

**TheTraffickedHuman.Org**

**A submission to the House of Commons Standing  
Committee on Justice and Human Rights National  
Consultation on Human Trafficking**

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## I. INTRODUCTION

Thetraffickedhuman.org comprises a group of individuals who raise awareness and advocate for the end of prostitution and human trafficking. In our individual roles, we are front line workers, community organizers, educators and lawyers.

In our recent work, we have focussed our attention on supporting enforcement of *The Protection of Communities and Exploited Persons Act*, and particularly enforcement of the provisions which criminalize the buying of commercial sex and deriving a material benefit from the purchase of commercial sex. To that end, in 2017, for instance, we arranged two lectures in Vancouver by Valiant Richey, Senior Deputy Prosecuting Attorney, King County, Seattle. Mr. Richey shared his experiences and successes in combatting prostitution and human trafficking by targeting the demand for commercial sexual services.<sup>1</sup>

We write in response to the National Consultation on Human Trafficking, and the proposed Bill C-38, which would bring into force some of the provisions of the former Bill C-452.

Although human trafficking is broader than prostitution, and includes labour and organ trafficking, within Canada, trafficking is primarily for the purposes of commercial sex. More than 50% of those trafficked in Canada are Indigenous women and girls. In the fourth Annual Report on Progress on the implementation of **Canada's National Action Plan to Combat Human Trafficking** (National Action Plan), it is recognised that large profits are the primary motivation for engaging in trafficking in persons.

## II. The Definition of “Human Trafficking” Must be Broadened to Recognise all Forms of Human Trafficking.

We applaud the Committee's commitment to strengthening Canada's laws to combat human trafficking and offer several comments to further strengthen the laws.

*The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (the “Palermo Protocol”), which Canada ratified in 2000, contains an expansive definition of “human trafficking”:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

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<sup>1</sup> <http://thetraffickedhuman.org/about/valiant-richey-event>

The definition correctly recognizes that coercion and exploitation can occur in a multitude of circumstances. The definition puts the focus on the power imbalance between the trafficker and the victim, and the vulnerability of the victim. Examples of vulnerability could include being in foster care or an abusive family home, poverty, drug addiction, mental illness. The insidious nature of the “lover boy” technique of recruitment into prostitution<sup>2</sup> is captured by the definition.

The *Criminal Code*, in sections 279.01 and 279.04, however, offers a more restrictive definition, which focusses on conduct which causes the victim to fear for her personal safety or the personal safety of a person known to them. This requirement for a threat to physical safety is not present in the *Palermo Protocol* definition.

We are concerned that such a narrow view of what constitutes trafficking fails to recognise the many vulnerabilities that lead to being trafficked into prostitution and will create a barrier to a successful prosecution of those who engage in trafficking. By way of example, in a March 19, 2018 CBC Radio interview, Jade Brooks, described being trafficked into prostitution at the age of 17 by her boyfriend.<sup>3</sup> It is not clear that her experience of sexual exploitation, which she calls trafficking, would meet the *Criminal Code* definition of “human trafficking”.

Adopting the *Palermo Protocol* definition of “human trafficking” will not only bring Canada’s laws into line with our international obligations but will also ensure protection for the broadest range of human trafficking victims.

### **III. Human Trafficking Laws Should Complement Prostitution Laws.**

Dr. Caroline Norma, an Australian academic, has described the system of prostitution as a “human rights devastation ... inflict[ed] on whole swathes of the globe’s female population”.<sup>4</sup>

In *Canada v. Bedford*<sup>5</sup>, the Supreme Court of Canada acknowledged that many of those being prostituted are not exercising a meaningful choice:

[86] First, while some prostitutes may fit the description of persons who freely choose (or at one time chose) to engage in the risky economic activity of prostitution, many prostitutes have no meaningful choice but to do so. Ms. Bedford herself stated that she initially prostituted herself “to make enough money to at least feed myself” (cross-examination of Ms. Bedford, J.A.R., vol. 2, at p. 92). As the application judge found, street prostitutes, with some exceptions, are a particularly marginalized population (paras. 458 and 472). Whether because of financial desperation, drug addictions, mental illness, or compulsion from pimps, they often have little choice but to sell their bodies for

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<sup>2</sup> <https://www.thestar.com/news/crime/2015/12/18/accused-pimp-describes-ways-women-get-lured-into-human-sex-trafficking.html>

<sup>3</sup> <http://www.cbc.ca/radio/thecurrent/the-current-for-march-19-2018-1.4582208/one-woman-s-experience-inside-canada-s-hidden-human-trafficking-epidemic-1.4582210>

<sup>4</sup> <http://www.abc.net.au/news/2014-05-23/norma-do-men-have-a-right-to-prostitutes/5471458>

<sup>5</sup> 2013 SCC 72, at para. 86

money. Realistically, while they may retain some minimal power of choice — what the Attorney General of Canada called “constrained choice” (transcript, at p. 22) — these are not people who can be said to be truly “choosing” a risky line of business (see *PHS*, at paras. 97-101).

The court, therefore, recognized that those who choose to enter prostitution are a small and privileged minority.

