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Chair: Mr. Randeep Sarai



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• (1635)

[English]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order.

Welcome to meeting number 70 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the House order adopted on March 22, 2023, the committee is meeting in public to begin its study of Bill S-224, an act to amend the Criminal Code in relation to trafficking in persons.

Today's meeting is taking place in a hybrid format pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application.

I'd like make a few comments for the benefit of the witnesses and members.

Please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your mike, and please mute yourself when you're not speaking.

To access interpretation, for those on Zoom, you have the choice at the bottom of your screen of either floor, English or French audio. For those in the room, you can use the earpiece and select the desired channel.

A reminder that all comments should be addressed to the chair. For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function.

The clerk and I will manage the speaking order as best we can. We appreciate your patience and understanding in this regard.

Welcome everyone.

We are studying Bill S-224, an act to amend the Criminal Code in relation to trafficking in persons. To help us with the study today, we have Dr. Janine Benedet, QC, professor of law at the Peter Allard School of Law at UBC. We also have, from the Brave Education for Trafficking Prevention foundation, Holly Wood, researcher and educator, also via video conference; and we have Sandra Ka Hon Chu from the Canadian Alliance for Sex Work Law Reform.

I apologize. I think we had to cancel you last time. Thank you for rescheduling and coming back. Things in Parliament happen, and we have to adjust from time to time, but thanks for being here.

You'll each have five minutes to deliver opening remarks, and then we will have questions coming from the members. Hopefully anything you might have left out you can answer within that time.

We'll begin with Dr. Benedet, please, for five minutes.

Dr. Janine Benedet (Professor of Law, Peter A. Allard School of Law, University of British Columbia, As an Individual): Thank you, Chair. Thank you to the committee for the invitation to speak on this important bill.

I am a law professor and lawyer in Vancouver and have developed expertise in the criminal law in this and related areas of sexual violence and exploitation over 25 years of researching and teaching and representing clients in court.

In my introductory remarks, I will offer four observations—two general and two specific to the bill. I know that time is tight, and so I will try to be clear and concise.

First, human trafficking is a serious global problem and a serious problem in Canada. It is a practice that preys on the vulnerable for profit. Thomson Reuters recently did an investigation that found 700 establishments across Canada involved in sex trafficking, many with connections to known criminals. They estimated that the illicit profits in Canada and the United States combined are \$2.5 billion annually.

Most sex trafficking victims in Canada are Canadians. This is a practice that disproportionately targets indigenous women and girls, those with intellectual disabilities and other vulnerable groups.

Canada has made an international commitment to fight human trafficking, and we cannot afford to become complacent or be in denial. Human trafficking is not a moral panic, and it is not a sleight of hand.

Second, the distinction between sex trafficking and the prostitution industry as a whole, legally speaking, continues to be misunderstood. Not all prostitution is sex trafficking. Legally, the difference between sex trafficking and prostitution—even when that is relabeled "sex work"—is not that one is forced and the other free. That is a common misconception. The difference is that trafficking requires a third party, a trafficker. You cannot traffic yourself.

Where there is no third party, there is no trafficking, but there can still be exploitation. To use a simple example: A guy who buys a 14-year-old kid who has run away from home and trades him, sex for drugs, is exploiting that kid, but if there is no third party involved—no pimp—that is not trafficking in a legal sense.

The contentious question of whether all prostitution is exploitative and discriminatory is not what is before the committee today.

Of course, trafficking laws apply to traffickers, not purchasers, who drive the demand for trafficking. Canada has an international obligation to target the demand for sex that fuels trafficking, but we have separate offences for buyers of sex, which are also not before the committee today.

Third, turning to the bill itself, the definition of trafficking in the Criminal Code at present is unnecessarily convoluted and too restrictive. It is very hard for victims to come forward, and having an offence that is so difficult to prove makes matters worse. Only 12 per cent of trafficking charges that go to court result in a conviction for a trafficking offence.

Removing the requirement to prove reasonable fear for safety, as this bill does, would be very helpful, because it is inappropriate to impose a reasonableness requirement on victims. We should be focusing on the actions of the trafficker. Also, fear for safety is not the only way that traffickers influence and control their victims. A trafficker who controls access to drugs, or who threatens to disclose pornographic photographs to a woman's family or to report her welfare fraud, may be very effective at causing her to remain in prostitution, so the requirement of fear for safety is too restrictive and is unhelpful.

We rejected a similar requirement in the law of sexual assault, and the only offence left in the Criminal Code with a similar requirement is stalking—criminal harassment—and that requirement has been consistently criticized.

Fourth, and finally, while I support this change, I would like to see it go further. The definition of exploitation in the bill is limited to causing someone to enter or remain in the sex trade—I'm talking here about sex trafficking—through coercion; deception; abusing a position of trust, power or authority; or any other similar act. This is still quite narrow, depending on how the courts interpret it, and it fails to capture a number of ways that traffickers groom and manipulate their targets and select those targets based on their vulnerability.

The Palermo protocol includes the exploitation of a condition of vulnerability in its definition of exploitation, and I would like to see the Canadian criminal code definition brought into line with our international commitments and that internationally accepted definition.

• (1640)

Thank you for your time. I welcome your questions.

The Chair: Thank you, Dr. Benedet.

Next we'll go to Holly Wood, from Brave, please.

