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Chair: Mr. Randeep Sarai



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• (1535)

[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I'll call this meeting to order. Welcome to meeting number five of the Standing Committee on Justice and Human Rights.

Pursuant to the motion adopted on Tuesday, February 8, the committee is meeting on the review of the Protection of Communities and Exploited Persons Act.

Today's meeting is taking place in hybrid format, pursuant to the House order of November 25, 2021. Members are attending in person in the room and remotely using the Zoom application. The proceedings will be made available via the House of Commons website.

I think everyone still knows the mask policy. If you're not speaking, try to have your mask on. I think members are okay, as they're distanced six metres apart. Staff, if we can ensure that you have them on unless you're drinking or eating, that would be great.

I'd like to welcome our witnesses. We have Gwendoline Allison, from Barton Thane Law, and Mr. Paul Brandt, a public figure. From the Pivot Legal Society, we have Kerry Porth. We're going to make sure she gets some technical help before she comes on. Also, we have Lindsay Watson, legal director of Pivot Legal Society.

Each of the witnesses, the two individuals and Pivot Legal Society, will have five minutes. I will start with Gwendoline Allison of Barton Thane Law for five minutes, and at the end there will be rounds of questions.

Ms. Gwendoline Allison (Barton Thane Law, As an Individual): Thank you to the committee for the opportunity to appear before you today.

I am a lawyer with 26 years of experience in employment and human rights law. I have a number of clients who have appeared before you or who are appearing before you, and I was co-counsel in both the Bedford and Barton decisions. Although I'm aware of the recent Ontario Court of Appeal decision upholding some of the laws, my introduction today will focus on the implications for employment-related laws should Parliament decide to repeal PCEPA.

I am mindful of comments I have seen, both in the briefs and in meetings, that decriminalization will endow those in prostitution with labour and employment rights and access to courts and tribunals.

In considering how those laws may protect the safety and security of those in prostitution, I will make a few introductory comments.

First, prostitution is highly gendered. The vast majority of buyers are men, and the vast majority of providers are women and girls. There are some boys and men who provide commercial sexual services, but the buyers are still men.

Second, prostitution targets the vulnerable. In the Bedford case, at paragraph 86, the Supreme Court of Canada recognized that many of those in prostitution are not exercising a meaningful choice to engage in prostitution, but rather have no meaningful choice but to engage in prostitution.

Third, prostitution has a hierarchy that is both classist and racist. The poorest, the racialized and the most vulnerable are at the bottom. Not only that, but prostitution encourages racism, as buyers seek out experiences linked to racist stereotypes.

Fourth, the courts have recognized that prostitution is inherently dangerous. Women in prostitution are subjected to male violence at very high rates.

Finally, as the Supreme Court of Canada has recognized, the source of the harm is the men who buy and those who profit from prostitution.

I recognize that many employment-related laws are mainly within the provincial sphere of regulation and outwith the control of Parliament. If Parliament decides to repeal, your role becomes very limited.

Labour and employment laws will not protect those in prostitution. Those laws are targeted to the protection of employees. It's widely recognized that in every legal regime, regardless of whether it is described as legalized, regulated or decriminalized, and regardless of the setting, whether it be at the street level or in private homes, massage parlours, managed brothels or escort agencies, those engaged in prostitution are classified as independent contractors. That is the case in the bunny ranches in Nevada, the mega-brothels in Germany, the windows in Amsterdam, and in New Zealand.

While in Canada, that would permit those in prostitution to register for EI and CPP, it would mean no minimum wage, no overtime, no scheduled time away from work, no vacation pay, no paid sick leave, no bereavement leave, no severance pay, no benefits and no job security. As independent business people, those in prostitution would be responsible for remitting income tax and, depending on their earnings, collecting and remitting GST.

The mechanisms for labour and employment law enforcement would not be available to those in prostitution. That lack of protection has been recognized in recent studies in New Zealand and Australia. Even those studies that support decriminalization acknowledge that neither decriminalization nor legalization have had any substantive connection to improved labour rights.

Similarly, human rights legislation is inadequate. Although “employment” is more broadly interpreted than under the common law, the key requirement is that there has to be an “employer”, someone against whom the woman may seek a remedy. Human rights legislation could, at most, operate to protect women only in indoor, managed situations.

Decriminalization of the buyers and profiteers has implications that go beyond those in prostitution. Over many years—and it has taken many years—it has become unlawful to require a person to engage in sex as a condition of their employment. The question arises as to how, in a decriminalized environment, those unlawful activities could become lawful.

A final strand of protection is provincial workers’ compensation legislation, to ensure safety in the workplace and compensation for work-related injuries. That would require significant amendments to legal regimes, over which you have no control.

What would occupational health and safety regulations look like for the prostitution industry? How would we eliminate the risk of violence? How many sexual acts can a woman endure during any shift? How many hours should be worked? How much topical anaesthetic should be used? All of these issues are under-researched and are not covered by current regulations.

Arguably, one benefit of the scheme is the ability to obtain compensation for workplace injuries. Such a scheme could, but does not yet, compensate for the known injuries caused by prostitution—violence, mental disorders, occupational diseases, repetitive strain type injuries and pregnancy.

The scheme, however, is also employer-funded, so the practical issue is compliance. Who pays? Again, there has to be an identifiable employer. Otherwise, the independent contractor would be the one to have to register. Without being registered, there is no protection.

In my submission, the lack of attention to those in prostitution and the obvious inapplicability of the current mechanisms illustrate how ineffective employment-related legal regimes are to protect the safety and security of those in prostitution.

Thank you. I would be happy to answer any questions you may have.

• (1540)

The Chair: Thank you, Ms. Allison.

Next we'll go to Mr. Paul Brandt.

Mr. Paul Brandt (As an Individual): Thank you, Mr. Chair.

Today I'm pleased to present to you and this standing committee for your deliberation of the review of the Protection of Communities and Exploited Persons Act, or the PCEPA. Thank you for your invitation. I'll be speaking in support of the PCEPA.

I'm here today as a private citizen, the father of two children and someone who has had the great privilege of speaking with many women and children directly impacted by human trafficking and the sex industry.

Aside from my 25 years in the music industry and two years as a pediatric registered nurse prior to that, you may be interested to know that I'm the founder of an organization called #NotInMyCity, which was formed to disrupt human trafficking. I've also recently completed my time as chair of the Government of Alberta's Human Trafficking Task Force. It's my hope that the knowledge I've gained over the past 18 years of being involved with working on behalf of communities and exploited persons will prove useful to you as you review and make decisions on how best to move Canada forward to end the sexual exploitation of women, children and youth.

Fifteen years ago, I saw a glimpse of a horrific future for women, children and youth in a country using the decriminalization model. I was in an area internationally renowned for the trafficking of young children. It was rife with organized crime. On that street was a warehouse where children were given drugs—or downers—to force them to sleep during the day. They were then given amphetamines—or uppers—at night to wake them up before being taken by their traffickers, pimps and bodyguards to body rub parlours and brothels, where they were forced to sexually service men.

Across the street, a three-storey building was under construction, which was being financed by a California-based businessman to be used as a sex destination hotel to service busloads and planeloads of men from around the world who pay to rape and sexually assault young children. Children whose tiny bodies had been used up and had died were being buried in the yard behind the construction site. Those who had survived were sold to sex buyers until they aged out, were impregnated by their abusers or had HIV/AIDS. These children no longer had any monetary value to their traffickers. It was one of the most horrific places I've ever been.

I met a little girl that day on that street who was five years old and was being sold six to eight times per night to adult men for the purposes of sex.

Since arriving back in Canada from that trip, and until the current day, I've immersed myself in learning about how there are connections between prostitution, trafficking and the growing commercial sex industry. I've learned how sexualized violence thrust upon children creates a progression of subsequent abuse and victimization, often resulting in their being trafficked. I've learned how traffickers use popular online platforms to lure and exploit victims, who are often children. The two most common sites used to facilitate human trafficking in Alberta are Snapchat and Instagram.

I've learned that 75% of those in the sex industry were first exploited as children, and over 50% of trafficking victims in Canada are indigenous, despite their representing only 4% of Canada's population. I've learned how new data released on May 2, 2021 by Statistics Canada reveals that a record high number of human trafficking incidents were reported to police in Canada in 2019. Reports are up 44% from the previous year, and more than one in five victims are 17 or younger.

Crime investigators I spoke with detailed how the child abuse sexual material created to feed the demand in the sex industry that they had to view during investigations had become their nightmares. One former RCMP officer detailed that the worst part wasn't the visuals, but the sounds the children made while being sexually tortured. He couldn't get that out of his head.

While not to be conflated with the activities of those who willingly enter and stay in the sex industry, the sex industry and human trafficking are related. Many women with former experience in the sex industry have told me that while they were in the life, they would have inaccurately said that they had chosen to be involved in the sex industry. It was only upon exiting and beginning the journey to freedom that they were able to realize that they'd been victims of force, fraud and coercion during their time in the sex industry. They had only said they were willing participants because of their traumatization and in a desperate attempt to regain some sense of control.

PCEPA is effective when enforced, yet more can be done to ensure it is enhanced and utilized effectively and uniformly across the country. Removing or altering the PCEPA by introducing decriminalization or legalization will negatively impact women, children, youth and indigenous populations in Canada.

The evidence is clear. Since its introduction, more victims are being identified and supported, more children are being protected, and more sex purchasers are being charged because of the urgently needed framework and safety mechanisms created by the PCEPA.

Thank you.

• (1545)

The Chair: Thank you, Mr. Brandt.

Do we have the next witness?

We'll go over to you, Ms. Porth.

Ms. Kerry Porth (Sex Work Policy Consultant, Pivot Legal Society): Good afternoon, and thank you for having us here today.

Pivot Legal Society works in partnership with communities affected by poverty and social exclusion across Vancouver, B.C. and Canada to identify priorities and develop solutions to complex human rights issues.

