



Brief of the

**Christian Legal Fellowship**

to

**The Standing Committee on Justice and Human Rights**

regarding the

**Review of the *Protection of Communities and Exploited Persons Act***

**March 2, 2022**

## Executive Summary

As an NGO in Special Consultative Status with the United Nations, Christian Legal Fellowship (CLF)\* appreciates this opportunity to highlight Canada’s international legal obligations that are most relevant to this Committee’s review of the *Protection of Communities and Exploited Persons Act (PCEPA)*. Specifically, as outlined below, Canada has undertaken international commitments to enact legislative measures to combat exploitation in prostitution and the demand for human trafficking.

In CLF’s view, the *PCEPA* is an important and necessary measure that supports Canada’s ability to fulfill these international commitments.

### Canada’s international legal obligations to combat trafficking and exploitation

By ratifying a specific international legal instrument, Canada formally commits to being legally bound by it.<sup>1</sup> Two such ratified international instruments are especially pertinent to the *PCEPA*. Taken together, these instruments make it clear that Canada has an international legal obligation to combat human trafficking, including the exploitation of the prostitution of others.

The first instrument is the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*.<sup>2</sup> Canada signed the *CEDAW* on 17 July 1980 and ratified it on 10 December 1981.<sup>3</sup> Pursuant to Article 6 of the *CEDAW*, Canada has committed to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”<sup>4</sup>

The second relevant instrument is the United Nations *Convention against Transnational Organized Crime* and the associated Protocols,<sup>5</sup> including the *Protocol to Prevent, Suppress and Punish Trafficking in*

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\*Christian Legal Fellowship (CLF) is a national charitable association of over 700 lawyers, law students, law professors, jurists, and others. For more about CLF’s work, please see page 10 of this Brief.

<sup>1</sup> See Government of Canada, “International Human Rights Treaty Adherence Process in Canada”, online: <https://www.justice.gc.ca/eng/abt-apd/icg-gci/ihrd-didp/ta-pa.html>. See also *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32 at para 31: “ratification is the way in which international instruments become binding internationally”.

<sup>2</sup> *Convention on the Elimination of All Forms of Discrimination against Women* (18 December 1979), online: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> [CEDAW].

<sup>3</sup> United Nations, “Ratification Status for CEDAW – Convention on the Elimination of All Forms of Discrimination against Women”, online: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en).

<sup>4</sup> *CEDAW* at Art 6. The UN Committee on the Elimination of Discrimination against Woman recognizes “the gender-specific nature of the various forms of trafficking in women and girls and their consequences, including with regard to harms suffered”, and “acknowledges that trafficking and exploitation of prostitution in women and girls is unequivocally a phenomenon rooted in structural, sex-based discrimination, constituting gender-based violence”; see “General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration”, CEDAW/C/GC/38 (20 November 2020), online: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en) at 4.

<sup>5</sup> *United Nations Convention against Transnational Organized Crimes and the Protocols Thereto*, A/RES/55/25 (15 November 2000) (entered into force on 29 September 2003), online: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

*Persons, Especially Women and Children* (known as the *Palermo Protocol*).<sup>6</sup> Canada signed the *Palermo Protocol* on 14 December 2000 and ratified it on 13 May 2002.<sup>7</sup>

Similar to the *CEDAW*, the *Palermo Protocol* defines “trafficking in persons” to include “the exploitation of the prostitution of others or other forms of sexual exploitation” (Article 3) and declares that “[e]ach State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3”.<sup>8</sup> In addition to declaring that “States Parties shall establish comprehensive policies, programmes and other measures [... t]o prevent and combat trafficking in persons”, the *Palermo Protocol* requires that States Parties “adopt or strengthen legislative or other measures, such as educational, social or cultural measures, [...] to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”<sup>9</sup>

Canada’s international legal obligations under the *Palermo Protocol* and the *CEDAW* therefore require the Government of Canada to adopt legislative measures that “discourage the demand” for the “exploitation of persons, especially women and children”, and to “adopt such legislative and other measures as may be necessary to establish as criminal offences” “the exploitation of the prostitution of others or other forms of sexual exploitation”.<sup>10</sup>

This approach has been consistently reaffirmed by UN bodies since the *Palermo Protocol* was developed. For example, on 19 December 2016, the United Nations General Assembly adopted UN Resolution 71/167 “Trafficking in women and girls”.<sup>11</sup> The Resolution calls upon governments to take appropriate preventive measures to address the underlying causes of human trafficking, such as “the persistent demand that fosters all forms of trafficking [...]”, as well as other factors that encourage the particular problem of trafficking in women and girls for exploitation, including in prostitution and other forms of commercialized sex”.<sup>12</sup>

Most recently, the United Nations Committee on the Elimination of Discrimination against Women issued “General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration”.<sup>13</sup> This General Recommendation noted “that a life free from being trafficked must be recognized as a human right and appropriate conditions must be created for that

<sup>6</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, A/RES/55/25 (15 November 2000) (entered into force on 25 December 2003), online: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> [*Palermo Protocol*].