Ms. Holly Wood (Researcher and Educator, BRAVE Education Foundation): Hi there. My name is Holly Wood, and I'm representing Brave Education for Trafficking Prevention.

I'm a Master of Legal Studies student at Carleton University, currently finishing my thesis focused on police responses to sex trafficking and sex work in Ontario. I hold a Bachelor of Arts (Honours) in Law from Carleton.

I'm a nationally licensed human trafficking prevention educator with Brave Education, where I assist with building and delivering sexual exploitation prevention curricula for grades K to 12 and adults. I serve as vice-chair of the Ottawa Coalition to End Human Trafficking and chair of the advocacy committee. I have worked for the Ontario Ministry of Children, Community and Social Services with foster care youth who are at risk of or actively being trafficked. I've worked at the Elizabeth Fry Society of Ottawa with women who were criminalized as a result of being trafficked, and I have worked in criminal defence; the firm I worked for successfully defended a human trafficker.

For my first example in support of Bill S-224, I look to the experience of a survivor whom Brave has worked with. Out of respect, I will speak of this survivor anonymously.

As a 19-year-old girl, she was trafficked by a man she loved and who she thought was her boyfriend. She had a relationship with her trafficker. He trafficked her in five cities across Canada. After years of being trafficked, she learned what trafficking was. She learned that she had, in fact, been trafficked.

She pursued legal action against her trafficker. When asked to attend court to provide a victim impact statement, she got on the stand in the courtroom in front of her trafficker. She looked out into the courtroom and locked eyes with him. She immediately felt feelings of love and dependence flood her body. She ran out of the courtroom and did not testify, because regardless of the fact that she knew she had been trafficked, she was so in love with him that seeing him in that courtroom triggered an emotional response of love, not fear. She was not afraid of her trafficker. She was in love with him. To this day, she tells us that she would go back to her trafficker in an instant, because he made her feel more loved than her family and friends did.

She is a prime example of why this bill is so important. Even when victims of trafficking know they have been trafficked, the feelings of love and attraction to their traffickers do not disappear. The effects of the manipulation, coercion, love bombing, etc., do not end just because a survivor has been pulled out of their situation. Hence, it is important, more now than ever, to remove the requirement to prove fear, so that survivors of human trafficking can pursue justice without the unfair burden of proving fear and without having to worry about the years of an emotional relationship with their trafficker getting in the way of securing a conviction for the crime they endured.

Human trafficking and exploitation can affect anyone, not just women and girls. For my final example, I will look into my colleague Ena Lucia Mariaca Pacheco's published research on male exploitation and familial trafficking. According to Ena Lucia's research, there can be several reasons that men or boys may be hesitant to show fear after being trafficked or exploited.

Societal expectations in Canada place emphasis on men being strong and tough and suppressing their emotions. Therefore, many men and boys may feel pressure not to show that fear or weakness. They may believe that expressing fear or vulnerability is not productive or helpful, and they may choose to internalize their emotions to maintain a sense of control or to try to forget about their trauma. Male victims may experience feelings of shame or embarrassment, judgment or stigmatization if they show that they are fearful or unable to protect themselves from their male or female perpetrator.

Therefore, by taking out fear and showing male victims that it is okay to finally speak out about their exploitation, hopefully we will see an increase in disclosures and convictions. It is important to approach this bill with empathy and understanding, recognizing that in any response to trauma, you are shaped by a complex interplay of personal, cultural and societal factors. Fear can look like different things to different people and, in many cases, is not what the current provision deems fear at all.

I thank the committee, Mr. Colin Carrie and all other parliamentary bodies for paying long-overdue attention to the devastating crime of human trafficking. Bill S-224 is one of many steps we must take to protect our communities and, most importantly, those affected by the crime of trafficking.

The fact of the matter is that our current laws in Canada are not evolving at the same pace as the crime of human trafficking is. In the anti-human trafficking movement, we have a common saying—it is a legal system, not a justice system.

For me and my team at Brave, Bill S-224 can change the narrative for our legal system and make justice more accessible for victims of human trafficking. Most importantly, Bill S-224 will reinforce that trafficking of individuals in Canada is not acceptable, will not be tolerated and will be punished accordingly, in line with the rights and dignities of victims who, with the help of Bill S-224, will feel more inclined to stand up to their traffickers in a courtroom in order to protect current and future generations.

• (1645)

Thank you.

The Chair: Thank you, Ms. Wood.

We'll now go to Sandra Ka Hon Chu from the Canadian Alliance for Sex Work Law Reform.

Ms. Sandra Ka Hon Chu (Co-Executive Director, HIV Legal Network, Canadian Alliance for Sex Work Law Reform): Thank you, Chair.

I am sharing my time with Elene Lam, who will go first.

Ms. Elene Lam (Executive Director, Butterfly: Asian and Migrant Sex Workers Support Network, Canadian Alliance for Sex Work Law Reform): Hi and good afternoon. I am Elene Lam, executive director of Butterfly. We work with over 5,000 migrant sex workers in Canada.

I am shocked that the committee did not consult any migrant rights, racial justice or sex workers who are directly impacted. Many scholars on violence against women and racial justice and human rights organizations have already shown their opposition to this bill, and have shown concern that they are not having the opportunity to tell you how this bill is harmful.