Our work engages all levels of government, including federal laws and policies. Pivot's work includes challenging laws and policies that force people to the margins of society and keep them there.

The last time I testified before a government committee on behalf of Pivot was in September of 2014, when PCEPA was in its study phase. At that time, Senator Donald Plett said this to me:

Of course, we don't want to make life safe for prostitutes; we want to do away with prostitution. That's the intent of this bill.

My first point is that the purposes of PCEPA, as expressed in its preamble, are contradictory. Laws that are intended to stop sex work from happening cannot help but put sex workers in harm's way.

We have several recommendations to make to this committee. At the heart of all our recommendations is the necessity of centring the lived experiences of people who do sex work and experience the realities of criminalization.

One, don't conflate trafficking and sex work. Sex work, which we define as "the consensual exchange of money for sexual services" is not trafficking, and trafficking laws should not be used as a reason to investigate sex workers and sex work businesses.

Two, repeal the laws that criminalize adult sex work. We recommend repealing all criminal laws that prohibit the purchase or sale of sexual services by adults and that limit adults selling sex from working with others in non-coercive situations. This includes the PCEPA and provisions such as section 213(1)(a) and (b), which were not constitutionally challenged in Bedford. We also recommend that you remove the immigration and refugee protection regulations that prohibit migrants from working in the sex industry.

Three, create appropriate provincial laws and municipal bylaws in consultation with sex workers. Decriminalizing sex work would not necessarily mean that there are no restrictions on sex work. However, the boundaries on sex work should be developed with sex workers, who are the true authorities in their lives and work.

Four, recognize the complex realities of indigenous peoples who sell and trade sex. Narratives about indigenous people in sex work tend to focus on their overrepresentation. Indigenous sex workers Pivot has worked with say this is due to their lack of economic opportunities and the fact that sex work is an occupation that does not require formal training.

Indigenous people across Canada also have a great diversity of experiences and may use sex work as a way of resisting the colonization of their communities, perpetuated through displacement from lands and the repercussions of the genocidal residential school system. Provincial systems for youth in care, also disproportionately indigenous, often do not meet their needs. As a result, indigenous youth often struggle to support themselves when they try to escape abusive circumstances.

The federal government should increase broad-based supports, thereby positioning indigenous people to decide whether they want to participate in the sex industry, and if so, under what conditions.

Five, learn from other jurisdictions. New Zealand provides a model for decriminalization of sex work, which was developed in consultation with sex workers and which respects and promotes their human rights and safety. Over the past decade, research has suggested that this legal regime has resulted in sex workers' having greatly enhanced control over the conditions of their work, including their ability to refuse clients and to insist on condom use.

Finally, six, work on undoing the stigma that surrounds sex work. The greatest commonality between sex workers in Canada is the stigma they face. Most sex workers live in fear that their work will be revealed to family and neighbours. This stigma perpetuates over-policing and supports conditions that have allowed predators to murder, sexually assault, rape and abuse sex workers with impunity.

Education is also needed to dismantle negative stereotypes about sex workers, but law reform is essential. Changing the law would be a first step towards undoing the stigma, accepting sex work as an occupation and accepting people who do sex work as full members of our communities.

Thank you.

• (1550)

The Chair: Thank you, Ms. Porth.

I will now start our first round of questions. Before I begin, I want to welcome Mr. Fortin back to the committee. We like to see you back as always. Hopefully, your health is good.

I also want to welcome Mr. Cooper, our new member of the committee. Thank you, Mr. Cooper, for joining us.

It's over to you, Mr. Moore, for six minutes.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

Thank you to all of our witnesses for appearing on what is a really important study of the Protection of Communities and Exploited Persons Act.

I was pleased to be part of a government that brought in that legislation, which criminalizes those who fuel and perpetuate the de-

mand for prostitution by purchasing sexual services; protects those who sell their own sexual services; deals with the most vulnerable in our society; and makes sure the law is responsive to court decisions, but that we're doing our best to protect those who are vulnerable.

I want to ask a question of Mr. Paul Brandt. Thank you for appearing today. This is something you don't have to do in your time, but you spoke with great passion about what you saw in other countries. We heard from previous witnesses that the complete decriminalization of prostitution in Canada could lead us to becoming the brothel of the United States. It was really horrific to hear the description you gave about a country where this has been completely decriminalized.

Could you speak a bit more to that, as well as about #NotInMyCity, which is combatting human trafficking? I'm interested in hearing a bit more about that. There's a perception about human trafficking as being a big-city issue, but I'm from New Brunswick and, in some of our smaller Atlantic Canada communities, human trafficking is happening now. The corridors where people are trafficked are right across Canada.

If you could speak to that, I'd appreciate it.

Mr. Paul Brandt: #NotInMyCity is an organization I founded about five years ago here in Calgary, where I am right now. The idea behind this organization was to raise awareness about the issue of human trafficking and to disrupt human trafficking and sexual exploitation, especially as they relate to children.

You're right. Looking at places around the world where we've seen legalization and decriminalization, like Norway, Amsterdam, Germany and where I was in Cambodia, these are examples where the failed experiment of legalization and decriminalization occurred. We see brothels. We see drive-through sex boxes at truck stops, where buyers pull into walled stalls to buy women by the hour. Clubs with small flat rates will buy unlimited sex with as many women as a man wants during his stay.

Five years ago, when we started #NotInMyCity, it came to my attention that it's well known within the anti-trafficking community that one common menu item available to sex buyers occurs once a year during the Calgary Stampede. There's high demand by local and international sex buyers who visit the city at that time, specifically for indigenous women and girls, to facilitate their sexual fantasies.

Undercover investigations here in Alberta have turned up online communications on the dark web between traffickers. They say they don't deliver to Calgary, but they can get "it" across the border. The "it" that they're referring to is the trafficking of victims forced into the sex industry to meet demand.

I would say my home province of Alberta has made great strides in the last five years by uniformly and consistently applying the tenets of the PCEPA, and the momentum is changing communities for the better. We're seeing a lot of co-operation. Recently, #NotInMyCity introduced the position "safety network coordinator" through the Alberta law enforcement response team, ALERT, which handles crimes of this nature and organized crime. The safety network coordinator assists those wanting to exit the sex industry and was introduced by the Alberta law enforcement response team to be there to effectively and efficiently intervene.

I'll finish with this, and it was really telling to me. I was speaking with staff sergeant Colleen Bowers the other day, with the Alberta law enforcement response team. She's heading up the human trafficking counter-exploitation unit, and she said that the Nordic model approach of the PCEPA is the most effective middle ground for addressing the connections between human trafficking and prostitution. Uniform application of the PCEPA, along with increased public education about the links between human trafficking and the commercial sex industry, are improvements that she would like to see to enhance safety within the community.

She further said that ALERT's client-centred approach, recently implemented in Alberta through the safety network coordinator position, has been a great success in assisting those involved in the sex industry who would like to exit, are being trafficked, or are at risk of being trafficked. The SNC's success at intervening on behalf of those in the sex industry who need immediate support depends on the protections available within the PCEPA. The activities of the SNC were developed with the PCEPA in mind.

Finally, she said that the repeal of the PCEPA would be disastrous to both willing and non-willing individuals who are involved in the commercial sex industry. The risks are simply too high. International evidence of the failures of decriminalization and legalization is clear. Law enforcement jurisdictions across Canada do not have the capacity to address the amount of organized crime and victimization that is likely to occur should the PCEPA be substantively altered.

• (1555)

Hon. Rob Moore: I see that I only have 30 seconds left, but I do have one quick follow-up question.

You mentioned that PCEPA is effective when enforced, and you mentioned the Alberta experience. I know you're an Albertan, but we have heard of other provinces where it's not being as effectively enforced.

Can you speak quickly to that?

Mr. Paul Brandt: I would say that misapplication of the act causes harm. It has to be applied the way it was intended and the way it was written. Where it's uniformly and consistently applied, we are seeing that it's working. It's gaining incredible ground in Alberta right now, and in the work we're doing across the country.

The Chair: Thank you, Mr. Moore.

Now, we'll go over to you, Ms. Brière, for six minutes.

[Translation]

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Mr. Chair.

I will continue in the same vein.

Mr. Brandt, what would your recommendations be?

In what direction should we take our study?

[English]

Mr. Paul Brandt: I would say that supporting and maintaining the PCEPA, and enhancing the legislation as it is, would be valuable for Canadians. Women, girls, youth and children, and a disproportionate number of indigenous people, are lured into the sex industry. The PCEPA addresses this issue. By enhancing measures within the act, the PCEPA can be made more effective.

In the brief I submitted to the committee, I outlined a number of steps that I would recommend.

More focus should be placed on prevention within the act. I've heard in previous testimony that you can't legislate prevention, but we're actually seeing the exact opposite happening in the work we're doing in Alberta. When the act is applied as it was intended, we see prevention being one of the main mechanisms that are triggered.

Resources and additions should be made available, within the act, for re-education and vocational opportunities for survivors. My friend, Ms. Trisha Baptie, who has also testified before this committee, talks about how, for her, it was not a choice—it was the lack of choice. We're really seeing, in the client-centred approach we're taking in Alberta, that it is all about choice. Additions to the act to enhance access to addiction and trauma resources, I believe, are key.

Next is strengthening the act to encourage and support the PCEPA as a bridge among all levels of government, including municipal, provincial and federal levels. We're just starting to get to a place now, in Alberta, where we're seeing those connections happen through a newly formed community response model and the creation of coalitions across the entire province, where all levels of government are being engaged and working together.

Next are requirements and provisions of resources within the act to ensure the use of shared definitions in relation to trafficking. This is extremely important. Consistent approach and training, universal branding and public messaging, and universal and consistent ongoing training, I believe, are key.

