

February 25, 2022

Standing Committee on Justice and Human Rights

Re: Bill C-36 Review of the Protection of Communities and Exploited Persons Act

Mr. Chairperson and distinguished members of the Committee, thank you for giving the Canadian Centre for Child Protection the opportunity to participate in the study of Bill C-36 Review of the *Protection of Communities and Exploited Persons Act*.

I. About the Canadian Centre for Child Protection (“C3P”)

C3P is a registered Canadian charity dedicated to the personal safety of all children, and it has been operating for over 35 years. C3P owns and operates Cybertip.ca, Canada’s tipline to report the online sexual exploitation of children. Cybertip.ca was adopted under the Government of Canada’s *National Strategy for the Protection of Children from Sexual Exploitation on the Internet* in May 2004.

All reports made to Cybertip.ca are assessed by a child protection analyst. Reports that pertain to incidents that appear to be in contravention of the *Criminal Code* are sent to law enforcement for possible investigation, and any information regarding a child potentially in need of protection is forwarded to the appropriate child welfare agency. **As of July 1, 2021, Cybertip.ca has received 1,732 reports related to human trafficking of minors for the purpose of sexual exploitation (“sex trafficking”) and sexual exploitation through prostitution of persons under the age of 18, and 393 reports related to the sexual advertisement of children online.**

II. Children and the Protection of Communities and Exploited Persons Act (the “PCEPA”)

C3P’s mandate and mission is aimed at the protection of children, which for the purpose of this submission means any person under 18. Accordingly, this submission only relates to those *Criminal Code* provisions that both relate to the PCEPA and concern children.¹ While the PCEPA did not make extensive changes to the *Criminal Code* provisions that address the sex trafficking and sexual exploitation through prostitution of persons under 18, it is C3P’s position that the Committee’s review of the PCEPA must consider its impact on children. Children, particularly those experiencing poverty, homelessness and addictions, are particularly vulnerable to being exploited by others. Accordingly, it is essential that the Committee consider what changes may be needed to better protect children from being exploited in this manner.

To that end, C3P has 4 specific recommendations:

1. Amend the *Criminal Code* (or create a stand-alone statute) that imposes a duty on online platforms to a) report all instances of sexual exploitation of children for consideration on their platforms (including the advertising of same), and b) devise mechanisms to detect if an individual under 18 is being trafficked or exploited through their platform. This must be done in consultation with law enforcement to ensure that police undercover operations under s. 286.1(2) are not affected.

¹ Communicating/obtaining sexual services for consideration from person under 18 (s. 286.1(2)); material benefit from sexual services provided by person under 18 (s.286.2(2)); procuring a person under 18 (s. 286.3(2)); advertising sexual services (s. 286.4); trafficking of a person under 18 (s. 279.011(1)); material benefit from trafficking a person under 18 (s. 279.02(2)); and withholding or destroying documents — trafficking of a person under 18 (s.279.03(2)).

2. Either:
 - (i) Make it a statutory aggravating factor if a person pays a child (or other person, such as a trafficker or a guardian) to produce “child pornography” (the term used in the *Criminal Code*, but which shall hereafter be referred to as child sexual abuse material (“CSAM”)); or
 - (ii) Make the purchase of CSAM in the context of trafficking/exploitation a prohibited act (e.g., expressly include the purchase of CSAM in the definition of a “sexual service”) for the purpose of the trafficking/exploitation provisions.
3. Amend section 286.4 (advertising sexual services) to:
 - (i) delineate between advertisements involving adults and those involving children;
 - (ii) make it mandatory for police and judges to conduct an assessment of any visual, audio, or written material created as part of an advertisement to determine if such material is “child pornography”; and
 - (iii) make it mandatory that any and all imagery (or other related information) of children posted in relation to advertisements for the sexual services of children be removed from online platforms, regardless of whether the image meets the threshold of “child pornography” under the *Criminal Code*.
4. Conduct a separate study of the trafficking/exploitation provisions as they pertain to children only, alongside the obligations Canada has committed to in the UNCRC, the Optional Protocol, and the Protocol on Human Trafficking, to determine how our Canadian laws in this area should be strengthened.