<sup>7</sup> United Nations Treaty Collection, “Penal Matters”, Chapter XVIII, online: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en).

<sup>8</sup> *Palermo Protocol* at Art 3 and Art 5.1.

<sup>9</sup> *Palermo Protocol* at Art 9.1(a) and 9.5 (emphasis added).

<sup>10</sup> *Palermo Protocol* at Art 3, Art 5.1, and Art 9.5 (emphasis added).

<sup>11</sup> United Nations General Assembly, “Trafficking in women and girls”, A/RES/71/167 (19 December 2016), online:

[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_71\\_167.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_167.pdf).

<sup>12</sup> *Ibid* at 8, para 16 (emphasis added).

<sup>13</sup> Committee on the Elimination of Discrimination against Women, “General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration”, CEDAW/C/GC/38 (20 November 2020), online: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/38&Lang=en).

right to be fully enjoyed by women and girls.”<sup>14</sup> To “make the realization of that right effective, rather than illusory”, the *CEDAW*’s State Parties (including Canada) must “pursue all appropriate means to eradicate trafficking and exploitation of prostitution”.<sup>15</sup> General Recommendation No. 38 further emphasizes the need to “[d]iscourage the demand that fosters exploitation of prostitution and leads to trafficking in persons.”<sup>16</sup>

As discussed below, legislation like the *PCEPA* is an important means of meeting these international commitments because of its role in reducing the demand for commercialized prostitution that, in turn, leads to exploitation.

### **The *PCEPA* supports Canada’s fulfillment of its international obligations**

The *PCEPA* was Parliament’s response to the Supreme Court of Canada’s ruling in *Canada (Attorney General) v Bedford*, 2013 SCC 72. While Parliamentary debate at the time may have focused on whether the *PCEPA* responded appropriately to that decision, the *PCEPA* was also clearly designed to combat human trafficking.<sup>17</sup> In introducing the legislation (Bill C-36), then Minister of Justice Peter MacKay stated:<sup>18</sup>

“The impact of the new prohibitions would be borne predominantly by **those who purchase sex and persons who exploit others through prostitution**. The bill is intended to **reduce the demands for prostitution**, which **disproportionately impact on society’s most marginalized and vulnerable**.

The bill would also modernize existing procuring offences, **to ensure that those who exploit others through prostitution are held to account for capitalizing on the demand created by purchasers**.

These reforms are informed by new, contemporary legislative measures outlined in the bill’s preamble, which include **protecting communities and those who are exploited through prostitution from prostitution’s implicit harms, which include sexual exploitation**, the risk of violence and intimidation, exposure of children to the sale of sex as a commodity,

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<sup>14</sup> *Ibid* at 3.

<sup>15</sup> *Ibid*.

<sup>16</sup> *Ibid* at 13.

<sup>17</sup> The Ontario Court of Appeal recently found that Parliament “was concerned that prostitution was linked to human trafficking” (*R v NS*, 2022 ONCA 160, para 21). In addition to quoting some of Minister MacKay’s comments, which are discussed in this Brief, the court cited MP Royal Galipeau’s Parliamentary speech on Bill C-36: Canada, Parliament, House of Commons, *Debates (Hansard)*, 41st Parl, 2nd Sess, Vol 147, No 117 (26 September 2014) at 7885 (R Galipeau), online: [www.ourcommons.ca/Content/House/412/Debates/117/HAN117-E.PDF](http://www.ourcommons.ca/Content/House/412/Debates/117/HAN117-E.PDF). In that speech, MP Galipeau explained: “The bill recognizes that prostitution is linked to human trafficking. In fact, research shows that jurisdictions that have decriminalized or legalized prostitution have larger sex industries and experience higher rates of human trafficking for sexual exploitation. This is not surprising. Allowing the purchase and sale of sexual services results in an increase in demand for those services, and an increase in demand results in an increase in supply. [...] The fact that prostitution may, and does, result in human trafficking for sexual exploitation underscores the importance of prohibiting prostitution [...] Bill C-36 is more than just a response to the Bedford decision. It is also a response to the complex web of criminal conduct associated with prostitution” (at 7885-7886). In *R v NS*, the Ontario Court of Appeal upheld the constitutionality of three *Criminal Code* provisions introduced by the *PCEPA*, namely s 286.2 (material benefit), s 286.3 (procuring), and s 286.4 (advertising).