Finally, although it's not available because it has not been released by the Government of Alberta yet, a study has been turned in to the Alberta government recently by the human trafficking task force. I would suggest looking at suggestions within that report on trauma-informed, most promising practice detail. I would suggest that you contact the Government of Alberta to review the report, called "The Reading Stone". I think this committee might find some of the suggestions within that report very helpful.

• (1600)

[*Translation*]

Mrs. Élisabeth Brière: Thank you.

I will now address Ms. Allison.

Ms. Allison, you represented, as counsel, the Asian Women Coalition Ending Prostitution, an intervener in the Bedford decision. You are therefore familiar with the findings of the case.

The court found, among other things, that the provisions of the Criminal Code then in force infringed the right to safety of persons selling sexual services.

Since the passage of Bill C-36, do you believe that people who work in the sex industry are better supported and guided?

What would be your recommendations?

[*English*]

Ms. Gwendoline Allison: One of the challenges, which I think Mr. Brandt touched on, is that Bill C-36, or PCEPA, is not being uniformly enforced across Canada. Particularly in B.C., it was declared very early on that the Vancouver Police Department would not engage in arresting purchasers of commercialized sexual services. That policy has been taken throughout B.C. in other police forces.

That's the first problem. The legislation has not been given a chance to operate properly in B.C.

I think a number of improvements to PCEPA could be made to protect the rights of women and those engaged in prostitution. I'll say that there's a big difference between PCEPA and the previous legislation. The purposes are completely different. They're in different sections of the Criminal Code. It's now a crime of violence rather than a property offence and a nuisance offence, so it recognizes that this is a crime of violence, as the Ontario Court of Appeal has just recognized.

I would say there are a couple ways we can improve the federal approach towards prostitution. First of all, we need consistent application across Canada. Second, when I appeared before Parliament back in 2013, everyone was unanimous in saying that section 213 should be repealed. I agree with that still. The communication provision outside schools and churches, although I recognize and appreciate the goal of it, has the effect of criminalizing those who are engaged in prostitution. Also, by criminalizing them, it prevents them from exiting. In my submission, that should be repealed.

There's also expunging the records of those who have been convicted of selling sexual services in order to permit them to gain employment. There are many pieces of legislation across Canada that prevent those with criminal records from working, particularly in

the volunteer sector. That is a barrier to exiting, which tends to punish the more vulnerable.

Increased funding—

The Chair: Sorry, Ms. Allison. Thank you. We're out of time. I have to go to the next witness. Hopefully, we'll catch up on that later.

Mr. Fortin, you have six minutes.

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Thank you, Mr. Chair.

To begin, I would like to welcome all the witnesses and thank them for being with us today.

Human trafficking is a scourge. I was particularly moved by Mr. Brandt's testimony about children. I can't imagine that happening here in Canada today. I would add, however, that it is part of our job to try to clarify and improve the laws that are in place.

Ms. Allison, could you continue the answer you were giving when the chair turned the floor over to me? You were giving us your suggestions.

You also talked about standardization, and you were asking that there be consistent application across Canada. For example, you mentioned that British Columbia did not always apply the provisions set out in Bill C-36, and that surprised me.

You also talked about the issue of criminal records. In a way, the existence of criminal records prevents offenders from working.

I would like you to continue to list the things that could help improve the situation.

• (1605)

[*English*]

Ms. Gwendoline Allison: Thank you. I have only a few more.

One way is to have increased funding for exiting prostitution. We know from experience, in countries like Sweden, that it takes a consistent investment in the exiting programs.

The fourth one is to commit to a long-term education plan. When the "end demand" laws were introduced in Sweden, they were highly unpopular. The government committed to an education program that led, within a few short years, to a complete reversal of that. The laws in Sweden are actually very important and very popular among the people now. They've been accepted by them.

So it's a recognition and an understanding of what the law actually means. I've certainly had discussions with law enforcement and lawyers in B.C. who haven't really appreciated what the law actually says. They have a mistaken impression of what is involved in the law. We need a consistent and long-term education plan in order to assist that.

Thank you.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Ms. Allison.

Bill C-36 came into force in 2014. On the ground, what differences do you see between the period before the bill came into force and the period after it came into force?

I am asking Mr. Brandt the same question. He can answer it after Ms. Allison.

[*English*]

Ms. Gwendoline Allison: In my experience in B.C., I advise groups who advise frontline workers. What they're telling me is that since the law hasn't applied at all in any great sense, nothing has really changed from before or after.

[*Translation*]

Mr. Rhéal Fortin: Thank you.

Mr. Brandt, if I may, I would like to ask your opinion on this same question regarding the difference observed on the ground after the coming into force of Bill C-36.

[*English*]

Mr. Paul Brandt: We're just starting to see a change in jurisdictions, where it is being applied uniformly. It has taken this long to start to see the co-operation that is needed for positive results.

The fact that this committee is meeting, and how it's already been revealed through the process that there are incredibly diverse opinions and approaches to the issue of the sex industry, right down to the words that are used to describe it, is proof that PCEPA is working. This is too important an issue to allow only one view to be upheld. We must look at the lived experience of all who are impacted by the sex industry.

When the Supreme Court of Canada decision acknowledged there were inherent risks in the sale of sexual services, that was key. There are risks inherent whenever individuals are prostituted by others, or are of their own accord prostituting themselves. In the Swedish law, which PCEPA was fashioned after, it's written into the legislation that prostitution, by its very nature, is discriminatory against women.

The way we apply that in Canada...PCEPA states that people who are providing their own sexual services are not criminalized; rather they're viewed as needing support and assistance, not blame and punishment.

In practice, we're starting to see an understanding that is developing with frontline agencies, law enforcement and the public, that there are very subtle and nuanced ways to look at this issue. I believe that's a result of the framework that was created by the PCEPA.

[*Translation*]

Mr. Rhéal Fortin: Mr. Brandt, in your experience in the field, besides criminal sanctions and criminal penalties, such as imprisonment, what would convince an abuser to stop buying children—I have trouble using the expression “buying children”, because I find it unbelievable—to commit such acts?

What can we do to discourage them from doing this? Are there other ways to convince them aside from criminal penalties and the like?

[*English*]

Mr. Paul Brandt: Aside from penalties to the crimes of this nature.... There's a question that I asked a group of young men hockey players here in Alberta just this past Friday night in talking to them about this issue. They were 17 to 20 years old, young men about to enter adulthood and the world. They have influence because they're hockey players, and people look up to them.

What if the people of this committee, these boys, and the people of Canada determined to change the culture and industry of exploitation, so that by the time young people of today grow up, they no longer live in a society in which men are emboldened to purchase another human for their own gratification? This requires a cultural shift, and the PCEPA creates a framework for that cultural shift.

• (1610)

The Chair: Thank you, Monsieur Fortin.

Mr. Garrison, you have six minutes.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair, and thank you to the witnesses for being here today.

I want to say a special thanks to Pivot Legal Society. It's very important that we centre the voices of those involved in sex work and those who work directly with them, instead of talking about them.

Ms. Porth, in your introduction, you talked about the danger of conflating sex work and trafficking. We've heard from other witnesses here that if you conflate the two, then you miss the real trafficking.

Could you expand a bit on why that's one of your key points?

Ms. Kerry Porth: When we're constantly conflating sex work and trafficking—I can say that many of the witnesses who have appeared before the committee have definitely been doing that—we miss out on actual violence and exploitation that happens in the sex industry but that does not rise to the level of trafficking. That's part of the negative work conditions that are caused by criminalization.

Criminalization really forces the sex industry into dark shadows and the underground. It really facilitates the violence and exploitation that happen. Calling them one and the same thing really does a disservice both to sex workers and the work they do, and to trafficking victims.

Mr. Randall Garrison: Thank you very much.

In that response you mentioned forcing sex work into marginal places, both physically and in the community. We've heard from other witnesses that this is what makes this law more dangerous for sex workers.

Can you talk a bit more about how that works? How does criminalizing the purchase of sex make sex work more dangerous?

Ms. Kerry Porth: Sure.

If you think about it, the prohibitions on communication and advertising make it very difficult for sex workers to properly communicate the terms of transactions and consent with their clients.

For sex workers working on the street, their clients are wanting them to get into the car with them very quickly, because they don't want to be detected by law enforcement for the crime of purchasing sex. Rather than having time outside of the vehicle to assess the client, to see if there are any weapons in the car or items of restraint, or perhaps, to consult a bad date sheet, the sex worker is asked to get into the car quite quickly. Once she's behind the closed door of a moving vehicle she's lost the power of negotiation. Sex workers who are advertising online are no longer able to place very explicit ads. Clients are unwilling to engage with typical screening practices, which include giving a real name and a real phone number, so they're finding it very difficult to assess the safety of potential clients prior to meeting them in person. That is when misunderstandings and potential violence can happen.

Mr. Randall Garrison: We've heard today several people asserting that the PCEPA law is not being enforced in British Columbia.

Would you say that's the experience of sex workers you work with in British Columbia?

Ms. Kerry Porth: There are a couple of things.

There are the provincial sex work enforcement guidelines that were adopted in 2017, I think, by the B.C. Association of Chiefs of Police. Basically, those are guidelines for police interactions with sex workers that prioritize sex workers' safety, dignity and respect over other considerations.

The Vancouver Police Department doesn't enforce sex work laws between consenting adults, but it does focus on issues such as the sexual exploitation of children and youth, and human trafficking.

What we hear from sex workers themselves is that they continue to be surveilled and harassed by police while they're working on the street. We've heard of police parking marked police vehicles on strolls where sex workers are working, or stopping them for street stops or other reasons while they're trying to work, so they continue to be harassed by police. Whether or not the police are actually enforcing PCEPA, they continue to surveil and harass sex workers.

• (1615)

Mr. Randall Garrison: If we were to recommend the repeal of PCEPA, would you say that this would somehow encourage trafficking, or would it actually have no impact on trafficking?