On December 6, 2014, Parliament enacted *The Protection of Communities and Exploited Persons Act*, which represents a shift in thinking in combatting commercial sexual exploitation. The law focuses the range of the law on the actual source of the harm: the buyers and the profiteers.

The Act sets out the objectives of the legislation that:

- Prostitution is inherently exploitative and violent;
- Prostitution is demand driven and it is necessary to target demand;
- Prostitution has a disproportionate effect on women and children, and consequently is a practice of inequality and sexual subordination;
- Prostitution objectifies and commodifies the girls, youth and women who are prostituted;
- It is necessary to invoke the criminal law to protect the dignity and equality rights of those who are prostituted;
- It is necessary to resist the commercialisation and institutionalisation of prostitution.

The clear statement from Parliament is that girls, youth and women are not for sale; that they are full human beings, with dignity and human rights. The Act rightly recognizes prostitution as a system of gender inequality and a human rights abuse. Although the Act does not make explicit reference to the harms prostitution causes to Indigenous and other groups of racialized people, the Act clearly addresses those groups.

The Act makes buying sex, receiving a material benefit from prostitution and advertising criminal offences. Those are dramatic shifts.

There are calls for the provinces and police forces to refuse to enforce the laws. We are conscious that the Liberal Party of Canada recently adopted a motion to repeal the Act. To date in British Columbia, not a single buyer has been arrested. On a local prostitution customer review website, the moderator calmed the fears of his members by telling them that they have a greater chance of winning the lotto max than of being arrested.

These developments are disappointing. In our view, the laws set out in the Act are necessary both to end exploitation and to end human trafficking, for several reasons. First, prostitution, and human trafficking, are demand driven activities. As has been recognised in the National Action Plan, traffickers are motivated by profits. The source of those profits is those who buy.

Second, Mr. Richey, in his work in Washington State, has confirmed through his work that arresting traffickers does not act as a deterrent to other traffickers, and that the only way to defeat the commercial exploitation is to target the demand for paid commercial sex.<sup>6</sup>

King County, WA has instituted a policing and prosecution model in line with the Act. The county did so partly in recognition that (a) the physical harm caused to victims of trafficking by traffickers was overstated; (b) much of the physical harm came from the buyers; and (c) arresting traffickers, without arresting buyers, does little to end commercial sexual exploitation.<sup>7</sup> As Mr. Richey has stated:

In Washington, what we did was we started going after the traffickers in a big way and we prosecuted them aggressively. We were the first state in the country to have an anti-trafficking statute and, as I said, I have prosecuted many of these guys, and we have sent them away for incredible prison sentences: 35 years, longer than killing someone in some cases.

And what I learned in doing those cases was that while it is incredibly important to the victims of that particular trafficker that that person be held accountable, and it's also important from the perspective of preventing any future victims of that trafficker, as a strategy to end exploitation, [pursuing traffickers only and not pursuing buyers] is not helpful. It's virtually useless. And the reason is, is like, for example, drug dealers who are not deterred by other drug dealers going to prison, traffickers are not deterred by other traffickers going to prison. They are enabled. And you can spin your wheels on that forever and never get to a place where you are actually stopping it.

Again, I am not saying we shouldn't be holding those guys accountable. We absolutely must do that but if we expect that as a strategy to work to end [commercial sexual exploitation], we are misguided and fooling ourselves.

As a consequence, King County decided to supplement its anti-trafficking prosecutions with targeting buyers.

The Seattle city attorney, the King County prosecuting attorney and the executive director of the Organization of Prostitution Survivors have jointly called this model the only "socially just model".

The Seattle Times praised the model, calling it "the right, compassionate approach". The newspaper stated boldly that buyers need to understand how their actions are often deepening another person's victimization and pain. The newspaper called for increased penalties for buyers, on the grounds that increasing the risk and consequences of buying commercial sex forces patrons to think carefully about their actions and enables law enforcement to take the offence more seriously.

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<sup>6</sup> <http://thetraffickedhuman.org/about/valiant-richey-event>, at 09:15 – 10:38 and 11:18 onwards

<sup>7</sup> <http://thetraffickedhuman.org/about/valiant-richey-event>

Third, in every jurisdiction where prostitution has been decriminalized, human trafficking has increased.<sup>8</sup> In Canada, an increase in human trafficking for sexual exploitation could have devastating consequences for our most vulnerable populations, and particularly our Indigenous girls and women.

Fourth, directing efforts away from buyers and solely onto traffickers diverts attention away from one of the main causes of harm: the buyers. It is the buyers who routinely rape and sexually assault girls, youth and women trafficked into prostitution. Diverting the law away from those buyers leaves those girls, youth and women in harm's way.

We strongly urge that Parliament reinforce its commitment to the Act and encourage its enforcement.

#### **IV. Recommendations**

1. Amend s.279.04 of the *Code* to be compliant with the *Palermo Protocol*.
2. Parliament reinforce its commitment to the Act and promote the enforcement of the legislation, as a necessary tool to promote human rights in Canada.

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<sup>8</sup> [https://eprints.lse.ac.uk/45198/1/Neumayer\\_Legalized\\_Prostitution\\_Increase\\_2012.pdf](https://eprints.lse.ac.uk/45198/1/Neumayer_Legalized_Prostitution_Increase_2012.pdf)