<sup>18</sup> Canada, Parliament, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 101 (11 June 2014) at 1700 (Hon P MacKay) (emphasis added).

and related criminal activities such as **human trafficking** and drug-related and organized crime. [...]

All of the offences that I have just described comprehensively address **the exploitative conduct engaged in by those who create the demand for sexual services and those who capitalize on that demand.**”

The purpose of the *PCEPA*, therefore, is not to legalize prostitution (and attempt to make it safe), but rather to deter and decrease it as much as possible because of its inherent harms, including the risks of sexual exploitation and trafficking.<sup>19</sup> Indeed, the Minister of Justice emphasized the government’s position that, based on the available evidence, prostitution could not be made safe.<sup>20</sup>

“Let us be clear: we do not believe that other approaches, such as decriminalization or legalization, could make prostitution a safe activity.

The evidence, including the evidence submitted to the courts in the Bedford case, **shows that prostitution is extremely dangerous no matter where it takes place. It also proves that decriminalization and legalization lead to increased human trafficking for the purpose of sexual exploitation.** Failing to ensure the consistent application of criminal law to the wrongful acts of prostitution is simply not an option.”

The *PCEPA* was designed to reduce prostitution itself and, with it, the correlated demand for sexual services that fuels trafficking in persons, including the exploitation of the prostitution of others, especially women and children. Indeed, several Canadian courts, including the Ontario Court of Appeal and the Manitoba Court of Appeal, have affirmed that a central purpose of the *PCEPA* is “to reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it and ultimately abolishing it to the greatest extent possible”.<sup>21</sup>

While critics of the *PCEPA* may seek more open or permissive regimes, the government must consider whether such approaches will fulfill Canada’s international commitments to eliminate human trafficking and exploitation in prostitution. Such regimes were considered and found to be lacking when the *PCEPA* was introduced. For example, the Minister of Justice referenced “[t]wo recent international

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<sup>19</sup> This distinct purpose distinguishes the *PCEPA* from the analysis in *Bedford* (see *R v NS*, 2022 ONCA 160, especially paras 21, 46, 55). The purposes of the provisions challenged in *Bedford*, according to the Supreme Court, were not to deter prostitution generally (paras 132, 138, 147), but to (i) “combat neighbourhood disruption or disorder and to safeguard public health and safety” (para 132), (ii) target pimps and their exploitative conduct (para 137), and (iii) “prevent the nuisances street prostitution can cause” (para 147). By contrast, the preamble to the *PCEPA* targets “the exploitation that is inherent in prostitution”, emphasizes that “it is important to denounce and prohibit the purchase of sexual services because it creates a demand for prostitution”, and states that the “Parliament of Canada wishes to encourage those who engage in prostitution to report incidents of violence and to leave prostitution”. See also Debra M Haak, “Canada’s laws designed to deter prostitution, not keep sex workers safe”, *The Conversation* (9 December 2018), online: <https://theconversation.com/canadas-laws-designed-to-deter-prostitution-not-keep-sex-workers-safe-107314>.

<sup>20</sup> Canada, Parliament, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 101 (11 June 2014) at 1700 (Hon P MacKay) (emphasis added).

<sup>21</sup> *R v Gallone*, 2019 ONCA 663 at para 92, citing Department of Justice, “Technical Paper: Bill C-36, *Protection of Communities and Exploited Persons Act*”, Government of Canada, online: <https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>; *R v MacDonald*, ONSC 4423 at para 16; *R v Maldonado Vallejos* at paras 21-22; *R v NS*, 2022 ONCA 160 at para 59; *R v Alcorn*, 2021 MBCA 101 at para 14.

studies” that “show that jurisdictions that have decriminalized prostitution have often experienced increases in human trafficking and further violence, which is unacceptable.”<sup>22</sup> One pre-*PCEPA* study noted that, “[o]n average, countries with legalized prostitution experience a larger degree of reported human trafficking inflows”; this impact was corroborated with case studies of Sweden, Denmark, and Germany.<sup>23</sup> A more recent, post-*PCEPA* study also supports these findings. Researchers found that, even when controlling for other factors that contribute to higher rates of human trafficking, the evidence demonstrated that “[l]egalizing prostitution increases the rate of trafficking by 74%”.<sup>24</sup>

Canada is not alone in adopting the *PCEPA*’s approach to ending the demand for exploitation in prostitution. This approach, often referred to as the “Nordic model”,<sup>25</sup> has been adopted and upheld in other jurisdictions internationally.