Ms. Kerry Porth: I think it would have a positive impact on trafficking if police were less concerned with enforcement against consensual sex workers. If they stopped searching for trafficking where it didn't exist and sex workers had access to labour protection, employment rights and occupational health and safety, sex workers could act as allies in the fight against trafficking.

Mr. Randall Garrison: I have 30 seconds for a quick question.

You talked about learning from others in New Zealand. We've heard some assertions about what goes on in New Zealand.

What has been your experience in communicating with those involved in New Zealand?

Ms. Kerry Porth: Peer-reviewed evidence about the New Zealand model of decriminalization shows that it's been incredibly positive for sex workers there.

We hear there's been an increase in trafficking in New Zealand since decriminalization was enacted. One of the problems with New Zealand's model of decriminalization is it didn't decriminalize migrant sex workers, so any migrant sex worker is captured in statistics as a trafficking victim. Of course, it looks like trafficking has increased, when that's not the case.

The Chair: Thank you, Ms. Porth.

Over to you, Mr. Brock, for five minutes.

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Mr. Chair. I'd like to sincerely thank all the witnesses for their testimony today and for their advocacy in this important area.

Time permitting, I'd like to ask Ms. Allison a couple of questions and Mr. Brandt one question.

Ms. Allison, I come from a legal background as well. I'm a former Crown attorney for the Province of Ontario. I would like to hear your thoughts with respect to the recent Ontario Court of Appeal decision in N.S., and in particular your opinion as to whether or not you agree with the court's analysis and conclusions reached.

Ms. Gwendoline Allison: I do agree with the court's analysis in N.S. I think it's an important decision. On the key parts of the provisions, one of the issues that wasn't considered in N.S., of course, and is considered in the upcoming Canadian Alliance case is whether or not the purchasing law under section 286 is constitutional. The Ontario Court of Appeal upheld the "material benefit" provision and the "advertising" provisions as well. They upheld the purposes. I know that you've been taken to the purposes of PCEPA, which are key to establishing a section 7 argument, if you like, and to find that the three purposes that the court found were the purposes of PCEPA are constitutional. I think it's a very important decision.

Mr. Larry Brock: Along a similar vein, we know that the court of appeal rendered a unanimous decision, so there is no automatic right to appeal to the Supreme Court. If leave were granted—and this is all hypothetical—by the Supreme Court of Canada, do you foresee any constitutional vulnerabilities with any other aspects of Bill C-36?

Ms. Gwendoline Allison: It's hard to predict what will happen. Obviously, if leave is granted, the Supreme Court of Canada will be considering only the three provisions, but what the court does in making its decision may have an effect on the other ones. The purposes of PCEPA have been upheld as constitutional by the Ontario Court of Appeal, so even though section 286, the "purchasing" provision, wasn't available, it still has an influence over that. The Supreme Court of Canada's decision in N.S. will have an overflow effect on the other decisions that are coming forward.

• (1620)

Mr. Larry Brock: I'll go over to you, Mr. Brandt. I will say your testimony was absolutely gut-wrenching. I know you didn't identify the country as you described the circumstances and what you saw, but your description brought me back to my days as a member of the Brantford Crown office, being responsible largely for all the Internet child exploitation prosecutions for the last 10 years.

It really brought me back to that dark period of my professional career, which really caused me to reflect on the vulnerabilities of our youth.

I have a quick question with the minute and 30 seconds remaining.

Bill C-36 made some amendments with respect to the penalties associated with trafficking of adults and trafficking of minors. As it stands right now, there is only a one-year differential with respect to the minimum penalties for trafficking minors versus trafficking adults. Given your advocacy, given what we've heard today, do you think that adequately denounces this type of heinous crime against the vulnerable members of our community?

Mr. Paul Brandt: I would say no.

Human trafficking is an outcome of vulnerability. It's progressive in nature. As I mentioned, 75% of people who end up in the commercial sex industry were first exploited as children. I've seen in testimony through the work with the Alberta human trafficking task force, and in my work over the last 18 years that those initial abuses, victimizations, often lead victims into a dangerous spiral that they continue to deal with for the entirety of their lives. While there can be rehabilitation, there's a lifelong impact from this crime.

Mr. Larry Brock: Thank you, Mr. Brandt.

The Chair: Thank you, Mr. Brock.

We now go for five minutes to Mr. Naqvi.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you very much.

I want to go back to Ms. Kerry Porth, please. When you were talking to Mr. Garrison, you were describing the experience of New Zealand. Mr. Brandt mentioned Sweden as well. I'm always interested in jurisdictional experiences.

Ms. Porth, can you walk us through what's contained in the law in New Zealand? How does it differ from what we have in Canada that we're studying at this moment?

Ms. Kerry Porth: In New Zealand, they removed all of the criminal penalties associated with adult sex work. The sex industry is still regulated by their public health. Public health is a federal department in New Zealand, so it has a bit of a different legislative model from what we have in Canada.

Sex workers can work independently, for themselves, or they can choose to work in sex-based businesses, such as brothels. There are occupational health and safety regulations that they abide by, and they have access to employment and labour law.

In one situation, a sex worker who was being sexually harassed at the brothel she worked at, by someone else who worked there, won a large award because she sued for it.

They have far more rights, and they also feel more free to call the police if they need to, if they're in trouble.

Mr. Yasir Naqvi: How long has that regime existed in New Zealand?

Ms. Kerry Porth: They decriminalized it in 2003.

Mr. Yasir Naqvi: What is the experience? What has the research demonstrated is the impact of decriminalizing sex work in New Zealand?

Ms. Kerry Porth: There have been very positive outcomes for sex workers. They report feeling safer in their work, having more control over their work and their work environments, being more able to insist on condom use with clients, and more positive outcomes like that.

• (1625)

Mr. Yasir Naqvi: Is it your recommendation that Canada follow a similar model?

Ms. Kerry Porth: Yes. Canada's model would have to be a bit different because of the way they regulate the sex industry in New Zealand. It is more of a federal model than it is.... Ours would have to be a provincial or a municipal model.

Decriminalization certainly doesn't mean a free-for-all, and it wouldn't mean an increase in trafficking. There would still be regulations on things like where brothels can be located or what kind of signage is appropriate. There would have to be changes to employment insurance, so that sex workers have access to it, changes to labour laws so that sex workers who are working [*Technical difficulty—Editor*] to deal with that. None of these things are available to them now.

Mr. Yasir Naqvi: I want to go back to asking you about the conflation between human trafficking and sex work. We've often heard in this committee that those terms are being used interchangeably, sometimes expressing that one is the same as the other. You started your presentation with that point.

My number one question is, can you explain to us, in your view, what the differences are between the two?

My number two question is, if one were to follow a model like New Zealand's, how does one create checks and balances so that we don't end up promoting human trafficking in any way?

Ms. Kerry Porth: Basically, the difference between sex work and trafficking is that one implies consent and the other does not. Sex workers go to a great deal of care in negotiating with clients the terms of the transaction to reach consent. They negotiate over things like where they feel safe being taken, what acts they're willing to perform, condom use and other safer sex practices.

Human trafficking victims do not have the option to negotiate at all. That is all done for them, and they are forced into their circumstances. There's quite a difference between sex work and trafficking.

The Chair: Thank you, Ms. Porth.

Next we'll go to Mr. Fortin for two and a half minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Ms. Porth, you tell us that if we were to apply the New Zealand model to Canada, we would have to make adjustments. Can you elaborate on that for us?

What changes would you make to the New Zealand model of decriminalization if we were to adapt it here in Canada? What would we need to watch out for?

[*English*]

Ms. Kerry Porth: I think one of the most important things is the ability of migrant workers to be able to work in the sex industry. At present in Canada, any migrant is prohibited from working in the sex industry. This leaves them in the difficult situation of not being able to contact authorities if something happens to them.

Oftentimes, if they do contact the police, a CBSA investigation is launched, and they are often detained and deported back to their

home country. That is one thing we would need to do differently, like in New Zealand.

Occupational health and safety regulations that govern the sex industry in New Zealand are federal in nature. Ours would be provincial, so care would have to be taken that there aren't too many differences across the country in how those regulations are introduced, so that we don't have a situation where sex work occurs very differently in each province.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Ms. Porth. I'm sorry to interrupt you, but I don't have much time left.

I would like to address Mr. Brandt, if I may.

Mr. Brandt, earlier at the end of your answer to my last question, you said that the way to solve this problem was to make a cultural change. However, we cannot say that it is part of Quebec or Canadian culture to trivialize prostitution or human trafficking.

I'd like you to tell me more about that. What do you think we should change? You will probably tell me that we need to focus on awareness raising, but is there anything else we can do?

In my opinion, the culture doesn't have to be changed. I can't believe that fostering human trafficking is now part of our culture.

Could you elaborate on your thinking on this issue?

• (1630)

[*English*]

Mr. Paul Brandt: I would say that it is important for us to ensure that everybody who is on this committee and everyone right across Canada understands what the definition of “conflate” is. It's a term that is thrown around quite a bit, and I think it's important for us to make sure that we're on the same page with what “conflate” means.

It is very important, and the PCEPA is clear that conflating human trafficking and the sex industry should not happen. That being said, they are related.

That shift in culture is to understand the relationship between these two issues.

The Chair: Thank you.

Thank you, Mr. Fortin.

We go over to you, Mr. Garrison, for two and a half minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I want to go back to Ms. Porth and talk a bit about something she raised indirectly. Since PCEPA has negative impacts on those involved in sex work, those negative impacts would hit hardest at those who are most marginalized, including indigenous women.

Can you talk a bit more about how PCEPA impacts marginalized sex workers?

Ms. Kerry Porth: Because marginalized individuals are living their lives in a public space, they're constantly under police surveillance. This is a real issue for sex workers, who are trying to make a living working on the street.