The claim is that the bill will help charge traffickers and bring them to justice. It will not. As Sandra will explain, this bill will lead to more human trafficking charges laid against migrants, Black and racialized people, sex workers and those who are providing support services to others. It will take away their livelihood, make them live in fear and drive them to work even more underground.

The concern was already expressed by some of the committee members that this bill does not differentiate sex work from human trafficking. It cannot differentiate as to whether people have asked another person to organize the work or whether they are being forced or exploited. Both of them will be charged with trafficking, no matter the nature of the relationship. It is wrong to assume that all third parties are exploiting and human trafficking. Poor, racialized migrant sex workers rely on community support to stay safe. They help each other access transportation, food, medical care, translation and a safe work environment. If Bill S-224 passes, anyone who helps sex workers stay safe, particularly Black and migrants, will be charged as human traffickers. People will be too afraid to be associated with sex work, and that will make sex workers more isolated and vulnerable.

Advocates against sex work have long used anti-human trafficking campaigns and policies to further their racist anti-migrant agenda. They promote moral panic, racial discrimination and hate against the sex industry. By calling for the criminalization of sex work and increased policing, the goal of anti-trafficking campaigns is often not ending trafficking but ending the sex industry. It's not protecting sex workers but ending sex work.

You are all here today because you care about the rights and safety of vulnerable people. You should listen to the community and what many racialized, Black and migrant sex workers will tell you: "Don't take away my agency. We cannot let Bill S-224 pass. Bill S-224 does not protect us. It puts us into danger."

I will now give Sandra the time to explain more.

Thank you.

Ms. Sandra Ka Hon Chu: Thank you, Elene.

My name is Sandra Ka Hon Chu. I'm co-executive director of the HIV Legal Network.

I have two main points to add about Bill S-224. First, the removal of the threat to safety requirement will capture cases where no exploitation exists. Proponents of this bill describe difficulties obtaining direct evidence from a potential complainant, but the test today is already an objective one and does not require a complainant's testimony. Removing this requirement merely gives more power to police and prosecutors to define, and often wrongly define, violence and exploitation for communities. In the case of sex work, violence and exploitation are assumed. For example, Professor Roots has documented how police pressure sex workers to take on the trafficking victim label despite their rejection of this label. Without the threat to safety requirement, determinations of coercion or exploitation are made through biased perspectives of sex work.

Second, as Elene described, the amendments risk capturing all third parties in sex work, including those who provide supportive services to sex workers. Butterfly and the HIV Legal Network have been consistently told by law enforcement that any third party involvement of sex workers suggests exploitation that warrants investigation. However, researchers have documented how police and prosecutors insist that pimping is a major problem, focusing their attention on young, poor, racialized men, and particularly Black men, despite sex workers' more nuanced accounts of third parties as protectors and intimate partners. As Elene mentioned, many sex workers also take on third party roles. Migrant, Asian and other racialized communities rely on family members and community for work support, but they are often swept up in anti-trafficking efforts.

Butterfly members have been charged with third party sex work offences for merely assisting with client communication, scheduling, advertising and screening. While the punishments for third party sex work conviction are already severe, third parties convicted of human trafficking are subject to a four-year mandatory minimum sentence, which could result in the removal of status and deportation for those who are not Canadian citizens.

If you truly wish to support people at risk of exploitation and abuse, you must listen to sex workers and reject Bill S-224 in its entirety; fully decriminalize sex work by removing all sex work-

specific criminal offences; remove immigration regulations that prohibit migrants from working in sex work; stop surveillance, raids, detention and deportation of sex workers; support non-carceral forms of safety, such as decent work, health care and housing for all; and invest in grassroots communities so that they can support each other.

Thank you.

• (1650)

The Chair: Thank you.

I want to thank both of you, Ms. Lam and Ms. Ka Hun Cho.

Next we'll go to our first round of questions for six minutes.

Witnesses, I want to let you know that I use cue cards. When you have 30 seconds left on the time, I'll put that up. When you're out of time, I'll put the "out of time" red card up, so you can wrap it up and I don't have to cut you off.

We'll begin with Mr. Moore for six minutes.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair, and thank you to our witnesses. It's a great panel of witnesses on this important bill.

I also want to thank you for coming back to the committee. Our schedule being what it was, and with votes and so on, we ended up having to move your testimony a couple of times. It was really important that we heard from you, and I'm glad we did. Your testimony was very helpful.

Dr. Benedet, you appeared at the Senate committee's study on this bill last June. You said that "removing the requirement to prove a reasonable apprehension of fear...would be helpful", in part because "the use of the reasonableness standard tends to allow stereotypes and myths about trafficking to enter the picture."

Can you elaborate on that specific point?

Dr. Janine Benedet: Sure.

Any time you put an objective standard into a criminal offence like that, you need some kind of a benchmark against which to measure “reasonableness”. Generally speaking, in the modern context, I think we recognize that it is inappropriate for the reasonableness of a victim's fear to be judged by third parties.

In the context of trafficking specifically, you have the reality that these convictions are very hard to obtain. Sometimes the coercive behaviour, the fear, isn't explicit and it's not overt. There's so much manipulation going on behind the scenes—or sometimes quite overtly, as you've seen from Ms. Wood—that it's difficult then to say, well, a reasonable person would fear for their safety under those conditions.

