



May 5, 2023

Dear Committee:

Thank you for this opportunity to submit a brief to the Standing Committee on the Status of Women for its study into the Human Trafficking of Women, Girls and Gender-Diverse People in Canada. I am a Professor of Law at the University of British Columbia, and a lawyer who represents women's and disability rights groups in cases relating to violence against women, including prostitution. I have been researching legal responses to male violence against women for over 25 years.

An effective response to sex trafficking in Canada is hampered by a number of forces, including misinformation about the definition of trafficking; attempts to draw false dichotomies between prostitution and trafficking, especially for the purpose of laws targeting buyers; a failure to learn from best practices in other countries; and a failure to appreciate fully our international obligations. I briefly address these issues below, and am happy to provide more information should that be of interest.

### **The Definition of Sex Trafficking**

The 2000 *Palermo Protocol*, to which Canada is a party, defines trafficking as “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...for the purpose of exploitation.” Canada’s *Criminal Code* uses a similar but more restrictive definition, which unfortunately omits the reference to a condition of vulnerability. Neither definition requires that a person be moved geographically, physically restrained, or threatened. Significantly, both documents make clear that consent is not a defence to trafficking. (*PP*, art. 3(b); *CC*, s. 279.01(2)). This underscores that the focus needs to be on the actions of the trafficker, who profits financially from sexually exploitation, and not on judging the motives or mindset of the victim.

*Recommendation: The Code definition of trafficking should be brought into line with the definition in the Palermo Protocol to include “exploitation of a condition of vulnerability.” This expansion should not, however, be used as a pretext for decriminalizing sex buying. Trafficking laws have no application to buyers.*

### **The Relationship between Prostitution and Sex Trafficking**

The biggest misconception is that because not all prostitution meets the definition of sex trafficking, any prostitution that falls outside that definition is “free” or “chosen,” and should therefore be treated differently. Even some anti-trafficking advocates fall into this trap. It is true that not all prostitution is sex trafficking – trafficking requires a third party (the trafficker) be involved in the exploitation of the trafficked person. Where there is no third party, there is no trafficking. This does not mean, however, that where there is no third party, there is no exploitation. The women and girls in prostitution who are not under the control of a third party are still being pushed into prostitution out of financial necessity, and the men who buy them are still engaging in a discriminatory practice that is both a cause and a reflection of sex and gender inequality. The fact that buyers are men and those who are bought are mostly women, children, and gender-diverse people, is not an accident or a coincidence. The fact that poor, racialized and Indigenous women make up most of the world’s prostituted people is not a reflection of choice, suitability, or mere “consumer preference.” It is an expression of racism and sexism that is essential to why this harmful cultural practice continues to exist.

*Recommendation: The Committee should recognize that prostitution is a practice of sex/gender discrimination and violence against women that is antithetical to the equality of women, girls, and other vulnerable people. The Committee should recognize that prostitution is a practice of racism, and antithetical to both racial equality and decolonization.*

### **Targeting the Demand for Prostitution is Essential to Fighting Sex Trafficking**

Article 9(5) of the *Palermo Protocol* obligates Canada to target the demand that creates sex trafficking. The money male buyers pay to traffickers is what sustains the entire industry. Canada's laws must continue to include a prohibition on sex purchase. This has the important signaling effect of communicating that the purchase of women and girls for sex is an act of sex and gender inequality, intersecting with other forms of inequality. Without this prohibition, the message is that prostitution is legal and therefore acceptable. This leads to increased demand, which in turn fuels trafficking to meet that demand.

It is not effective to limit efforts to target demand only to those buyers who knowingly buy kids or trafficked women. This ignores the fact that adult women in prostitution are targeted because of poverty, involvement in the child welfare system, racism, and other systemic factors. Cindy Gladue (*R v. Barton*) was not trafficked; she was still a vulnerable woman who was abused by a john. Buying her, and thousands of women like her, was and is exploitative. Such an approach ignores the fact that if it is legal to buy adult women, men who buy girls will claim the defence of mistake of age, since pimps tell girls to say they are 18 or older. Men who buy trafficked women will say they had no idea that the woman was trafficked.

In Germany, where [1 million men visit brothels every day](#), and it is illegal to knowingly buy a trafficked person; only 1 buyer was charged with this offence in a 3-year period (2017-2019); he was not convicted. (Information from Andrea Salvoni, Deputy Coordinator for Combatting Trafficking in Human Beings, OSCE). In countries where sex purchase is legal, it becomes much easier to hide sex trafficking and there is an incentive to deny its existence. In New Zealand, as much as 1/3 of the industry is made up of women from Asia, working illegally, who are brought in to make up for the shortage of New Zealand women sufficient to meet demand. Yet New Zealand officially prosecutes no cases of sex trafficking in adult women, a dubious claim that has provoked [international censure](#). (An excellent comparison of Germany and New Zealand can be found at <https://catwinternational.org/wp-content/uploads/2021/06/Germany-New-Zealand-A-Comparison-in-Prostitution-Law-FINAL.pdf>)

*Recommendation: Educate Canadians that sex purchase is antithetical to equality; exploits the vulnerable, and is illegal in Canada. Learn from best practices in countries such as France and Sweden where laws targeting sex purchase, coupled with education and financial resources, are turning the tide of public opinion, reducing sex purchase, and creating an unattractive environment for sex traffickers.*

Yours truly,



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