They are targeted for police harassment for a number of different issues, such as maybe earning money in other ways, such as street vending and other such activities that are often criminalized by the police. They are sometimes working in circumstances of homelessness and sometimes trading sex for a place to stay or things like that.

The law certainly doesn't help with some of the issues that marginalized people have to face on a daily basis.

Mr. Randall Garrison: I have one last question. How does the existing law make it more difficult for sex workers to work together to make sex work safer?

Ms. Kerry Porth: We know that some sex workers act as third parties to other sex workers, so they may help them with advertising, or they might rent a place together to work together for safety, but these sorts of situations can make them vulnerable to material benefits, advertising laws, and other laws under PCEPA. The Bedford case recognized that it's much safer for sex workers to work indoors and together, but many of the activities that would facilitate that are criminalized under PCEPA.

Mr. Randall Garrison: Thank you very much for your time.

The Chair: Thank you to all the witnesses in the first round. I want to thank you for your commitment to this cause and to making, specifically, the lives of women safer despite your differences of opinion. It's much appreciated.

I'm going to suspend for a few minutes while the clerk tests the next round of witnesses with sound checks.

- (1630) _____ (Pause) _____
- (1635)

The Chair: I call the meeting back to order.

We almost have all the witnesses set. I'll give five minutes to each witness group, and then we'll have a round of questions.

From Aboriginal Legal Services, we have Christa Big Canoe, legal advocacy director. You have five minutes. Thank you.

Ms. Christa Big Canoe (Legal Advocacy Director, Aboriginal Legal Services): Good afternoon, and thank you for inviting me to present to the committee. My name is Christa Big Canoe, and I'm the legal advocacy director of Aboriginal Legal Services. It is our position that the Protection of Communities and Exploited Persons Act is an end-demand legislation that is not effective, that it is not creating positive change, and that it increases harms and opportunities for violence against sex workers.

Given my limited time, I'm going to point to the Pivot Legal Society's "Evaluating Canada's Sex Work Laws: The Case for Repeal" as a good document that this committee is encouraged to read, review and seriously contemplate.

Stigma perpetrates conditions that have allowed predators to murder, rape and abuse sex workers with impunity. Police fail to in-

vestigate and prosecute these crimes when they involve indigenous women, girls and 2SLGBTQQIA+ community members. They are assumed to be sex workers. The National Inquiry into Missing and Murdered Indigenous Women and Girls heard this horrific narrative time and time again. Negative stereotypes about sex workers continue to have adverse impacts on the way indigenous women are portrayed, seen and treated. An example of this was apparent in *R. v. Barton*, in which Cindy Gladue was reduced to being referred to multiple times in court as a native prostitute, native girl and sex worker.

Disappeared and murdered indigenous women are often assumed to be sex workers or reported in the media as being sex workers. This belief, although erroneous on many occasions, results in less attention being paid when indigenous women go missing.

Laws prohibiting the exchange of sex for compensation between consenting adults are not the way to end violence against indigenous women or to address inequality and systemic poverty. The pervasiveness of these stereotypes and racism is so ingrained that the Supreme Court in *Barton* in 2019 had to instruct that:

[O]ur criminal justice system and all participants within it should take reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons—and in particular Indigenous women and sex workers—head on. Turning a blind eye to these biases, prejudices, and stereotypes is not an answer. Accordingly, as an additional safeguard going forward, in sexual assault cases where the complainant is an Indigenous woman or girl, trial judges would be well advised to provide an express instruction aimed at countering prejudice against Indigenous women and girls.

Sexual exploitation of indigenous women and girls and two-spirited community members occurs well before they decide to engage in sex work. Indigenous children who are apprehended into child protection services at alarming rates in this country often experience sexual exploitation. Addressing issues of poverty and inequity and decolonizing approaches to child welfare institutions is the leading way to reduce sexual exploitation that indigenous children in this country experience.

The acute mass incarceration of indigenous women in Canada's correctional institutes also demonstrates the high criminalization of indigenous women. Indigenous women now account for 42% of the women inmate population in Canada. Laws that further perpetuate stereotypes and distinguish groups such as sex workers are harmful, and overcriminalized populations are the ones that face the most scrutiny from authorities, even when it's not warranted.

The ban on purchasing sex directly impacts sex workers' safety and indigenous sex workers' safety, engaging the rights of liberty, life, and security of the person under section 7 of the charter, as well as section 15, the guarantee of equality under the law.

The court in Barton also reminded us of an important thing:

Our criminal justice system holds out a promise to all Canadians: everyone is equally entitled to the law's full protection and to be treated with dignity, humanity, and respect. Ms. Gladue was no exception. She was a mother, a daughter, a friend, and a member of her community. Her life mattered. She was valued. She was important. She was loved. Her status as an Indigenous woman who performed sex work did not change any of that in the slightest. But as these reasons show, the criminal justice system did not deliver on its promise to afford her the law's full protection, and as a result, it let her down—indeed, it let us all down.

We call for the repeal of PCEPA . It's unconstitutional and actively prevents people who sell or trade sexual services from enjoying their fundamental charter rights.

- (1640)

Like Pivot, Aboriginal Legal Services was an intervenor in the Bedford case before the Supreme Court of Canada. We intervened mainly because of the life and liberty risks that the Criminal Code provisions were creating for indigenous sex workers.

In July 2014 we also made submissions to this committee on Bill C-36. At the time, we objected to the passing of Bill C-36 because of the acute indigenous overrepresentation in the criminal justice and penal systems. This situation has only gotten worse in respect of those two issues.

The overall impact of the bill—

The Chair: Thank you, Ms. Big Canoe. I'm going to have to interrupt you. Hopefully you'll be able to answer in the questions coming forward.

For the witnesses and those who are not familiar, I have cue cards, so just watch for them. I give you a 30-second warning and then a time-out warning at the end.

Our next witness is Ms. Franklin, of Courage for Freedom, for five minutes.

Mrs. Kelly Tallon Franklin (Chief Executive Director, Courage for Freedom): Thank you, Chair.

This is a very difficult day.

I am Kelly Tallon Franklin with Courage for Freedom. I'm CED and chair of committees for Canadian and international ECOSOC organizations for business and professional women.

As a survivor of the sex trade, I share current experiences with over 427 minor-aged women and girls, personally and professionally supported. I am sharing their perspectives with additional information from traffickers, johns, different areas of the sex industry, law enforcement, frontline support workers, friends and families. It includes all oriented communities, including the Black, ethnic, language and religious faith communities, as well as all socio-demographics.

I do not speak to repeal Bill C-36, PCEPA, as it's still in the best interests of Canada as a whole. I ask instead that the committee review sections and amendments of it, as well as witness testimony,

briefs and documents against CEDAW concerning the difficulty—and our responsibility as a UN-sanctioned nation and as a founding member—of individual versus collective and societal rights and responsibility.

I would also ask that you note the UN's neutrality in view of four choices: the Nordic model, decriminalization, partial decriminalization and legalization.

My [*Technical difficulty—Editor*] would also say that under decriminalization they have, as indigenous women, been placed at further risk of harm, violence and even murder without increased safety or liberties.

In Germany, the studies of 80% of their population report that the law does not work. In 2017, all parties there agreed the laws were a failure. In Costa Rica, sex trade women have suffered. Legalization lowered their standard of living to less than \$2 an hour, opened doors to international criminals, placed them as the now number one central Latin American country for sex tourism with increased child exploitation, and lowered their tier status at the UN.

Canada has a tarnished record, as human trafficking is the second-highest national grossing crime. However, in our quest for a ranking globally, may we not just seek to legalize all aspects to influence our status, but base everything we do on safety and security, addressing root causes and not governmental controls?

In the highest per capita community in Canada, officers I work with have asked me to share the information that they believe repealing PCEPA will result in more bridges to international organized crime and heightened victimization. Project Maple Leaf, which we founded, saw that a large number in the sex trade and in prostitution have not been charged under these current laws, but the procurers and benefactors from the sale of others as managers in that 5% agency privileged advanced have exemplified personal gain under the guise of helpful support of the oppressed and marginalized.

Hard and grey data used under the law enabled the discovery of victims and survivors of the sex trade who were protected, regardless of charges laid, plea deals or prosecution. I agree that inconsistent policing poses an issue, but we also understand that when we bring these issues to the surface, we are going to see a retribution of actions in crime.

A sex industry female friend said openly, “I am not afraid to say that without PCEPA, I and others in the sex industry would have been arrested and without options. Those who aim to repeal these laws do not speak for me.” Repeal will make it even easier for them than it currently is to buy and sell children, and marginalize and oppress women and youth.

An 18-year-old who is fighting out-of-sex-trade trauma has been told in a women's and girls' shelter that she's not “woke” and is being gaslit by posters that her body is her choice and sex work is real work. Last week, she was told that she should do some stripping or rub and tugs as harm reduction to pay for a baby stroller.

Statistics show the likelihood of rape, both as an escort or in the street trade. Murder rates are higher, whether it's legalized or not, and 95% are still under-represented by agency. It means there's no equity in privilege, race or economy that could be presented to you today, and that third party profiteers draw on the criminal element.

How can we possibly weigh the effectiveness, when some of our measurements' activities were not even enabled given the COVID situation?

Today, I'm not a conflationist and I don't want to remain polarized, but I demand consideration of the sex trade, sex industry, human trafficking, sex trafficking, labour trafficking, violence against women and girls, domestic violence, murdered and missing indigenous women, sexual exploitation and, as a witness already stated, the consideration of youth sex workers. Yes, consider them, but please consider them as child rape victims. Request more report consideration from the Canadian Centre for Child Protection and the National Center for Missing and Exploited Children as representatives of the visual, written and audio sex trade to actually and adequately represent everything, including the previous misrepresented data about jails, probation and parole.

