Make available to the person discriminated against the right, opportunity of privilege that, in the opinion of the Tribunal, the person was denied.
- Compensate the person discriminated against for all, or a part of any wages or salary lost, or expenses incurred, by the contravention;
- Pay to the person discriminated against an amount that the Tribunal considers appropriate for injury to dignity, feelings and self respect, or to any of them.

The *Canadian Human Rights Act* has the same provisions, with the exception that it limits injury to dignity to \$20,000.00.

As was previously stated, a human rights approach focuses on the rights of the person who was discriminated against. This is often referred to as a “rights based” framework. That we accept as a fact, and in law, that all individuals in Canadian Society are equal in dignity and rights, and when those rights are violated they must be restored. One of the key factors in a rights based framework, is that individual rights must be entrenched in law with an enforceable legal process, and in keeping with international standards.

How do the equality rights provisions of the Canadian Charter of Rights and Freedoms inform our approach? What about the BC Human Rights Code?

The lives of Canadians were fundamentally changed in 1985 with the proclamation of Section 15 – the equality rights provision – of the Canadian Charter of Rights and Freedoms:

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15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

It is commonly understood that the equality provisions of the *Charter* gave all people in Canada legal equality of outcome. Not just equal protection (equality of opportunity), but equal benefit (equality of outcome) of the law. Prior to Section 15, our human rights model in Canada was one of identical treatment, leading the Supreme Court of Canada to conclude that pregnancy discrimination is not sex discrimination because not all women become pregnant.

There is no doubt in my view that trafficked persons found in Canada should be afforded the legal rights in Section 15. Be it through race, national or ethnic origin or sex, this modern form of slavery could only be rectified by enforcing the equality rights of trafficked victims. As the *Charter* is intended to govern the conduct of governments and rectify discriminatory legislation, it would seem to be a necessary tool in the human rights strategy for trafficked persons.

The rights in Section 15 flow into domestic human rights legislation making equality available in the more mundane areas of employment, public services, tenancy and purchase of property. Logic would dictate that responsibility for trafficked persons would be both federal and provincial, and so both the *Canadian Human Rights Act*, and the *B. C. Human Rights Code* might come into play.

To sum up a human rights approach to trafficked persons, we would want nothing more than to fulfill the purposes of the *Code*:

- To foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and social life of British Columbia;
- To promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- To prevent discrimination prohibited by this Code;
- To identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;

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- To provide a means of redress for those persons who are discriminated against contrary to this Code.

If it could be supposed that a human rights approach and legal framework will be taken towards trafficked persons in Canada, would that ensure such persons would be treated with the dignity, respect and equality expressed in the purpose and goals of Canadian human rights legislation?

We know that trafficked persons are those persons who are economically desperate in their country of origin, and are fraudulently enticed to what they believe is a better way of life. We know that people are trafficked within Canada. To move forward on this issue, it is necessary to look at the human rights of people living in Canada today who are economically marginalized.

Although women in Canada achieved legal equality with the Proclamation of Section 15 of the *Charter*, real equality (substantive equality) continues to elude us. Equal pay for equal value has not been achieved, and women continue to be unable to access male dominated high paying jobs. Sexual harassment and pregnancy discrimination continue in the workplace. Sex trade workers in Canada are most commonly not treated with dignity respect and equality. As the majority of trafficked persons are women and children placed in the sex trade, it is absolutely necessary that a feminist analysis and framework be applied to the human rights of these people.

The human rights of aboriginal people in Canada have been and remain today extremely limited. If an aboriginal person (Status Indian) experiences discrimination in an area that is covered in the *Indian Act*, such as housing, that person does not have access to the *Canadian Human Rights Act*, but must rather complain to the Tribal Council, who is frequently the perpetrator of the discrimination. Although there has been years of conversation around the inclusion of Status Indians in the *Canadian Human Rights Act*, this still has not happened. Much of the literature on trafficked persons within Canada, speculates that many of these are aboriginal people.

A third group of persons who are trafficked is men who are forced into labour. As it is common practice these days for the federal government to allow employers to contract to bring workers to Canada from other countries, it might be useful to look at a human rights dispute currently in progress in British Columbia on this issue. The case is *Construction and Specialized Workers Union 1611 on behalf of Foreign Workers and others v. SELI Canada Inc. SNCP-SELI Joint Venture and SNC Lavalin Constructors (Pacific) Inc.* 2007 BCHRT 404; 2007 BCHRT 419; 2007 BCHRT 423; 2007 BCHRT 442; 2008 BCHRT 32; 2007 BCHRT 451; 2008 BCHRT 80.

The Respondent is engaged in the tunnelling operations that are required for the construction of the Canada Line rapid transit line which will, when it is completed, run

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from Richmond into Vancouver. In issue are the Union's allegations that the workers from Latin America, who are paid under Schedule B of the collective agreement, are discriminated against as compared to workers from Canada, who are paid under Schedule A. This case is complicated, but what stands out is the Respondent's constant legal activity to stop the case from being considered. They made an application to dismiss on the basis that the union was inadequate to represent the Complainants. They threatened the Complainants by stating they would never work for the Company again unless they signed a petition against the union. In seven separate complaints they raised expensive time-consuming issues. The first decision came down in October 2007, and the merits of the case itself still have not been decided.

Finally, the human rights legislation itself is wanting, both federally and provincially. From a human rights perspective, in order to apply a human rights framework to trafficked persons, the prohibited ground of "social status" should be added into the legislation. This ground exists in the Quebec legislation, and is used by people on social assistance, single parents and any person who can show adverse treatment based in marginalization. In addition, we have no social and economic rights at all in most of Canada, unlike the European Community where there is a guarantee of the right to adequate housing and the right to an adequate income.

In conclusion, in addressing the rights of trafficked persons in Canada, it is essential to take a human rights approach as opposed to a criminal approach. But notwithstanding this, existing human rights need to be expanded, not only for trafficked persons, but for all Canadians.

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