III. Use of technology

C3P monitors reported case law tied to *Criminal Code* provisions addressing sexual offences against children. This monitoring includes offences targeting the sex trafficking and sexual exploitation through prostitution of persons under 18.² **Most reported case law specific to sex trafficking and sexual exploitation through prostitution of a person under 18 involves a trafficker who has specifically lured the child (online³ and offline) for the purpose of sex trafficking.** Out of view of any caregivers, the public, or police, offenders have unfettered access to large numbers of potential victims through various online platforms. Traffickers and purchasers of sex use the intimacy and anonymity of the internet to take advantage of children’s naivety and any vulnerabilities they may have to coerce and manipulate them into sexual exploitation.

Case Examples. There are examples in reported case law where the accused communicated with a child “for the purpose of obtaining sexual services for consideration” and also subjected the child to the same types of tactics prevalent in online luring cases, such as the use of a false persona⁴ or a job ruse.⁵ For example, a case out of Nova Scotia involved a man who used a fake persona on Facebook to manipulate a 15-year-old girl into sending him sexually explicit pictures and videos of herself and engage in sexual activity with him.

² See footnote 1.

³ For example see: *R c Vera Camacho*, 2019 QCCQ 6896 (use of Kijiji and Facebook); *R v Alcorn*, 2020 MBQB 183 (use of Facebook); and *R v Bains*, 2021 ABPC 20 (use of Whisper and Snapchat); *R v Robinson*, 2021 MBQB 108 (offender found the victim on an escort site – not named in the judicial decision).

⁴ For example see *R v Bains*, 2021 ABPC 20 (the male accused pretended to be a female on Whisper and lured the 14-year-old complainant to a meeting at which he sexually assaulted her; during the communications, he asked, “How about we give u a \$100?” referring to payment for a sex act).

⁵ For example see *R c Vera Camacho*, 2019 QCCQ 6896 (in general, the accused would place ads on different sites offering a well-paid job as a receptionist or masseuse in a salon and then ask the girls who responded to send naked pictures of themselves).

According to an online news article, the offender contacted the victim on Facebook Messenger using his fake persona:

*...and told her he was president of one of the criminal organizations shown on his Facebook profile. He said he would not harm her boyfriend if she entered a contract with him for 30 days to provide sexual services to [the offender] that would be photographed and videotaped and sent to him.*⁶

In addition to reported case law, reports to Cybertip.ca also provide a lens into the sexual exploitation of children through prostitution and sex trafficking. These reports come into Cybertip.ca from a wide range of individuals, including victims, family members of victims, acquaintances of the traffickers or purchasers, and in a few instances, adults who identify themselves as sex workers who report having been contacted by an adult who was seeking out a minor. The nature of the reports include reports of children being “sold” on online platforms such as Kijiji.ca, Facebook®, Instagram®, Twitter® and fetish or escort sites. Reports made to Cybertip.ca mirror what is revealed in reported case law – the use of technology to facilitate the commodification of children’s sexual exploitation is on the rise. It is with this reality in mind that the following observations and recommendations are made.

IV. Gaps under the PCEPA

Platforms used for sex trafficking and sexual exploitation of children through prostitution

The PCEPA made it permissible for sex workers to advertise their own services, but adequate mechanisms were not put in place to protect children who may be “advertised”. Reported case law reveals there are several different online platforms through which the sexual services of children are advertised. One such platform was the notorious Backpage.com (now shut down due to the amount of exploitation that occurred through that website). A large portion of the decisions we have reviewed involving children being trafficked for sexual exploitation originated on Backpage.com. In these cases, sex traffickers would post (or cause the child to post) ads with sexualized pictures of the child, sometimes those pictures would meet the strict legal definition of “child pornography”, while sometimes they would not.

Cases involving Backpage.com are still going through the justice system, several years after Backpage.com was shut down by the US government.⁷ Canadian courts are grappling with issues such as the permissible parameters of undercover police operations in this context. Meanwhile, traffickers have moved on to other online platforms, including escort sites (e.g., Leo List) or classified advertisement websites (e.g., Craigslist.ca and Kijiji.ca).⁸ Virtually any site that allows advertisements for sexual services is vulnerable to being used in this way and there are currently no laws to help prevent this, nor any means of detecting it other than through public reports or undercover police work.

In Canada, *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, S.C. 2011, c. 4 imposes a duty on service providers to report CSAM to a designated entity. Thus, the application of the legislation is narrow, which means that unless that exploitation takes the form

⁶ See Steve Bruce, Windsor, N.S., man used fake Facebook account to sexually exploit 15-year-old girl, November 4, 2021. The Saltwire Network. Available online at: <https://www.saltwire.com/cape-breton/news/provincial/windsor-ns-man-used-fake-facebook-account-to-sexually-exploit-15-year-old-girl-100653642/>.