• (1645)

Honourable Chair, what will be the report implications of our time in history? What will be the choices and the rights?

If we do not have a means to discover—

The Chair: Thank you, Ms. Franklin.

I'm going to have to end it right there, but hopefully you'll be able to extract some of it during the questions.

• (1650)

Mrs. Kelly Tallon Franklin: Thank you.

The Chair: I'm going to ask Madam Clerk if SWAN Vancouver Society is on. No?

I believe the third witness is having difficulty, so we'll bring in a round of questions, beginning with Mr. Brock, for six minutes.

Mr. Larry Brock: Thank you, Mr. Chair.

Thank you, ladies, for your testimony today. Your advocacy in this important area is going to help us formulate our studies.

My questions go first to Ms. Big Canoe.

I know, Ms. Big Canoe, that you did not have an opportunity, because of the time constraints, to finish your narrative. Were you

planning on opining or providing any input with respect to the intersection of indigenous women and girls and human trafficking? Is that part of your narrative?

Ms. Christa Big Canoe: Yes, it would be part of my narrative in relation to two things, the recommendations that I would make and a reference in terms of the recommendations that we're supporting.

Much like your former set of panellists, I talk about the conflation between human trafficking and sex work, and the need for clear definitions and understanding. There are also a couple of things we need to be aware of when we look at something like the national inquiry's report and we see the harm and levels done. In my submission and speaking notes, if I do not get the opportunity to get to them, there are six recommendations that are derived from the Pivot report, and three from the national inquiry.

Mr. Larry Brock: I'm going to get into some specifics now, Ms. Big Canoe.

My former career was as Crown attorney for the jurisdiction of Brantford—Brant, which, as I'm sure you're familiar with, includes the largest indigenous reserve in Canada, the Six Nations of the Grand River, as well as the Mississaugas of the Credit.

I should have known this, but it was unknown to me during the past election. It came to my attention by speaking to some of the elders and law enforcement on the Six Nations that the Six Nations leads the country in terms of the percentage of indigenous women and girls who are victims of human trafficking. I don't know if you were aware of that particular statistic. I'd like to ask you specifically if you could perhaps provide some explanation in terms of what is going on in that part of my riding.

Ms. Christa Big Canoe: Certainly.

There is an awareness of the amount of sexual exploitation geographically, but if we're being fair and honest, we actually don't know those numbers with 100% certainty. The pervasive issues around the enforcement of Canada's current Criminal Code, even prior to PCEPA's trafficking provisions, were that it was largely not being enforced. A lot of trafficking, as the national inquiry heard, is, quite frankly, underground. The number of indigenous women who are trafficked interjurisdictionally within a province, through other provinces and across international borders should be shocking. I have heard that the number is large.

The Six Nations is also one of the largest reserves in the country. If you're looking only at a first nation reserve, it has over 17,000 members, and 10,000 of them reside in a fairly urban context, so it's not actually surprising, when you look at it from a per capita basis, that this might be a truth. In terms of what's happening in your neck of the woods, I can't directly respond to what the issues are, but it doesn't surprise me that it would be a community that puts forward what's happening. Trafficking does happen.

I want to be clear. ALS is not pro-trafficking. We are not saying that there shouldn't be laws in place and that there shouldn't be enforcement of laws that address trafficking. What we are suggesting is that the conflation between trafficking and sex work, and not having distinguishable or clear definitions of some of the words within the act itself, is problematic and causes life and liberty issues for those who are engaging in sex work.

Mr. Larry Brock: Thank you for that.

Part of your narrative was to talk about the overincarceration rates of indigenous offenders, particularly in this area. When you testified before the committee when Bill C-36 was being debated, you objected to the bill because of the acute aboriginal overrepresentation in the criminal justice and penal systems, and the overall impact this bill would have on a number of aboriginal sex workers, their families and communities.

What has been the impact, in your opinion, of Bill C-36 on the overrepresentation of indigenous people in the criminal justice system and on indigenous sex workers, their families and communities?

• (1655)

Ms. Christa Big Canoe: If we're looking at it as a statistical game, then you're going to see that there's been an increase since I made my submissions in 2014, particularly of indigenous women and female youth within our penal and criminal justice systems.

The number of those who are tied to sex-related offences has decreased post Bedford, because there aren't as many charges, but then there are connections within the community. Some of the provisions in PCEPA that rely on the livelihood or the potential of benefiting from livelihood are adversely impacting larger communities and broad communities.

We have to contextualize this criminalization and couch this reality quickly in the fact that indigenous people are overpoliced or underpoliced, depending on the circumstance, simply for being indigenous. They have more scrutiny. They're seen more often, and the police are following up with or dealing with those communities more regularly.

I don't think you're going to extract the statistic you're hoping for directly, but if we're looking at just a numbers game, we're only continuing to overincarcerate and mass-incarcerate indigenous people, including sex workers and people who have been sexually exploited through no fault of their own.

Mr. Larry Brock: Thank you, Ms. Big Canoe.

The Chair: Thank you, Mr. Brock.

It's now over to you, Ms. Diab.

Ms. Lena Metlege Diab (Halifax West, Lib.): Thank you very much, Mr. Chair.

Welcome to our witnesses here this afternoon.

Madam Christa Big Canoe, I have a couple of follow-ups, if you don't mind. I would like to get some clarification on a couple of things you said, but also a bit more on what you were referring to.

What would be the benefits of decriminalizing versus legalizing the sex trade, in your opinion, and how would that impact the indigenous community you represent?

Also, you had six recommendations, and three that were in the report. I'd like to hear those.

Lastly, what definitions in the act would you recommend be amended, and how would you define them?

Ms. Christa Big Canoe: Certainly.

Let me start with the recommendations first, and go to your first question, and I can undertake to pinpoint those in a follow-up note to the clerk if I don't get to address them today.

I would point to six points in Pivot's evaluation of Canada's sex work laws and what we need to do.

The first one is repealing, which seems pretty straightforward. It would also be to use existing laws to prosecute perpetrators of violence. No one is saying that violence is acceptable, or that sexual exploitation is acceptable, but within the Criminal Code we already have provisions.

We would add that law reforms should consider using appropriate language and not characterizing acts of sexual violence of minors as interfering.

For example, the national inquiry also made recommendations about the use of language. When we're talking about children, we shouldn't be talking about invitations for sexual touching. Kids cannot consent to sex. If there is work to be done, it is in relation to existing legislation in crimes and not an additional suite.

I will again refer to my notes because I want to have a moment to focus on some of the findings from the National Inquiry into Missing and Murdered Indigenous Women and Girls. I did not say this in my introduction, but I was co-lead counsel, so I was responsible for putting the evidentiary record before the commissioners and have quite a fluency with this.

The calls for justice that are really important include 4.3, which calls upon all governments to support programs and services for indigenous women, girls and 2SLGBT+ people in the sex industry to promote their safety and security, and they must be designed and delivered in partnership with people who have lived experience in the sex industry. They called for stable, long-term funding of these programs and services.

Whenever you hear any of your witnesses talk about exiting opportunities, the solution always comes from the community, which is much stronger than forcing people into exiting strategies through police or authorities.

Also, there's call for justice 5.3, asking the federal government to review and reform law about sexualized violence and intimate partner violence. Again, it's about looking at the existing laws and strengthening them.

Finally, there's 12.14, which called upon all child welfare agencies.... You're wondering what's the connection here, but, quite frankly, indigenous people in particular are exploited sexually more often in youth than the general population, so they call for more rigorous requirements for safety, harm prevention and needs-based services, as well as within foster situations to prevent the recruitment of children in care into the sex industry. The national inquiry also insisted that governments provide appropriate care services over the long term for children who have been exploited or trafficked while in care.

Indigenous people have this history in Canada, this colonial legacy. We took children and put them into schools where they were highly sexually exploited. It has been a long-standing history, and sometimes when we say things like we can't believe this happens in our country, I say I can't believe we're surprised it does. That has been the legacy towards indigenous people in this country.

Just to be clear, the two views don't have to be mutually exclusive. There are ways to tighten the law to protect those who are treated most vulnerably in the system, while still upholding and protecting the rights of those that are engaged in sex work of their own autonomy in a safe way, and we see that in other jurisdictions.

I think I'm probably going to have to defer. You might run out of time. I can pinpoint. There is some terminology, which Pivot's document explains quite well. For a couple of the terms that aren't explained well, we more recently have had case law. There was Anwar, which was from the Ontario Court of Appeal. Now we have a new Ontario Court of Appeal ruling that has helped explain things, but there are some loose terms where there's not a tight enough definition to work well even just neutrally, whether you're on the side of let's get rid of the law, or that of let's enhance the law.

I would undertake to follow up with a note to the clerk further to my submissions, pointing out a couple of these terms.

- (1700)

Ms. Lena Metlege Diab: Thank you, Mr. Chair.

We talk a lot about conflation in this committee, particularly in relation to this act.

Can you talk to me a little about how you can help us, or how you can help in trying to figure out how to distinguish the two? Even though there are linkages, they are obviously separate.

Tell me your view on that.

Ms. Christa Big Canoe: Certainly. It's a position I took when I talked to the committee in 2014. I said that we need to not conflate, using the word conflate to understand...there may be connections, there may be pathways, between sex work and human trafficking, but you can't just assume that if someone is autonomously working in the sex industry, they have been trafficked there. There are different truths for different people with the lived experience, so I am not going to try to assume that anyone who has had one experience begets another. There is that difference.

The big thing, too, to keep in mind is that it's very common for people to look into those stereotypes that I was talking about in my introduction and make assumptions. This is the stigma that is attached to sex workers. They are seen in society as either being less than or not worthy victims, because they've engaged in something that we might think is morally wrong. However, when we look at that stigma, we extend the stigma of sex work to something like human trafficking, which we see in society as the worst thing, to take one human being and do that to another. It's important to understand the definitions.