### International jurisprudence on the constitutionality of the Nordic model

The Nordic model has been adopted in jurisdictions such as Norway, Sweden, and France.<sup>26</sup> When France’s law was being debated in 2013, Maud Olivier, speaking on behalf of the government committee reviewing the proposed legislation, described the objectives of the law as being threefold:<sup>27</sup>

« [Les] objectifs poursuivis par la pénalisation des clients de personnes prostituées sont au nombre de trois. **Il s’agit tout d’abord de faire régresser la traite des êtres humains et l’exploitation sexuelle**, sur le modèle de l’exemple de la Suède. Pénaliser les clients, c’est également leur faire comprendre qu’ils participent à une forme d’exploitation de la vulnérabilité d’autrui : c’est pourquoi il faut poser un interdit, celui de l’achat d’actes sexuels. Enfin, la pénalisation du client constitue, à terme, la meilleure solution pour voir diminuer la prostitution en France, là où tous les pays qui ont réglementé cette activité l’ont vu augmenter, comme en Allemagne notamment. »

<sup>22</sup> Canada, Parliament, *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 101 (11 June 2014) at 1700 (Hon P MacKay). Note that the government offers a detailed list of sources used in the development of its Technical Paper on the *PCEPA*: see Department of Justice, “Annex A – Bibliography”, Government of Canada, online: <https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p2.html>. These include Seo-Young Cho, Axel Dreher & Eric Neumayer, “Does Legalized Prostitution Increase Human Trafficking?” (2013) 41 *World Development* 67, online: <https://www.sciencedirect.com/science/article/pii/S0305750X12001453>; and Richard Poulin, “The legalization of prostitution and its impact on trafficking in women and children” (2005), online: <http://sisyphe.org/spip.php?article1596>.

<sup>23</sup> Seo-Young Cho, Axel Dreher & Eric Neumayer, “Does Legalized Prostitution Increase Human Trafficking?” (2013) 41 *World Development* 67, online: <https://www.sciencedirect.com/science/article/pii/S0305750X12001453>.

<sup>24</sup> Rachel Tallmadge & Robert Jeffrey Gitter, “The Determinants of Human Trafficking in the European Union” (2018) 4:2 *Journal of Human Trafficking*, online: <https://www.tandfonline.com/doi/full/10.1080/23322705.2017.1336368>.

<sup>25</sup> As the court explained in *R v NS*, 2022 ONCA 160 at para 21: “Parliament adopted a variant of the so-called ‘Nordic Model’, which had been adopted in several other countries. The Nordic Model views the sex trade as a form of sexual exploitation. It targets those who create the demand for prostitution and those who capitalize on it.”

<sup>26</sup> Conseil Constitutionnel, “Commentaire”, online: [https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank\\_mm/decisions/2018761qpc/2018761qpc\\_ccc.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2018761qpc/2018761qpc_ccc.pdf).

<sup>27</sup> *Ibid*, citing Mme Maud Olivier, rapport n° 1558 (Assemblée nationale – XIV<sup>ème</sup> législature) au nom de la commission spéciale chargée d’examiner la proposition de loi, première lecture (19 novembre 2013) at 42-43 (emphasis added). See also Mme Maud Olivier, “Rapport”, Assemblée Nationale N° 1558, 14<sup>ième</sup> Lég (19 novembre 2013), online: <https://www.assemblee-nationale.fr/14/rapports/r1558.asp>.

In June 2017, a group of individuals and organizations brought a constitutional challenge to the Conseil d'État, arguing that France's law violated "the right of free enterprise and the freedom of contract", and violated "the respect of personal privacy, as well as the right of personal autonomy, and the right to sexual freedom that comes from it."<sup>28</sup> The Conseil d'État referred the matter to the Conseil Constitutionnel, which upheld the impugned provisions and declared them "as conforming to the Constitution."<sup>29</sup> Importantly, the Conseil Constitutionnel commented:<sup>30</sup>