⁷ Backpage.com was shut down in April 2018 by the US federal government. See Sarah N. Lynch, Lisa Lambert, “Sex ads website Backpage.com shut down by U.S. authorities” April 6, 2018. Reuters. Available online at: <https://www.reuters.com/article/us-usa-backpage-justice/sex-ads-website-backpage-shut-down-by-u-s-authorities-idUSKCN1HD2QP>.

⁸ For example see: *R v Braithwaite*, 2021 ONCJ 421; *R v JG*, 2021 ONSC 1095; and *R c Vera Camacho*, 2019 QCCQ 6896.

of “child pornography” it is not caught under federal mandatory reporting requirements. There are no similar duties imposed upon platforms to report children being sexually exploited on their platforms for financial or other gain. In addition, there is no mandated duty of care for any platform to take meaningful steps to *prevent* such activity from occurring on their platforms.

Currently, the Senate Standing Committee on Legal and Constitutional Affairs is conducting a study into Bill S-210: *An Act to restrict young persons’ access to sexually explicit material*. Bill S-210 creates a new criminal offence of making sexually explicit material available to a child for commercial purposes, and enables a government authority (to be determined) to mandate action by the organization to prevent future offences. Similar legislation for websites and mobile apps that facilitate the advertising of sexual services would be beneficial.

Due to the lack of oversight over the escort industry overall, there are virtually no accountability mechanisms in place for websites or platforms that permit posting ads for sexual services involving minors. As a result, children of any age can advertise their own sexual services on such platforms, or those who traffic them can do the same. These ads will use specific words or emojis to connote the victim’s age and experience, thereby circumventing the basic (unmonitored) standard that persons must be 18 or over to post an advisement for sexual services.

Recommendation 1: Amend the *Criminal Code* (or create a stand-alone statute) that imposes a duty on online platforms to a) report all instances of sexual exploitation of children for consideration on their platforms (including the advertising of same), and b) devise mechanisms to detect if an individual under 18 is being trafficked or exploited through their platform. This must be done in consultation with law enforcement to ensure that police undercover operations under s. 286.1(2) are not affected.

What constitutes a “sexual service” – evolution of technology and the law

When the PCEPA was introduced, the Technical Paper unequivocally stated that a sexual service needed to be something that occurred in person, stating that the:

...jurisprudence is clear that neither acts related to the production of pornography, nor stripping meet the test. In most cases, physical contact, or sexual interaction, between the person providing the service and the person receiving it is required; however, acts for which consideration is provided that take place in a private room in a club and that are sexual in nature, but do not involve physical contact between the “client” and “performer”, such as self-masturbation, have been found to constitute prostitution.⁹ [Emphasis added]

This interpretation was based on case law to that point, which had found that the provision of sexual material, including CSAM, was not a “sexual service.”¹⁰ When consenting adults are involved in the creation of pornography (live streamed or recorded), this limitation may make sense, however such an interpretation is not sensible when it comes to children. Through our case law monitoring, it is clear that it is becoming more common for those who exploit underage victims to offer the child money or other consideration (drugs,

⁹ Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act. Available online at: <https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>.

¹⁰ *R v Bauer*, [1999] OJ No 5294, the Crown’s argument that the images were a “sexual service” was dismissed. The case goes through the reasons why stating that there needs to be a “physical” element for there to be a sexual service. See also *R v Natarajan*, [1995] AJ No 1183, 177 AR 190, 29 WCB (2d) 379. See also *R v St. Onge et al.* 2001 CarswellQue 3859.

alcohol) in exchange for recording their sexual activity with the child, or offering the child some form of payment to create and send a sexual image or video, or perform on webcam. We have seen reported cases in which offenders have offered to pay, or have paid, for child sexual abuse material online – both recorded and livestreamed – from children and sex traffickers.¹¹

The reality is that the “escort industry” has evolved since the PCEPA came into force, and since the onset of COVID, such that sexual services are now offered as much online as they are offline. A person can now commodify themselves online using platforms that facilitate the sharing of sexually explicit material for consideration,¹² and have little to no age verification or other safeguards in place. As a result, purchasers of sex no longer need to risk leaving their homes to exploit another person. Instead, the online environment is similar to the “private room in a club” mentioned in the quote above. A purchaser can demand what they want, away from the prying eyes of parents, and without even being in the same country as the child. As stated by one judge: “*A request by a sexual offender that a child in his presence perform a sexual act should no longer be seen as any different as a request to do so online.*”¹³