The Chair: Thank you, Ms. Big Canoe and Ms. Diab.

We will go to Monsieur Fortin for six minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

I thank Ms. Big Canoe and Ms. Tallon Franklin for being here today.

Your testimony is important. This matter is very concerning. It is valuable to have the perspective of people on the inside and people on the ground.

I will direct my next question to Ms. Franklin.

Ms. Franklin, as I understand it, you are a speaker and you deal a lot with the issue of human trafficking awareness.

One of the witnesses in the previous panel talked about criminal sanctions. Indeed, the Criminal Code has penalties for people who are accused of human trafficking. I know there are other penalties in several other laws, including the one we're looking at now. I find the problem so serious that I wonder if there is anything else we can do but apply criminal sanctions.

What else can we do?

It appears unacceptable to me that any individual, male or female, would think of buying a child. It's unthinkable. The witness was telling us that the culture had to change. I find it hard to believe that this type of behaviour is part of our culture. Certain things must surely be changed, but I cannot believe that it is an accepted part of our culture, here in Quebec and in Canada, to buy human beings to satisfy one's own pleasure. Maybe I'm naive, but I can't understand that.

I'd like to hear your thoughts on raising awareness about human trafficking. Someone was talking about changing the culture. I have a bit of difficulty with that. I would like you to tell us a more about that.

What can we do to stop the behaviour in question, apart from threatening jail time?

• (1705)

[English]

Mrs. Kelly Tallon Franklin: There are so many answers to that question that I don't think time is going to allow us. I am finalizing a brief that I will be submitting post-presentation to committee for your review.

The first thing I want to answer is by saying that with PCEPA we have had a means to discover acts perpetrated against oppressed persons and against minors in the short time it's been on the books. One thing we need to consider is that of those 427 victim survivors who have been of minor age—whom I've had the privilege to support and journey with, along with their families and their communities—regardless of whether charges were laid there's grey data that we don't have on this issue.

The majority of them didn't have agency at that point and didn't understand that it wasn't a decision they made to involve themselves in the sex trade. For most of them, it took years of care with trauma and supports, and it's ongoing.

I'm going to be 60 this year. I remember the early nineties, when Kelly Mombourquette was murdered as a 14-year-old. The papers stated that she was a problematic child in the system and that she was a child prostitute. We've come a long way from that. We don't need that kind of media reporting.

However, most people who have experienced human trafficking in the sex trade do not know that there was a differentiation because of industry. It's teaching those in all industries, working with those who are in the sex trade to understand what's happening, getting that information out there and supporting their rights for safety regardless of what we think about other things. We're all human beings. We can talk about this like they're the 427 case files that I've worked on since 2013, or we can talk about it like they're persons.

I have a 12-year-old girl who did not know she was escorting. She did not understand what was happening. By the time she was aged 15 and had allowed a sex buyer to insert a sponge for her to perform, she was suffering from sepsis and infections. She had no clue about what had happened to her. Yes, she was sex trafficked, but it happened within the sex industry. We have to understand those intersectional points and how it puts more oppression forward.

I had the opportunity to work with the Anishinabe community as a welcomed guest in Manitoulin Island, the largest unceded territory in Canada, to see what was happening and what they were saying. I was made aware that there is no word for prostitution in the indigenous culture. That's colonized thinking that's infiltrated their communities and taken a foothold.

Regardless of what we believe about all of this, I'm not talking about morality. I'm talking about having an understanding, about a sex buyer knowing that somebody is 12 years old. How are we going to differentiate? How are we going to identify if we don't have acts against perpetrators to do the investigations appropriately?

How are we going to put this into our universities as a course...on the sex industry? Is it going to be in our high schools as a course that you can take? Is it going to be part of the middle school guidance counsellors' conversations with our children as they're preparing for high school? How about that kindergarten person in a little sharing circle, talking about their vision of growing up and being in a profession? Is it going to include saying that they want to be in the sex industry? We need to understand that we have a bigger responsibility than just individual rights in this conversation.

I implore you to do your homework. Prevention does work. I trained over 5,000 professionals last year. I didn't endorse arrests or witnesses. I talked about the trauma that is in both sectors of this conversation, where we have to be presenting solutions.

• (1710)

The Chair: Thank you, Ms. Franklin, and thank you, Mr. Fortin.

Mr. Garrison, we go to you for six minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I'd like to turn the topic back to what we're actually studying here, which is the PCEPA and not the trafficking laws or laws against child sex, which is obviously abhorrent to all members of the committee.

I want to go back to Ms. Big Canoe. I know it's kind of a frustrating format. Ms. Big Canoe has always had other things she wanted to say. I think she had three more recommendations she wanted to talk about, so I'd like to give her a chance to do that.

Ms. Christa Big Canoe: Thank you for that opportunity.

I understand the need to have the committee. For people who have worked in this area for a number of years, on various fronts, it's not a lot of time.

I shared with the committee the three calls to justice of the national inquiry and a couple of them from the Pivot report. One of the other ones that is important is recognizing the complex realities of indigenous people who sell and trade sex. Specifically, the federal government should increase broad-based support, including through funding to indigenous communities for self-administered education and vocational training, housing programs, income assistance, and health and addiction services based on indigenous traditions.

In Canada we have 613 first nations. In Ontario alone we have 13 indigenous languages, so one indigenous group cannot say what other indigenous groups' languages include or don't include. It's important to recognize the complex reality of indigenous people in that context of historical legacy and the way that children have been sexually exploited even by government-sponsored programs, whether it was intentional or not.

We also need to invest in supports to low-income sex workers.

You're probably wondering, "Ms. Big Canoe, I just asked you this question and you're not giving me an answer as it relates to PCEPA specifically."

Part of the solution is not carving out the specific law that is not going to address the issues that we know exist. Investing in supports for low-income sex workers, whether they want to do the sex or not, would also be an important thing. Poverty and discrimination are what drives a lot of choices within industries and outside of them. Using criminal laws to deny people their income sources is not the way to assure genuine autonomy. Instead, people experiencing poverty, discrimination and low income, like low-income sex workers, whether they wish to do other work or not, need access to more substantial income assistance benefits; safe, affordable housing; and culturally appropriate education, opportunities and health services.

In a nutshell, we often try in law to craft something that we believe is addressing a "problem", but sometimes we're creating additional problems or barriers for people, like life and liberty ones or accessing the resources they need to choose to exit or to choose to continue within a safe way of exercising their lives.

Thank you for the opportunity to allow those recommendations.

Mr. Randall Garrison: Thank you for setting it in the larger context.

As someone who has been a long-term advocate of a guaranteed, basic, livable income as a way of addressing some of these problems, I'm glad you've raised that important point, even though you didn't put that name on it.

My last chance here at questions to you would be to give you another opportunity to talk about something you said at the beginning, which I thought was very important. That is respecting the diversity of what exists among first nations and among people involved in the sex trade and trying to understand that there's no one-size-fits-all in these programs. I really appreciate your bringing that up. Maybe you could say some more about how important you think that is.

• (1715)

Ms. Christa Big Canoe: Aboriginal Legal Services, as an example, have always accepted clients and met them where they're at. In terms of trying to find resolutions, a good life solution for any individual is to meet them where they're at. Embracing diversity and understanding people have lived choices as adults that within law.... I think it is worth repeating that the act of selling sex itself has never been unlawful in the country of Canada.

Putting in place parameters that meet the safety requirements that don't result in things like overpolicing or criminalization of indigenous people, which is already at beyond an acute level.... I don't even refer to it as overincarceration any more; I refer to it as mass-incarceration, because we continue to apprehend indigenous children into child welfare institutes and we continue to penalize and put indigenous people into custody.

When there are some levels of autonomy and when people have power to make decisions and the ability to do things in a safe way, then we see less loss of life. We see that. We've seen that in places like New Zealand, within their model, where sex workers have a better relationship with police officers. Sex workers can utilize the law within that country to put forward their rights. If we're truly at a place that's concerned with human rights—and the national inquiry set up their entire calls for justice on this parameter—then those human rights have to include those basic things like dignity, life and liberty.

Mr. Randall Garrison: Thank you.

The Chair: Thank you, Mr. Garrison.

We'll now go to Mr. Cooper, for five minutes.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you very much, Mr. Chair.

I'm going to direct my questions to Ms. Franklin. I certainly recognize the work you do on the front lines with victims. At the outset of your testimony, you stated that the legislation should not be repealed. You alluded rather to possible amendments, but I didn't hear you elaborate on that.

Are there any specific amendments or improvements you would see to the legislation?

Mrs. Kelly Tallon Franklin: I believe that in the course of these hearings, you've heard multiple amendment recommendations. The first would be to have a better capacity to put into action in every province, in every community, exactly what the original intention was of this law. We haven't seen that, and as a result it's really hard to have a measuring stick against it.

What we have seen on the books is that those who are minors, because of the laws of PCEPA.... I'm going to speak to the comment made by the committee member through you, Chair, that yes, child human trafficking, better known as child rape, does intersect with this issue.

This law and its consideration—and there are other laws on the books around children—has had marked success in identifying that type of criminal activity. How can we ensure that whatever we're amending and whatever recommendations we are making are consistent and are being actually worked on?

When you hear testimony that there are certain segments or communities that just refuse to lay any charges or do anything, we have to wonder, what's the divide? I don't think policing is solely the solution. I agree with the other witnesses that this is going to take an all-hands-on-deck and multi-level approach because of a lot of the historical legacy that we've seen. Some of the amendments will need to consider what we're going to do in the areas of protection in the newest trends that we're seeing.

I'm going to reiterate this. Out of the 427 victim survivors I've worked with, who started as minors, they didn't have an agency or understanding what was happening to them. They couldn't understand or identify what the sex trade was, what escorting was. Providing the training and prevention piece that needs to be ramped up in all areas has given us an opportunity.