Official French Version	English Translation
<p><b>11.</b> D'une part, il ressort des travaux préparatoires que, en faisant le choix par les dispositions contestées de pénaliser les acheteurs de services sexuels, le législateur a entendu, <b>en privant le proxénétisme de sources de profits, lutter contre cette activité et contre la traite des êtres humains aux fins d'exploitation sexuelle, activités criminelles fondées sur la contrainte et l'asservissement de l'être humain.</b> Il a ainsi entendu assurer la sauvegarde de la dignité de la personne humaine contre ces formes d'asservissement et poursuivi l'objectif de valeur constitutionnelle de sauvegarde de l'ordre public et de prévention des infractions.</p>	<p><b>11.</b> On the one hand, it comes from preparatory work that, in choosing from the disputed provisions to punish persons purchasing sexual favours, the legislator has understood that <b>in denying procuring of its source of revenue, it is fighting against this activity and against human trafficking for sexual exploitation, and criminal activities founded on force and servitude of human beings.</b> The legislator has thus ensured the respect of the dignity of human beings, safeguarding them from these forms of servitude, and supports the constitutionality of preserving public order and preventing offences.</p>
<p><b>12.</b> D'autre part, l'article 61-1 de la Constitution ne confère pas au Conseil constitutionnel un pouvoir général d'appréciation et de décision de même nature que celui du Parlement mais lui donne seulement compétence pour se prononcer sur la conformité à la Constitution des lois déferées à son examen. Si le législateur a réprimé tout recours à la prostitution, y compris lorsque les actes sexuels se présentent comme accomplis librement entre adultes consentants dans un espace privé, il a considéré que, dans leur très grande majorité, les personnes qui se livrent à la prostitution sont victimes du proxénétisme et de la traite et que ces infractions sont rendues possibles par l'existence d'une demande de relations sexuelles tarifées. <b>En prohibant cette demande par l'incrimination contestée, le législateur a retenu un moyen</b></p>	<p><b>12.</b> On the other hand, Article 61-1 of the Constitution does not confer a general mandate for judgements to the Constitutional Council in a manner similar to that of Parliament, but only gives it the power to deliver a verdict on the constitutionality of laws submitted to it for review. If the legislator has prohibited all use of prostitution, including when the sex acts are shown to be freely committed between consenting adults in a private space, it is considered, for the great majority of cases, that persons working in prostitution are victims of procuring and exploitation, and that these offences are made possible by the existence of a demand for sexual favours for pay. <b>By prohibiting this demand by its disputed criminalisation, the legislator has used a</b></p>

<sup>28</sup> *Association Médecins du monde et autres [Pénalisation des clients de personnes se livrant à la prostitution]*, Conseil Constitutionnel, Décision n° 2018-761 QPC (1 février 2019), online: <https://www.conseil-constitutionnel.fr/en/decision/2019/2018761QPC.htm> at para 5 (English translation from the Conseil Constitutionnel) [*Association Médecins du monde et autres*].

<sup>29</sup> *Ibid* at para 19.

<sup>30</sup> *Ibid* at paras 11-13 (emphasis added). The official French version of this decision is available at: <https://www.conseil-constitutionnel.fr/decision/2019/2018761QPC.htm>.

<p>qui n'est pas manifestement inapproprié à l'objectif de politique publique poursuivi.</p>	<p>means that is not manifestly inappropriate relating to applied public policy.</p>
<p>13. Il résulte de tout ce qui précède que le législateur a assuré <b>une conciliation qui n'est pas manifestement déséquilibrée entre, d'une part, l'objectif de valeur constitutionnelle de sauvegarde de l'ordre public et de prévention des infractions et la sauvegarde de la dignité de la personne humaine et, d'autre part, la liberté personnelle.</b> Le grief tiré de la méconnaissance de cette liberté doit donc être écarté.</p>	<p>13. It follows from the foregoing that the legislator has assured <b>a reconciliation that is not manifestly unbalanced between, on the one hand, the objective of the constitutionality of maintaining public order and the prevention of offences and safeguarding human dignity and, on the other hand, personal freedom.</b> The objection to the violation of this freedom must therefore be dismissed.</p>

A challenge has since been brought by these groups to the European Court of Human Rights, although that matter has not yet been decided.<sup>31</sup> While CLF recognizes that there are meaningful differences between the legal systems and constitutional structures of Canada and France, it is nevertheless persuasive that, when faced with a legal challenge, the Conseil Constitutionnel upheld a version of the Nordic model, finding that the legislator's approach was neither "manifestly inappropriate relating to applied public policy" nor "manifestly unbalanced".<sup>32</sup>

In light of the international support for the "end demand" approach and the role that the *PCEPA* serves in fulfilling Canada's international legal obligations to end the demand for human trafficking, CLF urges this Committee to (1) explicitly recognize and affirm the *PCEPA*'s importance in fulfilling Canada's international human rights commitments, and (2) make recommendations to Parliament to ensure that the *PCEPA* is properly implemented and legally defended, as appropriate.