We know that. We know the history of that, because we used to have that in sexual assault law. It used to be that if you submitted to sexual activity out of fear, the courts would judge whether your fear was reasonable, right? It was an invitation to myth and stereotype, and in particular to judges to say, “Well, you could have done this or that,” or, “You had other alternatives,” or, “The door wasn't locked,” or, “You could have gone back to your family.”

In the context of human trafficking, the same thing happens: “You didn't take your cellphone.” “You were still in contact with your mom, so how can it be said that you reasonably feared for your safety?”

It's an inappropriate requirement. It's inappropriate in criminal harassment, where it remains as well. We have a lot of evidence of that in connection with other offences, and we have evidence of that in the human trafficking offence. It's part of the reason that convictions are so difficult to obtain.

• (1655)

Hon. Rob Moore: Thank you for that. It's very helpful.

Ms. Wood, according to the Canadian Centre for Justice and Community Safety, which reviewed human trafficking for over a decade, “The vast majority...of detected victims of human trafficking were women and girls”—that was 96%—and “one in four [of the] victims were under the age of 18.”

You had a great quote. You said we must ensure we have a justice system, not just a legal system. I think that's something we should all aspire to, that victims feel justice has been done, not that they're within the giant wheels of a legal system that doesn't value them and doesn't prioritize justice. That's certainly what we're working toward here.

With regard to the work that Brave Education is doing with young students, can you expand on that a bit? That jumps off the page at me, about one in four victims being under 18. Your presentation was very good, but I'm interested in hearing a bit more about that work.

Ms. Holly Wood: Yes, absolutely.

I want to add to those statistics that roughly 51% of all human trafficking victims in Canada are indigenous women and girls. We don't necessarily have stark statistics on boys and men, because they're not overly mentioned. It's estimated that up to 25% of victims of human trafficking are boys and men. That is an area of re-

search that Brave Education is pursuing with the help of Ena Lucia as well.

We work in human trafficking prevention education. We work in empowerment. We work in making sure everything is culturally relevant and culturally inclined. We work with communities across Canada, far and wide, in every province, territory and community, to understand what our youth are seeing with respect to what might be deemed human trafficking in terms of exploitation—especially with regard to technology and this manipulation, grooming and recruitment that we see in situations of human trafficking.

We do community consultation across Canada to build education, to understand and to change things in our curriculum to suit those communities with respect to the ever-changing crime of human trafficking.

What we see on the ground in those classrooms is absolutely horrific. There are young women and girls who go missing—especially in indigenous communities—who are suspected of having been trafficked. Many of them are from the inquiry into missing and murdered indigenous women and girls in Canada.

I cannot say enough that what we see on the ground with education is always changing. Our curriculum tries to stay as up to date as possible as things change and as we learn new things every day.

Hon. Rob Moore: I think I'm just about out of time.

Thank you.

The Chair: Thank you, Mr. Moore.

Next we'll go to Ms. Brière for six minutes.

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

My question is for Dr. Benedet.

You wrote in your 2018 submission to this committee, “Defining 'exploitation' in terms of a threat to physical safety is unduly narrow and makes the offence extremely difficult to prove.”

Could you please expand on that and link it with this bill?

Dr. Janine Benedet: Sure. As I said in my introductory remarks, I think there is a reason the definition of exploitation in the Palermo protocol refers to the exploitation of a condition of vulnerability. Indeed, the other offence in the Criminal Code, in section 153, which is drafted in terms of sexual exploitation of a young person, had to be expanded. This idea of limiting it to a relationship of trust, power or authority was simply too narrow. We added to that offence a relationship of dependency and a relationship that is exploitative of a young person.

Trust, power and authority can sometimes be interpreted quite narrowly by the courts. They're sometimes looking for formal relationships of authority. Often, what you really have, particularly with young victims, is the exploitation of a condition of vulnerability.

I mentioned, for example, women and teenage girls with intellectual disabilities, which is an area I've done some work in over the years. In many cases it actually doesn't take a lot of threats, violence or coercion to lure those women and girls into the sex trade. What you have, then, is traffickers selecting their victims based on their vulnerability and marginalization. They don't always need to use violence, because they're choosing victims they can recruit into the sex trade and keep there through other forms of manipulation.

I think it's important to recognize that. The fact that there are so many young people and indigenous women and girls is a reflection of the vulnerability of the victims. The fact is that you don't always need to use threats or violence to lure someone into a trafficking situation.

• (1700)

[Translation]

Mrs. Élisabeth Brière: In that case, do you think that, if we remove the notion of threat to safety and broaden the definition of exploitation, Bill S-224 will reinforce the perception that sex work is a form of exploitation?

[English]

Dr. Janine Benedet: Just to be clear, as I said in the beginning, this applies only where there's a third party involved. Prostitution, the commercial sex trade, can be very exploitative even without a third party involved. Many of the circumstances that drive people into prostitution are hallmarks of exploitation, but what we have here is a situation in which you have to prove that the individual knowingly and intentionally did one of a number of listed acts that caused another person to enter into, or to remain in, the sex trade. There's already a considerable amount of *actus reus* or *mens rea* before we even get to the question of whether the circumstances of those acts are exploitative.

