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Committee Brief – Bill C-20 (protection of children and other vulnerable persons) and the Canada Evidence Act

Prepared By: Cherry Kingsley, Special Advisor, International Centre to Combat Exploitation of Children regarding the Commercial Sexual exploitation of Children

Dear Committee Members:

The Commercial Sexual Exploitation of Children (CSEC) in Canada is an issue that is both a grave concern and prominent in our society. There are no clear estimates regarding the numbers of children involved in the various aspects of the commercial sex industry, whether it be trafficking, pornography or prostitution. While considering a legal response to protecting those most vulnerable to all forms of CSEC, it is important to take into account the vulnerabilities of all young people, and in particular the voices and experiences of those children and youth that have direct experience with CSEC. Long have we chosen to punish, shun and shame those young people who have been exploited in the commercial sex industry, preferring to address them as “community nuisances” or throwaways, or worse, criminals. The fact that we have no clear estimate of the numbers of children and youth involved is an indication of their status in our communities. The most visible aspect of the sex trade, street prostitution is a rather grim example of that sentiment, with young people being bought and sold openly on the streets of all of our major Canadian cities.

Bill C-20 addresses both the culpability of adults, while dismissing the historical arguments for the “appearance of consent” as justification or defense of those that buy and sell children or use children and youth in pornography. The principle of community well being and standards with regards to child pornography would serve well in challenging communities to address all forms of CSEC, including the often overlooked culpability of those that facilitate and profit from various aspects of CSEC including those Internet Service Providers that are grossly negligent in monitoring content while continuing to profit, and those at the community level that facilitate child and youth exploitation in prostitution in their hotel, restaurant or bar establishments.

Bill C-20 creates the necessary shift, both attitudinally and systemically towards a right based approach to CSEC with specific reference to the UNCRC in it’s preamble, as well as an emphasis towards understanding the circumstances and relationship of those children that are or have been exploited. As with all legislation there are gaps, most noticeable, addressing the needs of children and



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youth who have been exploited. While Bill C-20 makes it an offence to sexually exploit young people, the *Criminal Code of Canada* still criminalizes children for their exploitation. As well, Bill C-20 provides no real legislative mandate and obligation to either federal and/or provincial departments to provide real protection to those children who are vulnerable to or have been commercially sexually exploited with very little targeted resources and services that directly address the prevention, intervention and exiting needs of children and youth in and from the sex trade specifically. While an act to amend both the *Criminal Code* and *Evidence Act* cannot specifically address services to children directly, especially in provincial jurisdictional areas like child protection, it does influence how we address the issues and those most affected, with how it is both promoted and implemented.

In this brief, the International Centre to Combat Exploitation of Children (ICEC) will emphasize issues regarding age of consent, child pornography, protection vs. punishment/enforcement, the role of the community, the role of the UNCRC and other international instruments that Canada is a current party to.

Age of Consent

Currently in Canada the controversy and debate surrounding the age that a child can consent to sexual activity is surrounded by two illusory arguments.

The first being that children and youth over the age of 14 are NOT protected by law from sexual exploitation. This is true in how laws are enforced, not because the law does not provide protection. Current legislation, as well as those amendments proposed in Bill C-20 protects all those children and youth under the age of 18 from all forms of CSEC. There is a perception in Canada that children are made vulnerable to abuse and exploitation because of the age of consent, the reality is that children and youth are vulnerable to sexual abuse and exploitation because adults perpetrate abuse against them. Particularly, those made vulnerable because of race, gender, poverty, history of abuse, homelessness, circumstance, and the acceptance of those that “deserve abuse” and those that “deserve” protection. The perception that the age of consent is a factor for abuse, assumes that the appearance of consent makes what is not legal, morally okay.

It is accepted by society, that there are circumstances of the child wherein sexual exploitation is acceptable and that the onus of the protection lies with the child him or herself and not with the perpetrating and/or surrounding adults and community. This is particularly true for those children and youth exploited in prostitution.



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The other illusory debate point is that the appearance of consent is an acceptable defense in certain circumstances of sexual abuse and exploitation. This belief may reflect a wider attitude towards the continuum of sexual offenses committed against children. Under no circumstances can a child or youth consent to his or her abuse. It is a non-issue in the dialogue and protection of children and youth from all forms of sexual exploitation.

To debate the appearance of consent in cases of CSEC likens the argument to the days when what a woman wore justified rape. If we are to accept that children and youth lack choice and are made vulnerable to exploitation due to poverty, homelessness, racism, gender bias, homophobia, and a history of abuse, then it becomes necessary to challenge the perception that men are somehow lured into exploiting. If a child were to “ask” the community for exploitation, it would be up to the adults present to use common sense and their real opportunity for choice and say no. If we accept that CSEC is the utter absence of the most basic of human rights for children, then an effective response would be to strengthen their right to protection and authority over their bodies, while holding those that would perpetrate crimes against them, accountable.