### **The need for continued support and enforcement of the *PCEPA***

Early data suggests that the *PCEPA* has already advanced efforts to combat human trafficking. For instance, Statistics Canada notes that, "between 2015 and 2019, in incidents where the sex-trade-related offence was a secondary violation, the most serious violation in the incident was most frequently human trafficking. It was the most serious violation in 1% of incidents (137 incidents) involving a sex-trade-related violation prior to the *PCEPA*, and 7% after (429 incidents)".<sup>33</sup> Similarly, after the *PCEPA*, "3 in 10 court cases related to profiting from sexual services also involved a human trafficking charge, up from 1 in 10 prior."<sup>34</sup>

It appears that the *PCEPA* has also been successful in shifting the focus of the criminal law away from the (predominantly female) person in prostitution and onto the (predominantly male) sex purchaser and the (predominantly male) trafficker.<sup>35</sup> Data shows that "the proportion of individuals

<sup>31</sup> *MA ET AUTRES c la FRANCE et 4 autres affaires*, Requête n° 63664/19 (12 April 2021), online: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-209407%22%7D>.

<sup>32</sup> *Association Médecins du monde et autres* at paras 12-13 (English translation from the Conseil Constitutionnel).

<sup>33</sup> Mary Allen & Cristine Rotenberg, "Crimes related to the sex trade: Before and after legislative changes in Canada", Statistics Canada (21 June 2021), online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00010-eng.htm> (emphasis added).

<sup>34</sup> *Ibid* (emphasis added).

<sup>35</sup> *Ibid*. See Dyna Ibrahim, "Trafficking in persons in Canada, 2019", Statistics Canada (4 May 2021), online: <https://www150.statcan.gc.ca/n1/pub/85-005-x/2021001/article/00001-eng.htm>; and Nicole A Barrett, "An



accused in sex-trade-related incidents who were women dropped from 42% in 2010 to 22% in 2014 and 5% by 2019 after the *PCEPA* had been in effect for a few years.”<sup>36</sup> In short, the *PCEPA* seems to be advancing the goals and international legal objectives that it was designed, in part, to fulfill.

CLF does note, however, that proper enforcement of the *PCEPA* continues to be a matter of concern.<sup>37</sup> Moreover, CLF recognizes that, while legislative efforts to stop the demand are essential, the *Palermo Protocol* also calls for the adoption of other educational, social, and cultural measures to combat human trafficking.<sup>38</sup> CLF therefore encourages this Committee to consider ways to strengthen Canada’s approach to ending the demand for sexual exploitation. Additionally, CLF recommends further training and accountability measures to ensure that police and prosecution services are properly applying the *PCEPA* and prosecuting those who profit from the exploitive commodification of sex.

Although not all those involved in prostitution are victims of exploitation or trafficking, many want to leave the sex industry, yet feel they are unable to do so. For example, one study found that 95% of women in prostitution in Vancouver wanted to leave, but felt they did not have other options to ensure their survival.<sup>39</sup> Another study found that 89% wanted to leave prostitution, but felt they were unable to do so.<sup>40</sup> The interconnected nature of prostitution and sex trafficking, and its disproportionate impact on (young) women and girls, is also reflected in the most recent data from Statistics Canada:<sup>41</sup>

- “[O]ne in five (20%) human trafficking-related incidents reported in 2019 also involved a sex trade offence. This is in line with recent trends which further highlight the interconnected nature of these crimes.”
- “The vast majority (95%) of human trafficking victims were girls and women, and overall, most (89%) victims were below the age of 35 [...]. More than one in five (21%) victims were girls below the age of 18, and 43% of victims were young women aged 18 to 24.”

A meaningful discussion about the issue of human trafficking in Canada must also consider the disproportionate impact of human trafficking on Indigenous women and girls. Studies in Canada

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Assessment of Sex Trafficking”, Canadian Women’s Foundation (May 2013), online:

<https://www.canadiancentretoendhumantrafficking.ca/wp-content/uploads/2016/10/Assessment-of-Sex-Trafficking-in-Canada.pdf>. See also *R v Alcorn*, 2021 MBCA 101 at para 2, describing the offence of purchasing the sexual services of a person under 18 (s 286.1(2)): “It is typically a racialized and gender-inequality crime because victims of this offence are predominantly vulnerable Indigenous girls in the child sex industry and the offenders are primarily non-Indigenous adult men who take advantage of power imbalance for selfish, prurient reasons.” See also at para 20.