The proposed definition in Bill S-224 says it is a situation in which you cause that person "to provide or offer to provide labour or a service", and you do so with "the use or threatened use of force...another form of coercion...deception...fraud, the abuse of a position of trust, power or authority, or any other similar act." I think it's important to understand what we're talking about here and what has to be proven. This is still not going to be an easy offence to prove, but it's one that will be simpler and more straightforward, and it involves less judgment of whether victims feared for their safety and indeed whether those fears were reasonable.

The Chair: Ms. Wood, you have your hand up.

Is it a point of order, or did you want to add to that question?

Ms. Holly Wood: If I may just add, in support of that....

The Chair: I'll let Ms. Brière decide if she wants you to continue with that.

Mrs. Élisabeth Brière: Yes, that's okay, Mr. Chair.

Ms. Holly Wood: Thank you.

I just want to reinforce what she was saying.

In some research actually conducted by sex workers, Dr. Christine Bruckert, a Ph.D. at uOttawa, specifically stated in her work that the majority of sex workers worked independently. She estimated that between 80% to 90% of sex workers in the sex industry in Canada work independently. They do not have someone telling them what to do or how much to make. They make independent decisions without the threat of force behind them.

Trafficking victims are not as lucky. They are under the control of their trafficker. Victims of trafficking know that there's often a physical and emotional price to pay if they don't bring home enough money, again driving home the fact that in trafficking there's also that third party controlling the actions of an individual. In the instance of sex work, the worker in question has the control and the fully informed choice of when to start, when to end and whom to engage in sexual activity with. Trafficking victims are not that lucky.

The Chair: I think we're out of time, Ms. Brière.

Next we'll go to Mr. Fortin for six minutes.

[Translation]

Mr. Yves Perron (Berthier—Maskinongé, BQ): Hello, Mr. Chair. I'm replacing Mr. Fortin.

Hello to everyone.

I would like to thank the witnesses for being with us and for their very exact testimony.

Ms. Benedet, you quickly set out four points. First, you said that we shouldn't take this issue lightly. Second, you said that, for human trafficking to exist, there had to be traffickers. Your clarification on this point was quite clear. Then you mentioned that currently, only 12% of indictments lead to real charges. So it's a very difficult thing to prove. On this subject, you said something that struck me: we need to focus on the trafficker's activities. I'd like you to expand on that.

What more should be done? Should there be a specific change to the bill in its current form?

• (1705)

[English]

Dr. Janine Benedet: I'll just say that while I appreciate very much the work that Ms. Wood is doing, I certainly don't agree with her analysis that 80% to 90% of the sex trade involves people who are not exploited. Whether a third party is involved or not, there's still a considerable amount of exploitation that typically pushes people into prostitution. That's the reason we have such an overrepresentation of indigenous women and girls in the sex trade.

In direct answer to your question, which is, "What else can we do?", here I would encourage the committee to look at some of the initiatives that have been brought forward by member states in Europe. In particular, the Organization for Security and Co-operation in Europe, the OSCE, has a bureau to combat the trafficking of persons. It does a lot of really excellent monitoring. I would say that of all the member states, France is the country that by far has gone the furthest with this. It's really about bringing our domestic laws into line with our international obligations. We have an international obligation to punish human trafficking, and we have a definition internationally that speaks about the exploitation of a condition of vulnerability.

My worry with Bill S-224—it's an improvement, certainly—is that still we've just moved the focus on coercion, physical force, fear and threats into the definition of exploitation. We got rid of the reasonableness requirement—that's a step in the right direction—but the question will be, well, how do the courts interpret "any other similar act"? Are they going to recognize threats to report you for welfare fraud? Are they going to recognize threats to disclose pornographic photographs to your family members? Are those going to be seen as forms of coercion? Are they going to recognize that kind of emotional manipulation? We had a notorious trafficker in Vancouver who bought a small dog. If the girls were good, they got to take the dog for walks. If they were bad, he would abuse or threaten to abuse the dog.

These are all very effective techniques for keeping women in line. We just have to make sure we're not narrowing the definition in a way that's artificial. To me, the way to do that is to look to our international commitments.

[Translation]

Mr. Yves Perron: Thank you very much, Ms. Benedet. You raised something important when you said that the committee should look at the measures put forward by OSCE member states. Unfortunately, my speaking time is very limited and I won't have time to ask you to explain further. However, I would very much like you to submit in writing to the committee, if possible, two or

three recommendations for measures that you have seen elsewhere, that you consider relevant and that could enrich the committee's thinking.

Before my time is up, I'd like to allow you to clarify something. You talked about the fact that the Palermo protocol and the Criminal Code don't match up. Can you quickly clarify that and tell us what would need to be changed in the bill to make it consistent?

[English]

Dr. Janine Benedet: The Palermo protocol, when it lists the ways in which people can be exploited by traffickers, mentions many of the things that are in this bill—force, coercion, deception and fraud—but it also speaks about the exploitation of "a position of vulnerability". That's the language in the Palermo protocol.

I'm just pointing out that it doesn't appear anywhere in Canada's human trafficking laws, and it's useful, and particularly useful for minor victims of trafficking, where sometimes the grooming and the manipulation mean that you won't see force, coercion, deception and fraud. We're going to have to rely on the courts to say, well, the trafficker is in a position of trust or authority merely because he's an adult, and that's not what we've seen in the exploitation offence in section 153—

• (1710)

[Translation]

Mr. Yves Perron: I apologize for interrupting you, Ms. Benedet, but I want to clarify something before my time is up.