As a concrete example of the ways in which children can become sexual commodities online, several reports were made to Cybertip.ca about a 15-year-old child who was being sexually exploited for consideration through OnlyFans (an online platform that permits individuals to create sexually explicit content for paying viewers). One report from a member of the public alleged the child had been “trafficked by a pimp since she was 13”, and is being held hostage and forced to produce CSAM. Another reporting person, concerned about the same child, stated that someone was “going to kill [the child] on a live stream” if she does not make enough money.¹⁴

Another example is the case of *R v Chicoine*, 2017 SKPC 87, which involved a Canadian offender who paid low-income families in Romania and the Philippines to sexually abuse their children in front of web cameras so he could watch. He paid approximately \$21,000.00 CDN for the CSAM and live streamed sexual abuse of children. Over time, he amassed a collection of over 4000 images and nearly 600 videos of these children.¹⁵

In keeping with Canada’s obligations under the UNCRC and the General Comment No. 25, it is time to revisit the meaning of the term “sexual services” in the digital age, with a view to protecting children from harm. Currently in situations where an offender has received “made-to-order” CSAM for which they paid money or other consideration, there is no criminal offence that adequately captures the aspect of the consideration that was offered/given to cause that material to exist. The offender may be charged with “possession” of child pornography (s. 163.1(4)) or “counselling to commit” the creation of child pornography (s.464 or s.465 (conspiracy)), or (rarely) as a party to the “making” of child pornography. But none of those offences truly or adequately capture the added moral culpability of paying a child for such a thing. Offenders may now obtain sexual material of children tailored to their own fetishes and predilections – for a price. Such image, once

¹¹ For example *R v Dawe*, 2018 CanLII 47179 (NL PC).

¹² Jacob Bernstein, “How OnlyFans Changed Sex Work Forever, OnlyFans has put X-rated entertainment in the hands of its entertainers. Call it the paywall of porn.” *New York Times*. February 9, 2019. Available online at: <https://www.nytimes.com/2019/02/09/style/onlyfans-porn-stars.html>. Tali Arbel and Barbara Ortutay, “OnlyFans reverses explicit content ban after outcry” *ABC News*. August 25, 2021. Available online at: <https://abcnews.go.com/Entertainment/wireStory/onlyfans-planned-porn-ban-suspended-user-outcry-79636961>.

¹³ *R v Carter*, 2018 CanLII 3123 (NL PC) at para 2. See also *R v Burns*, 2018 ONCJ (unreported); *R. v. Jamieson*, 2017 MBPC 60; and *R v Chicoine*, 2017 SKPC 87.

¹⁴ Reports made to Cybertip.ca.

¹⁵ See *R v Chicoine*, 2017 SKPC 87 and *R v Chicoine*, 2017 SKCA 104 (sentencing appeal). A similar fact scenario is found in *R v Brown*, 2018 BCPC 260 and *R v Pitts*, 2016 NSCA 78.

created, may be shared with others and compound the victimization that has already occurred. It can be used to extort the child for more imagery. It is a potentially permanent and damaging form of exploitation for consideration that is not properly captured in existing laws.

Recommendation 2: Either:

- **Make it a statutory aggravating factor if a person pays a child (or other person, such as a trafficker or a guardian) to produce “child pornography”; or**
- **Make the purchase of CSAM in the context of trafficking/exploitation a prohibited act (e.g., expressly include the purchase of CSAM in the definition of a “sexual service”) for the purpose of the trafficking/exploitation provisions.**

Advertisements for sexual activity (s. 286.4)

In addition to CSAM being made for sale, traffickers sometimes create sexualized imagery, or encourage victims to self-produce such imagery, which is used to advertise the victim to potential buyers on online platforms. Some of the sexualized imagery created constitutes CSAM while some depicts the victims dressed in little clothing, posing provocatively, yet may not meet the legal definition. Regardless of the amount of clothing on the victims, any imagery that depicts a child as being sexually available for a price potentially puts that child’s safety at risk and can cause future harm to that child. Such imagery is often shared on websites such as the former backpage.com, and other similar websites to attract purchasers of sex.¹⁶

What is particularly troubling is that the sexualized imagery created as a result of these ads is not always identified and treated as CSAM or as sexualized imagery of children by the courts. The result is that: a) the culpability of the offender is not reflected in the judicial decision; and b) the material might remain online (being redistributed) causing further harm and victimization to the victim (e.g., the victim lives in fear of the imagery being discovered by those around them, including potential employers).