<sup>36</sup> Mary Allen & Cristine Rotenberg, “Crimes related to the sex trade: Before and after legislative changes in Canada”, Statistics Canada (21 June 2021), online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00010-eng.htm>.

<sup>37</sup> Debra M Haak, “Canada’s laws designed to deter prostitution, not keep sex workers safe”, *The Conversation* (9 December 2018), online: <https://theconversation.com/canadas-laws-designed-to-deter-prostitution-not-keep-sex-workers-safe-107314>.

<sup>38</sup> *Palermo Protocol* at Art 9.5.

<sup>39</sup> Melissa Farley, Jacqueline Lynn & Ann J Cotton, “Prostitution in Vancouver: violence and the colonization of First Nations women” (2005) 42:2 *Transcultural Psychiatry* 242, online: <https://pubmed.ncbi.nlm.nih.gov/16114585/> at 265.

<sup>40</sup> Melissa Farley et al, “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder” (2004) 2:3-4 *Journal of Trauma Practice* 33, online: [https://www.tandfonline.com/doi/abs/10.1300/J189v02n03\\_03](https://www.tandfonline.com/doi/abs/10.1300/J189v02n03_03).

<sup>41</sup> Dyna Ibrahim, “Trafficking in persons in Canada, 2019”, Statistics Canada (references omitted) (4 May 2021), online: <https://www150.statcan.gc.ca/n1/pub/85-005-x/2021001/article/00001-eng.htm> (emphasis added).

indicate that Indigenous women and children make up the majority of people trafficked for sexual exploitation in this country.<sup>42</sup> In 2016, the RCMP reported that Indigenous women comprised nearly 50% of victims of sex trafficking, despite making up only 4% of the Canadian population.<sup>43</sup>

As noted above, the *PCEPA* seeks to address a number of these concerns and serves several purposes in support of Canada's international obligations to combat human trafficking and exploitation in prostitution. First, it restricts—and therefore reduces—forms of trafficking and exploitation that may otherwise be difficult for authorities to address. These may include cases in which a person appears to be consenting to prostitution, but whose position of vulnerability is being abused or who feels unable to leave prostitution due to persistent, but subtle, forms of coercion.<sup>44</sup> This is a real concern, since many of these individuals may not self-identify as victims.<sup>45</sup> According to Statistics Canada, “human trafficking is often hidden [...] and involves victims who may be unaware that they are being trafficked, in precarious or vulnerable situations, fearful or distrustful of authorities, fearful of deportation or loss of employment, or who may be facing threats from the traffickers.”<sup>46</sup>

Second, the *PCEPA*'s provisions help reduce the demand for prostitution, pursuant to Canada's obligation under Article 9.5 of the *Palermo Protocol* to “discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.” As reported by the Canadian Women's Foundation, survivors of human trafficking have been clear that stopping the demand for commercialized sex is the best path to seeing human trafficking end in Canada:

“Experiential women [trafficked or exploited women and girls] told us trafficking would only end when it ceased to be profitable. Traffickers are not frightened by legal sanctions [...] Prosecutions that depend on the testimony of a victim merely give traffickers an incentive to further terrorize the women and girls under their control.

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<sup>42</sup> Nicole A Barrett, “An Exploration of Promising Practices in Response to Human Trafficking in Canada”, International Centre for Criminal Law Report and Criminal Justice Policy (May 2010), online: <https://icclr.org/wp-content/uploads/2019/06/An-Exploration-of-Promising-Practices-in-Response-to-Human-Trafficking-in-Canada.pdf?x34947>.

<sup>43</sup> Arina Roudometkina & Kim Wakeford, “Trafficking of Indigenous Women and Girls in Canada: Submission to the Standing Committee on Justice and Human Rights”, Native Women's Association of Canada (15 June 2018), online: <https://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR10002955/br-external/NativeWomensAssociationOfCanada-e.pdf>. See also Tavia Grant, “The Trafficked”, *The Globe and Mail* (10 February 2016), online: <https://www.theglobeandmail.com/news/national/the-trafficked-sexual-exploitation-is-costing-canadian-women-their-lives/article28700849/>.