As I understand it, you're clearly recommending that we introduce the notion of exploiting a vulnerability into the bill, through an amendment of some kind. Have I understood you correctly?

[English]

Dr. Janine Benedet: That's right.

[Translation]

Mr. Yves Perron: Thank you very much.

[English]

The Chair: Thank you.

Next we will go to Mr. Garrison for six minutes.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair.

I want to take a step back from the details of the bill and ask Sandra Ka Hon Chu and Elene Lam a question.

The bill seems to presume that while we all know there's a problem with trafficking, the solution is to get more convictions. I think, in your brief that was circulated to the committee, you made some suggestions about what might be more effective in reducing trafficking than focusing on convictions.

Ms. Sandra Ka Hon Chu: Yes. Thank you for that, Mr. Garrison.

I'll take that first, Elene, and then I'll pass it over to you.

We mentioned in particular the decriminalization of sex work, because we think this bill equates sex work with sexual exploitation. Decriminalizing sex work, when you actually do that, allows people who are experiencing abuse and exploitation within sex work to have the benefits of labour and employment legislation, occupational health and safety legislation and all the things that other people within non-criminalized sectors have access to.

I also want to make a quick point about the Palermo protocol, because that was such a big point discussed by the previous speaker. The UN itself has criticized this pre-existing vulnerability condition as being so broad and vague that it will capture anything, including irregular immigration status and people who are managers, supervisors and transporters who provide supportive services to sex workers. I would caution against expanding that notion. The current definition of human trafficking does not require a threat to physical safety. It already includes threats of psychological safety. You already do not require a complainant to testify. It is interpreted so broadly as it currently stands that expanding it to include this will be capturing far more people.

I will turn it over to Elene, who has already shared the experience of Butterfly, but the UN itself has criticized expanding this notion.

Ms. Elene Lam: I think, when we talk about this issue, we need to be clear about what we are going to do here. Are we going to end exploitation and trafficking, or are we going to end sex work? I think this needs to be very clear. I keep hearing the conflation that actually gives a lot of misinformation, that the goal is ending exploitation and not ending sex work, but a lot of recommendations on ending sex work actually create vulnerability and more opportunity for the exploitation of the community, particularly Asian migrant sex workers and racialized sex workers.

When we think about the solution, we need to think about what makes people have the power. We talk a lot about why there is exploitation, which is about the power dynamic and power control. Many of the recommendations, such as keeping more policing in people's lives and more criminal laws, actually make it more difficult for people to protect themselves and to access power. Many of Sandra's recommendations suggest giving the power to the individual.

When I hear the assumption that people cannot make decisions about their own lives themselves, this is extremely violent, because it takes away the agency of people, particularly sex workers. No matter how old the sex worker is, there is a certain agency that people need to exercise. Instead of imposing the moralistic agenda that sex work is bad and they should not do it, we need to recognize and understand the complexity of the relationship. Give people the

power and resources so they can make decisions on their lives, like we've done with domestic violence. We would not have the police go and arrest the husband, saying, "You don't know your husband is abusive. You may find it out five years later and arrest your husband." Why would we do that with sex workers? Instead, you let people know what the power is within the marital relationship. You can have different kinds of support. You can make yourself safe if you want to leave this relationship. What kind of support do you have?

It's similar to sex workers. Assuming that all third parties are dangerous, violent and trafficking is extremely ridiculous. We have workers who do not have credit cards. Their husbands use their credit cards to pay for the bill and are being charged. That is the law and that is what happens now. Now they are not only being charged under sex worker laws. They're being charged by the trafficking law and potentially put away for years in prison.

When you see the picture of who the traffickers are, they are young Black men. When you see the statistics on who are being charged by the third party law, many of them are youth themselves. They help other people. Are we going to see more of our community sex workers and more community racialized people put in prison? Is this something that's a solution? It's not. Here we have a lot of recommendations that are not going to end trafficking. They're not going to end exploitation. They will just make the sex workers, people in the sex industry, more vulnerable, more stigmatized and more marginalized.

That's why, when we ask about solutions, we ask about how we can give power to people and give people their agency. They can tell you what they want and what they need, instead of you assuming that they have no brains and they don't know they are being trafficked. It's about how we can support people to build capacity and have agency to make better decisions about their lives, instead of you putting your moralistic agenda on their lives.

This is what sex workers keep saying: Sex workers should have the right to decide whether they want to continue their work or stop their work. They should have their own say.

Thank you.

• (1715)

The Chair: You still have 30 seconds, Mr. Garrison.

I want to remind all of our witnesses to speak a little more slowly for our interpreters.

You can continue, Mr. Garrison.

Mr. Randall Garrison: I'm not sure what I can do with 30 seconds of questioning here.

However, I want to emphasize this idea that expanding the net and catching more people who may not be involved in exploiting is a side danger of this bill that you're bringing to our attention. We will end up causing prosecutions of people who aren't actually in relationships of exploitation.

Maybe you can comment quickly, Ms. Ka Hon Chu.