Through our case law monitoring we have seen a stark absence of any discussion as to the status of the images that are made. Rarely do we see a judgment that states whether or not such material is CSAM and if not, why not. Similarly, there is no discussion whether such material should be removed from the internet. In at least one instance, we have seen the blatant disregard of the context and content of such material based on the belief that material made in the context of sex trafficking or sexual exploitation through prostitution is not CSAM.¹⁷

It is imperative that those in the criminal justice system recognise the harm that this type of imagery can have on a child. Police should lay child pornography charges in these cases, keeping in mind this imagery is literally used to advertise a child’s sexual availability. Judges should, as with all instances in which such material is made, be given the opportunity to assess whether the imagery meets the legal definition of “child pornography” and to explain why it does not, if it does not. This will help everyone better understand the parameters and limitations of the current “child pornography” definition. When the imagery is found to be “child pornography”, it will also help to ensure that such material is removed from the internet to protect the victim in the future. In the absence of charges, courts should still consider the harm that may be caused

¹⁶ For example, see *R v Joseph*, 2020 ONCA 733 (offender was charged with making “child pornography”).

¹⁷ Ibid. The trial judge in *R v Joseph* expressed “discomfort” with the notion that the images qualified as “child pornography” and he refused to limit public access to the images, stating “these young women allowed it” (para 101) and that since they had already been online, “no harm” would arise if they were not kept under seal (para 50).

in the future as a result of such material having been made publicly available, as part of its overall assessment of victim impact.

Recommendation 3: Amend section 286.4 (advertising sexual services) to:

- (i) delineate between advertisements involving adults and those involving children;
- (ii) make it mandatory for police and judges to conduct an assessment of any visual, audio, or written material created as part of an advertisement to determine if such material is “child pornography”; and
- (iii) make it mandatory that any and all imagery (or other related information) of children posted in relation to advertisements for the sexual services of children be removed from online platforms, regardless of whether the image meets the threshold of “child pornography” under the *Criminal Code*.

V. Obligations under international law

In 1989, Canada ratified the United Nations Convention on the Rights of the Child (the “UNCRC”). The preamble to the UNCRC specifically states: “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.”¹⁸ As such Canada has obligations to put in place legal protections for children that are specific to their unique needs. In 2005, Canada strengthened its commitment to the UNCRC by ratifying the *Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (the “Optional Protocol”). One of the obligations under the *Optional Protocol* requires states to take all feasible measures to promote the physical and psychological recovery and social reintegration of a ***child who is a victim of being sold, child prostitution, or child pornography***.¹⁹

On March 24, 2021 the United Nations Committee on the Rights of the Child released General Comment No. 25, *General Comment on children’s rights in relation to the digital environment*. The General Comment is intended to provide member states guidance on how to realize and protect children’s rights under the UNCRC in the digital space. The General Comment acknowledges that children are at risk of harm online, in particular “risks relating to content, contact, conduct, and contract encompass among other things, violent and sexual content, cyberaggression and harassment, gambling, exploitation and abuse, including sexual exploitation and abuse...”²⁰ This is a signal to member states to review and amend existing legislation and policies related to children and ensure that they adequately protect children in the digital age.

Canada has also ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (the “Protocol on Human Trafficking”). One of the obligations that must be followed by member states is that they must take into account the ***age, gender and special needs of victims of trafficking in persons, in particular the special needs of children***, including appropriate housing, education and care when applying the Protocol

It is C3P’s position that in the context of the review of the PCEPA, a full review should be undertaken to identify the ways in which Canada’s obligations under the UNCRC, the Optional Protocol, and the Protocol on Human Trafficking are being fulfilled by the PCEPA, and what gaps may exist.

¹⁸ Convention on the Rights of the Child, 20 November 1989, 3 UNTS 1577 (entered into force 2 September 1990), Preamble.

¹⁹ See Article 9 of the Optional Protocol.

²⁰ General comment No. 25 (2021) on children’s rights in relation to the digital environment. Committee on the Rights of the Child. Published March 2, 2021. Available online at: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx> at para 14.

Recommendation 4: Conduct a separate study of the trafficking/exploitation provisions as they pertain to children only, alongside the obligations Canada has committed to in the UNCRC, the Optional Protocol, and the Protocol on Human Trafficking, to determine how our Canadian laws in this area should be strengthened.