We get calls from police officers, community workers, hospitals and Homeland Security. We've trailed girls who, by choice, have stated that they were in the sex trade, only to find them carried from Toronto to Vancouver, Washington and Seattle, back to New York, and then sold for \$20,000 in Puerto Rico, and now needing our assistance to exit, and redefine what was safe for them.

I'm not saying we need to conflate it with sex trafficking, but we have to have the conversation, because of those who have disclosed, the majority disclosed as adults about their childhood experiences, as we've heard over and over again. Their narrative is important and can't be dismissed. It is valuable to this conversation, as are all—

• (1720)

Mr. Michael Cooper: Thank you, Ms. Franklin. I have only a limited amount of time, but that was a very fulsome answer.

I want to shift gears a bit. During your testimony, you cited other jurisdictions with liberalized laws around sex work, like Costa Rica and Germany. We've heard repeatedly from other witnesses; in fact, Ms. Big Canoe cited New Zealand, as have others, as the gold standard. I was wondering if you might be able to share your thoughts on the New Zealand law.

Mrs. Kelly Tallon Franklin: I'm actually part of an organization that has boots on the ground in New Zealand, and I have a good friend who's a councillor in one of the communities in New Zealand. The authorities are still not completely satisfied that what they have done is in the best interests, especially not for the immigrant population, although that's important. There was a comment earlier today, during questioning, about how information is conflated in that community, because they don't think—

The Chair: Ms. Franklin, I'm going to have to ask you to wrap it up. Hopefully we'll get to you in a second.

Mrs. Kelly Tallon Franklin: My final point on this is that the Maori indigenous women have said unequivocally that it's not working for them.

The Chair: Thank you.

Mr. Anandasangaree, you have five minutes.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Thank you, Mr. Chair, and I'd like to thank the witnesses.

I'd like to acknowledge that I'm speaking to you from the traditional lands of the Algonquin Anishinabe people.

I have a very direct question for Ms. Big Canoe. Are there any elements of this legislation that are salvageable? If so, what are they?

If not, you suggested that we strengthen other laws. Can you give us more suggestions? Can you suggest what kinds of amendments would be required? If you don't have it today, you can also table it at a later point.

Ms. Christa Big Canoe: Certainly.

To answer the first part of your question, I think you can look at any law and pick and choose which ones may be the most neutral or most valuable. I think, from a fundamental theoretical position, when you say that you want to repeal the whole thing, it's because the process or framework itself is failing to recognize some of the issues.

I go back to Bedford. The issue is that people actually die while doing sex work as a result of being pushed into unsafe circumstances. Quite frankly, some of what this act is doing is recreating the same types of circumstances and situations that put those people into harm. They've pushed them back because of the fear of police or authorities potentially charging who they're selling sex to. What that looks like is that you're seeing some of those same pre-Bedford conditions, whereby people don't have the ability to put safety checks into place.

When I say the position we take as Aboriginal Legal Services is repeal, it's because it needs to be recast. When I say "recast", I'm talking about legislation that already exists.

One thing that my colleague was just talking about was all of this evidence and information we have since PCEPA came in. What about all the information we had pre-PCEPA about what was and wasn't being done with the human trafficking provisions within the Criminal Code?

There was this big conversation last time I was before the committee about how difficult it was to enforce it. I'm still trying to understand what provisions within this legislative framework changed or increased the ability of authorities to prosecute or do what they should have been doing, quite frankly.

Now that we've put a spotlight on it and now that we have a law, maybe that's where there's increased reporting or uptake. Within our own tool kit of laws, we actually had the ability to prosecute and go after human traffickers. We didn't do it well, so how do we address that issue?

• (1725)

Mr. Gary Anandasangaree: Given the limited time, can I ask that you table some suggestions with respect to strengthening other Criminal Code provisions?

Ms. Christa Big Canoe: Certainly.

Mr. Gary Anandasangaree: Continuing on that, would it be fair to say that this legislation has had a disproportionately negative impact on indigenous women, particularly those involved in the sex trade?

Ms. Christa Big Canoe: I'll answer the last part first. Yes, it has had a disproportionate impact.

SWAN unfortunately hasn't been able to be here for technical reasons. I would probably guess that they would be talking about the disproportionate impact it has on immigrant sex workers as well, who are in precarious positions because of fear of being removed from this jurisdiction.

Yes, there definitely is, but that is an ongoing issue that predates even the legislation. It's what we know about the overrepresentation and overpolicing of indigenous people to start with. It's all of those bad stereotypes piled on top of each other.

In terms of the recommendations for particular provisions, I would point you back to the national inquiry, which has some specific findings. It specifically talks about the need to increase culpability in relation to certain violence towards indigenous people.

I'm sorry I didn't anticipate that question, so I'd have to undertake to maybe reply to the clerk with some potential provisions that could work, in addition to my other part.

One thing we have seen post national inquiry is a change under 718.2(e) to include as an aggravating factor when it's an indigenous woman that's harmed.

Think about it. Sex workers get harmed if they can't reach out to police to prosecute these issues for fear of reciprocity or the other harms that this legislation's creating, so where do they go? If they could access and are accessing that and they are a victim themselves, they should have rights as victims in Canadian law as well. One of those changes in law has been to see an increase, potentially, in sentencing, as an aggravating factor if you target and attack an indigenous woman.

That's a good example of enhancing law.

The Chair: Thank you, Ms. Big Canoe, and thank you, Mr. Anandasangaree.

Now we'll go to Mr. Fortin for a quick two-and-a-half-minute round.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

I thank you also, Ms. Big Canoe.

I'd like to discuss two issues with you.

First, according to your testimony, Bill C-36, which was passed in 2014, did not really help the situation. If I understand correctly, in your view, the solution is not to crack down.

I would like you to confirm that and tell me whether the provisions currently in the Criminal Code are sufficient and well suited to address this problem or whether the Criminal Code should also be amended.

Should we amend the part of the Criminal Code related to human trafficking and prostitution?

Then I'd like to talk about consent. Earlier, you said that we should focus on the difference between prostitution and human trafficking. A previous witness told us that the main difference was consent. I thought that was an enlightening distinction. I'd like to hear your thoughts on that.

Can we say it is prostitution when the person gives consent, and say it is human trafficking when the person does not give consent, regardless of age?

[*English*]

Ms. Christa Big Canoe: I don't know if I'll have a chance to answer both, but definitely in relation to your second question, consent in law is sort of the turning point or what helps us distinguish. If someone is consenting—if they're not coerced, if they're not forced physically, if they're not drugged, if they're not sort of “dragged into it”—but of their own consent choosing to do something, that seems to be a big distinguishing factor. There is tons of case law on that. Consent case law is also in relation to sexual assault, and there are more definitions around what consent means that way.

If I'm a consenting adult, engaging in an activity of my own volition, then I'm consenting, right? I'm not being forced into it, so I'm not being trafficked.

For the first part of the question, I don't think I can give you the full answer in the time you have, but definitely there would need to be some amendments to the Criminal Code. I would suggest that it's not PCEPA. I'd suggest that you have to look at PCEPA as not being effective, as not clear enough, and as causing or creating pre-Bedford circumstances resulting in the loss of life, death. From an indigenous person's perspective, during the national inquiry, another 157 indigenous women went missing or were murdered in unresolved cases, so the violence against indigenous women is not decreasing.

• (1730)

The Chair: Thank you, Ms. Big Canoe, and thank you, Mr. Fortin.

Mr. Garrison, you have a quick two-and-a-half-minute round to conclude.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I hope, since we have another session scheduled after our March constituency weeks, that we'll endeavour to get SWAN back onto our agenda at the next available meeting. I see you nodding, so thank you for that assurance.

I want to go back to Ms. Big Canoe again and what she said at the beginning. We keep wandering away into talking about what we can do about trafficking, which is another set of hearings we might want to have, but this is actually about PCEPA. One of the things that you very clearly said in your introduction was that PCEPA increases harm. Just as we come to the end of the session, can we go back to that point you made and talk very specifically about the harms you see directly from this law?

Ms. Christa Big Canoe: Certainly. The harms I see directly from this law are quite clear, not just to a person who's exercising sex work but potentially to the people they're enlisting. There should be exceptions, even within PCEPA, so that people are not charged because they're acting in a supporting capacity. There's not enough clarity on some of those parts of the law.

As an example, if I'm a sex worker and I'm hiring a bodyguard, there is the potential for them to still be charged, investigated and harassed by police. Once they're being investigated and harassed by police, it creates a context where that place is not safe.

The other thing is that the majority of sex work is now done indoors. We have the Internet, and we rely on communication through the Internet. When people are afraid that they're going to be charged or that police will be involved and they will have their own livelihoods harmed, they don't want to consent to go to places that a sex worker has determined is safe for them to deliver that service, so they're pushed—again because the market demands it—into “dark corners”. They're pushed into places where they know that enforcement's not going to happen.

Using the Vancouver example—and we heard a bit from your last panel about that—the Vancouver police, in talking with Downtown Eastside sex workers, made a particular decision not to prosecute them, because they recognized that it pushed them into corners; it pushed them into dark industrial sections, and then that would be like going back to pre-Bedford; that would be like going back to—I'm not just being smart here—the pig farm. That would be like letting indigenous women disappear again.

Mrs. Kelly Tallon Franklin: Oh my gosh.

Ms. Christa Big Canoe: If they're pushed into dark corners, then they have no recourse for safety, so when I talk about harm, that's the harm I'm talking about.

There's obviously a whole human scale imbalance though. There are many harms happening.

The Chair: I'm sorry. I'm going to have to wrap it up there.

I want to thank all the witnesses and the committee for doing a great job.

We're slightly over in time, so I'm going to conclude and thank you.

Anyone who asked to make submissions, please send them to the clerk and we'll have them included in the report.

Thank you. The meeting is now adjourned.

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