Ms. Sandra Ka Hon Chu: I've talked to many sex workers and third parties who are being double-charged with sex work and human trafficking offences. I think it's really problematic to suggest that the low conviction rates are because it's hard to prove human trafficking. They are because police and prosecutors are charging people and expecting people to plead to the charge of sex work. We see that consistently in so many cases, that these charges are eventually withdrawn because people will plead to a sex work offence.

I think you need to reconsider the idea that it's very hard to prove. It's actually because of police and prosecutorial practice.

The Chair: Thank you.

Thank you, Mr. Garrison.

We will go to our next round. We'll do these in four minutes.

We'll begin with Mr. Van Popta for four minutes.

Mr. Larry Brock (Brantford—Brant, CPC): Mr. Chair, it's actually my time.

The Chair: Oh, Mr. Brock. Okay, we'll go to you.

I was told it was going to be Mr. Van Popta, but you can go.

Mr. Larry Brock: Yes, with time permitting, I may share my time with Mr. Van Popta.

I want to clarify a couple of points.

First, thank you, ladies, for your long-awaited attendance to speak on this important issue. I want to push back a bit, with the utmost respect to Ms. Chu and Ms. Lam.

I come from a legal background. I was a prosecutor for almost 18 years. In fact, in my office in Brantford, Ontario, about an hour west of Toronto, I was the designated human trafficking Crown prosecutor. Perhaps my experience differs from other prosecutors across this country. However, I can tell you that the experience Ms. Lam and Ms. Chu described, in terms of prosecutors simply looking for an easy way out and in fact exacerbating the problem with respect to prostitution, has never been my experience. Human trafficking inherently, with the tools we have in the Criminal Code and the vulnerability of the victim himself or herself, makes prosecutions very, very difficult.

When we have bills that give prosecutors some tools to assist in aiding in prosecution—in holding these offenders accountable and sentencing them accordingly—in my view, it's the appropriate thing to do, as legislators. I say that with respect, because my experience and my police service experience perhaps differ from the experiences shared by Ms. Lam and Ms. Chu.

To Holly Wood and to the professor, I have access to a document that was a submission made by the HIV Legal Network and the Butterfly association, the organizations that Ms. Lam and Ms. Chu belong to.

I want to read out a passage, and I'd like to get your observations and thoughts on it.

They state, “Canada’s human trafficking laws have a long history of effectively being anti-sex work laws. Today, prosecutors, police, and policymakers continue to primarily understand human trafficking as sex trafficking, and sex work is often seen as trafficking, regardless of circumstances.”

Starting, perhaps, with Holly Wood, what are your thoughts, please, on that passage?

• (1720)

Ms. Holly Wood: Just bouncing off our ongoing conversation here, I think that we have a lot of social, legal and political biases with regard to sex work and sex trafficking. They are often conflated. I will say that.

However, I think you made a great point in saying that when you are prosecuting the crime of human trafficking, there is a high legal threshold. You have to have victim participation. You have to meet these evidentiary burdens.

In my work with police officers, if they walk into a suspected human trafficking situation...and these are police not only from Ontario, but B.C., Manitoba, etc. This happened in my hometown about a month ago. A 14-year-old girl was suspected to be trafficked in a hotel room. The police officer walked in to investigate, and the girl said, “Oh, no. It's just my boyfriend. We're in a relationship, and we're inviting additional people over.”

Police have to leave. Again, you're talking about legal thresholds. Police look at a situation and say, “Is there fear? This girl seems to be perfectly consenting.” Regardless of the fact that she's a youth, they have to leave that situation. They have to leave piles of files on their desk because of the current high legal threshold with our current Criminal Code provisions regarding human trafficking.

I will let Professor Benedet take it from here.

Mr. Larry Brock: Thank you.

Unfortunately, I don't think I have any time for Dr. Benedet to provide her observations on that.

I apologize to you, Professor, and I apologize to my colleague, Mr. Van Popta, for not giving him any time to ask a question.

Thank you.

The Chair: Thank you, Mr. Brock.

We'll now go to Ms. Diab for four minutes.

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

Welcome, witnesses.

Let me ask a question of Ms. Ka Hon Chu. From your experience with the Asian and migrant sex workers, the workers are obviously racialized but also from very vulnerable communities across the country.

Can you tell me about your experience? You started to talk about policing and prosecutorial practices. What recommendations would you have for what you would like to see done with respect to this bill, one last time?

Ms. Sandra Ka Hon Chu: Thank you.

As we noted in our joint submission, I would like to reject the bill in its entirety. In 2012 there was a subjective requirement with regard to human trafficking. That was changed to this reasonable person standard because of the notion that it was too hard to convict if you required complainants' testimony.

I can't emphasize this enough: You do not require complainants' testimony under this current version of the law. Reject Bill S-224 in its entirety. You need to support, as Elene said, non-carceral forms of safety. People do not require more policing. We put hundreds of millions of dollars into human trafficking initiatives, and we have allowed more police and prosecutors to flourish in this anti-human trafficking world, but that hasn't translated into more safety. We care about the safety of migrant workers and people who are experiencing exploitation and abuse, but you need to support them so they can obtain decent housing, access to income supports, access to child care, access to housing—all the things that, as I'm sure the other witnesses will agree, are helpful in terms of supporting people.

I also want to provide my time to Elene to share more of the experiences of Butterfly, their first-hand experiences of policing in the context of human trafficking.