<sup>44</sup> Recall that the *Palermo Protocol*'s definition of “trafficking in persons” includes the recruitment by means of coercion, deception, or abuse of power or of a position of vulnerability, for the purpose of sexual exploitation, including “exploitation of the prostitution of others”. Victims of trafficking often do not recognize that they are being exploited, in part because of the techniques used by traffickers (e.g., the “boyfriend method”); see Arina Roudometkina & Kim Wakeford, “Trafficking of Indigenous Women and Girls in Canada: Submission to the Standing Committee on Justice and Human Rights”, Native Women's Association of Canada (15 June 2018), online: <https://www.ourcommons.ca/Content/Committee/421/JUST/Brief/BR10002955/br-external/NativeWomensAssociationOfCanada-e.pdf> at 7-8.

<sup>45</sup> Nicole A Barrett, “An Exploration of Promising Practices in Response to Human Trafficking in Canada”, International Centre for Criminal Law Report and Criminal Justice Policy (May 2010), online: <https://icclr.org/wp-content/uploads/2019/06/An-Exploration-of-Promising-Practices-in-Response-to-Human-Trafficking-in-Canada.pdf?x34947>.

<sup>46</sup> Adam Cotter, “Trafficking in persons in Canada, 2018” Statistics Canada (23 June 2020), online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00006-eng.htm>.

Buyers, on the other hand, *are* deterred by legal sanctions or the risk of public exposure. **Stop them from buying, we were told, and trafficking will end.**<sup>47</sup>

In recent years, we have seen meaningful and effective progress in Canada in the efforts to combat human trafficking. That said, there is still more work to be done, particularly in the areas of data collection, research, and enforcement. The federal government has already invested resources into addressing this information gap, such as by funding the National Human Trafficking Hotline. However, further resources are necessary, particularly in terms of gathering data on prostitution and human trafficking in Canada to accurately measure the effects of the *PCEPA* and the progress of the fight against human trafficking and exploitation. CLF is encouraged that our governments are taking this issue seriously. Moving forward, it will be important that authorities properly implement and enforce the *PCEPA* and appropriately defend the constitutionality of legislation that combats human trafficking.

### **About Christian Legal Fellowship / Alliance des chrétiens en droit**

Christian Legal Fellowship is a national charitable association of over 700 lawyers, law students, law professors, retired judges, and others, with members in 11 provinces and territories from more than 40 Christian denominations. CLF has chapters in cities across Canada and student chapters in most Canadian law schools. Our members are committed to promoting a national and international legal culture of respect for the dignity of all, especially the most vulnerable and marginalized.

CLF is a non-governmental organization in Special Consultative Status with the Economic and Social Council of the United Nations. CLF has appeared before Parliamentary committees and made submissions before provincial governments, regulators, and courts on issues of human rights, human dignity, religious freedom and conscience, and the inviolability of life. As part of its NGO status, CLF has presented written submissions to the United Nations and has been invited to participate in consultations by the UN Office of the High Commissioner for Human Rights. CLF has also participated in proceedings before international courts, including the InterAmerican Court of Human Rights and the Supreme Court of Sweden.

CLF has developed considerable expertise in legal issues surrounding prostitution and human trafficking in Canada. In particular, CLF was one of the few public interest organizations to intervene at all three levels of court in *Bedford v Canada*. CLF's submissions focused on promoting gender equality, preventing the exploitation of vulnerable persons, and protecting human dignity. CLF is deeply concerned with the implications of human trafficking in Canada and recently made submissions on this topic to the House of Commons Standing Committee on Access to Information, Privacy and Ethics; the House of Commons Standing Committee on Justice and Human Rights; and the International Centre for Criminal Law Reform. CLF has also organized and presented continuing professional development (CPD) programs for legal professionals on human trafficking and associated legal issues.

From a Christian perspective, CLF opposes human trafficking because it represents the commodification, exploitation, and enslavement of precious and unique human lives. Every person is a sacred life, created in the image of God, and having inherent dignity and value (Genesis 1:27, Psalm 139:14). We believe God calls us to defend the most vulnerable members of our society (Deuteronomy 10:18) and to seek the cause of justice (Micah 6:8).

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<sup>47</sup> Canadian Women's Foundation, "No More: Ending Sex-Trafficking In Canada – Report of the National Task Force on Sex Trafficking of Women and Girls in Canada" (2014), online: <https://www.canadiancentretoendhumantrafficking.ca/wp-content/uploads/2016/10/No-More-Ending-Sex-Trafficking-in-Canada.pdf> (bolded emphasis added).