VI. Other considerations

There has been an increase in number of charges and convictions related to the sex trafficking and sexual exploitation through prostitution of children.²¹ However, it remains an underreported crime. Some reasons for this are:

- (a) Child victims of sex trafficking and sexual exploitation through prostitution do not often come forward. This may be due to fear of the traffickers or the purchasers (especially when the traffickers are gang affiliated), fear of the police, a relationship of dependence between the victim and trafficker or purchaser of sex, or a variety of other factors.
- (b) When a victim does come forward, the trafficker may be prosecuted along with, at most, one or two purchasers. The child victim will rarely be able to positively identify or recall all of the purchasers who exploited them.

In addition, from the case law monitoring that C3P does, it is apparent that many sex trafficking or sexual exploitation cases are litigated, and that the children who do participate in the criminal justice system are not treated with the dignity and respect they deserve. For example, some members of the judiciary and other actors within the criminal justice system fail to perceive a child exploited through prostitution as a true victim. Child victims may be referred to as “streetwise”, implying that they somehow bear part or all of the blame for what occurred.²² Child victims may also be referred to as “sex workers” or “escorts”.²³ While these terms have come into the present-day vernacular in part to destigmatize fully informed and consensual adult arrangements, such terms when used in relation to children, are entirely inappropriate and minimize the inherently exploitative nature of the offence. **An adult may legally choose to engage in sex work, but that is never the case for a child.**

It must also be recognized that the criminal justice system is difficult to navigate for any victim. Vulnerable victims, such as children, and particularly children who may have addiction issues (often stemming from the trauma of being sexually exploited), or who lack familial or other supports, are not well equipped to meet the rigorous criminal law expectation of providing testimony and being cross-examined. We have noticed an uptick in not guilty pleas from accused charged with sex trafficking offences or offences under s.286.1(2). Is this because there are more individuals wrongfully accused of this particular offence? Or is it because a trial provides ample opportunities to discredit and demoralize a vulnerable child victim? Whatever the reason, these trials result in acquittals more often than other sex crimes against children. Assuming that at least some

²¹ For example in 2014, the Canadian government made changes to the commodification of sexual activity provisions through Bill C-36, the *Protection of Communities and Exploited Persons Act*. One of the changes the PCEPA brought about was the creation of s. 286.1(2), which established a method for law enforcement to find those who seek the sexual services of minors (or are indifferent whether or not they receive sexual services from minors). According to Statistics Canada, there has been a considerable increase in persons who have been accused of a purchasing offence since the PCEPA came into force. Statistics Canada also found that “After the change in legislation, more than four in five (83%) men tried in court for the new offence of obtaining services from a minor were found guilty”. Mary Allen and Cristine Rotenberg, “Crimes related to the sex trade: Before and after legislative changes in Canada”, June 21, 2021. Statistics Canada. Available online at: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00010-eng.htm>.

²² See for example *R v Floyd*, 2020 ONSC 2014 at para 50.

²³ See for example: *R v Joseph*, 2020 ONCA 733 (appeal), *R v Joseph*, 2017 ONSC 4566 (procedural) and *R v Joseph*, 2018 ONSC 4646 (sentencing); and *R v Floyd*, 2020 ONSC 2014.

of the individuals acquitted did commit the crime they were accused of, this means those individuals are free to victimize more children.

We urge the members of the Committee, as part of this review, to familiarize themselves with some of the reported cases that involve the sexual commodification of a person under 18 to help it to understand the types of cases currently going through the courts. Such a review would assist the Committee in better understanding the different ways in which children are being exploited, and some of the gaps in our current laws.

VII. Conclusion

The PCEPA was ostensibly introduced to protect adults and children who may be sexually exploited through prostitution. However, children and adults are not the same and require different approaches. Adults are free to offer their own sexual services in the absence of exploitation. Adults are free to create pornography. Neither of those things are true for children. Every instance in which a child provides sexual services – or CSAM – for consideration is exploitation, regardless of whether a trafficker is involved or not. Moreover, Canada is obligated, as a signatory to the *United Nations Convention on the Rights of the Child*, and the *Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* to have their **best interests** be a primary consideration. We ask that the Committee's review of PCEPA consider if the current laws are consistent with Canada's international obligations, and with its duty to its most vulnerable citizens. We implore you to avoid making blanket recommendations but instead specifically consider and address the needs and interests of children separate from those of adults.