Ms. Elene Lam: I think what Butterfly has been doing is to build community support to help community members deal with any kinds of issues they are facing, including in their workplace or in terms of exploitation or intimate partner violence. We work with the community members in terms of what they want—whether they want to leave their partner or protect themselves or learn how to negotiate, or whether they want to change their working environment. Centring the voice and agency of the workers is very important, particularly because there is some community support and people know each other and know whether the conditions are good, so we also work with different service providers. Also, as Sandra said, having a structural system that supports income and housing status is also very important for people.

• (1725)

Ms. Lena Metlege Diab: Ms. Lam, what is your fear with this bill, then, with regard to the—

Ms. Elene Lam: We see that sex workers who help other people to do advertising or help family members to communicate are already being charged under the law related to sex work. With this, not only will they be charged under the sex worker law, but they will also be charged under the trafficking law. They are facing 14 years in prison. This law covers not only sex workers. For any kind of racialized people, we see how racial profiling is happening now. When prosecutors and police have so much power, they can interpret this law in whatever way. Not only people who work in the sex industry but even people in intimate partner relationships or in any kind of working relationship may also be charged as traffickers. We see that racialized people are being targeted, and we see police already targeting sex work. This will become a powerful tool for the police to harass the sex worker and charge the sex worker, even though no one wants them to be in their life and no trafficking or exploitation is going on. This actually makes them more vulnerable, because their workplace is being raided and the place is being shut down.

Thank you.

The Chair: Thank you, Ms. Diab.

Next we'll go to rounds of two and a half minutes, beginning with Monsieur Perron.

[*Translation*]

Mr. Yves Perron: Thank you very much, Mr. Chair.

I will try to be brief because two and a half minutes is not a lot of time.

Ms. Wood, I would like you to please give short answers.

You spoke earlier of a high rate of people in the field who are completely independent. What would you say is the ratio of people who are trafficked to those who do it willingly?

[*English*]

Ms. Holly Wood: That research has not necessarily been done. I think that when it come down to independence, we have to remember the Bedford case, which allows sex workers to hire drivers, security guards and individuals to make sure they make it home safe at the end of the day. It would be my hope that with proper judicial training a judge would be able to differentiate, but I don't think those statistics necessarily exist.

[*Translation*]

Mr. Yves Perron: Thank you very much.

Ms. Ka Hon Chu or Ms. Lam, I don't know if either of you can answer the question. What do you think the ratio is? You seem to be saying that many of these people are consenting.

[English]

Ms. Elene Lam: I think this is the question you asked: How many people in marital relationships feel forced and in a relationship they feel puts them in vulnerable situations? I think this is very difficult, because this is a power dynamic. Our focus is to see how our intervention actually supports people so they can have more power resources and can negotiate better conditions, no matter if it's in their intimate relationship or their workplace. That's why the income support, like social support, particularly from the community, is a very important way to make people.... We see so many—

[Translation]

Mr. Yves Perron: Thank you very much, Ms. Lam. I apologize for interrupting, but I only have 30 seconds left.

At the end of the day, that's not an easy question to answer. That's the point I was trying to make. It's difficult for us.

The aim of the bill is to protect vulnerable people. Earlier, it was suggested we introduce the notion of exploiting a vulnerability, rather than rejecting the whole bill.

Do you think that including this notion could improve things?

[English]

Ms. Sandra Ka Hon Chu: Is that a question for the two of us?

No. I don't think it would improve capturing exploitation. Improving capturing exploitation would mean allowing people in the sex industry to have access to labour rights, employment rights and occupational health and safety rights. You're just muddying the waters right now if you add that condition.

The Chair: Thank you.

We have Mr. Garrison for two and a half minutes.

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

Again, for Elene and Sandra, is it fair to say that your argument in your brief is that if we decriminalized all the aspects of sex work that remain criminalized in this country, we would actually reduce trafficking and the dangers of trafficking?

• (1730)

Ms. Elene Lam: Yes, definitely.

When we work with the community, that fear of the police and law enforcement is the major source of what might create unsafe working conditions and create vulnerability in the workers. Take away the criminal law, including sex workers, clients and third parties, so that they can have a support system and work safely. It's very important.

The other thing, of course, is that status for income support is another kind of very important measure to make it so people can have safe working conditions. Take away the criminal law through the decriminalization of sex work and do not assume that the third party is exploiting and trafficking. This is also very important.

Ms. Sandra Ka Hon Chu: Can I just jump in quickly?

The experience in New Zealand is instructive, because they decriminalized in 2003. Sex workers there have access to labour tribunals, human rights tribunals and all the protections that other people in other legal decriminalized sectors have access to. They have brought people who have exploited and abused them to those tribunals to fight for their rights. I think that is an instructive example.

Mr. Randall Garrison: Thank you, Mr. Chair. I believe my time has expired.

The Chair: Thank you, Mr. Garrison.

I want to thank all of the witnesses for your very valuable testimony. I appreciate your coming. I apologize once again for cancelling the last time.

This was a pretty fulfilling meeting. I think everybody got their questions in and pulled some answers out of them. Thank you.

I have just one piece of committee business for all the members. I believe it is to pass the budget for the study on S-225. Is everyone okay with that?

Some hon. members: Agreed.

The Chair: Thank you. That's it. We will adjourn, and I'll see you on Wednesday.

Thank you.

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