ICEC supports the current age of consent. ICEC supports Bill C-20’s efforts to examine the circumstances and relationship with the perpetrator of the young person rather than conclude that young people do not own their own bodies. With support, protection, education and an environment of rights as well as all efforts to address circumstances of child and youth commercial sexual exploitation in our communities, children can grow in an environment of safety and choice.

Child Pornography

Much debate happened in Canada around child pornography during the Robin Sharpe case in the Supreme Court of Canada. Many were disappointed with the seeming inability of both the court and government to step in and denounce all instances of child and youth pornography. Bill C-20 addresses the issue of “acts of imagination” by measuring the benefit to the community, the potential for harm, and freedom of imagination.

ICEC likens child pornography, and stories and illustrations that invite abuse and violence against children to hate crimes. Although strong in wording, Hate Crime is appropriate because it incites abuse and violence against a specific, targeted segment of the population that is not offered the same rights and freedoms of



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others. If we were to attempt to debate the validity of “stories and illustrations” or publications that promoted the same level of abuse and violence against say “seniors”, that debate would not happen. At times it seemed that the debate itself gave a forum to those that would promote the exploitation of children.

Wherein the community, or a segment of the community would use their rights or advantaged opportunities to exploit anybody, it is absolutely the obligation of the government to step in and unequivocally protect all children from sexual abuse, exploitation, harm, and even the threat of sexual abuse, exploitation and harm. It is important in the event of the passing of Bill C-20 that the principle of human rights for all children, protection from all forms of abuse, exploitation and harm, and statements that make clear the unacceptance of Hate Crimes and Literature that promote targeted victimization of one of Canada’s most vulnerable population be made clear to all members of our society. Children do not have a voice or a vote, nonetheless, they are citizens of our country, and the Charter of Rights and Freedoms should apply and be accessible.

Internet Service Providers provide a forum for discussion, the sharing of goods, services, information, products, arts, music and pictures. Since the Second World Congress Against Commercial Sexual Exploitation of Children it is estimated that 17,000 pornography websites are created daily worldwide and the sex trade in the United States generates more revenue than basketball, baseball and hockey combined. Internet Service Providers have a responsibility to develop, monitor and enforce content guidelines with respect to child pornography. With the easy and widespread access to child pornography on the internet and current technology like digital cameras child pornography has become a cottage industry in that anyone can access, produce, create, distribute and sell sexual images of the rape, torture and abuse of children anonymously. As Internet Service Provider’s profit by providing public with access to these venues there is a responsibility to create guidelines and mechanisms to enforce those guidelines to protect children and stem the widespread distribution of child pornography through their systems.

ICEC urges that resources be allocated to the investigation, monitoring and enforcement of those provisions in Bill C-20 that address the growing child pornography trade, with particular attention and emphasis within internet and computer technology. ICEC emphasizes transnational and international agreements, cooperation with international investigations, and inclusion and involvement of the private sector, particularly those companies that



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profit by providing public venues to those that exploit children and youth.

Protection vs. Punishment/Enforcement

Canada has long criminalized young people in the sex trade. Historically, children and youth involved in prostitution were not considered abused or exploited but criminally responsible for their “behaviour”. Police enforcement centered around complaints issued by the community in terms of nuisance, property crimes, condoms on the ground, high traffic, and general annoyance at the visibility and unattractiveness of children and youth involved in the street sex trade.

In Canada there has been legislation developed at the provincial level that allows for the forced confinement of children deemed “in need of protection”, most notably in Alberta. Although in direct contradiction to the Charter of Rights and Freedoms, secure care legislation provides the public with a false sense that young people who are or have been commercially sexually exploited are secure and being provided with the care that meets their needs, while the public is protected from having to deal with CSEC in their communities in a real way. Although there has been some evaluation as to the effectiveness of secure care facilities, there is no real evidence that it provides young people with the resources to break free from exploitation, that it is cost effective, that it protects the community, that it addresses the underlying causal factors of exploitation, that it is the best and most humane way to provide care to those young people, and that it works.

Internationally, much attention has been devoted to the development of investigation and enforcement strategies. Although the First and Second World Congresses Against Commercial Sexual Exploitation brought much needed global attention to the issues, government commitments centered on the allocation of resources to governmental departments and bureaucracies and yet at the community level very little resources went to the direct enforcement and protection of children and youth exploited in various aspects of the sex trade. Needless to say, governmental commitments to enforcement strategies offered little to young people in terms of services, resources, interventions, and support to exit. As well, at the community level, enforcement often relied solely on the testimony of the child without safety or support and often resulting in further victimization and risk to the young person. Bill C-20 offers child and youth victims of commercial sexual exploitation an opportunity to testify in safe environments and protects them from cross examination by their abusers



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increasing the likelihood that young people will be in a position to offer testimony. It is still imperative that enforcement finds alternative investigatory and evidentiary procedures and mechanisms that do not only rely or ask the child or youth to be responsible for both their own protection, and the protection of the community or further victims.

ICEC supports the de-criminalization of children and youth exploited in all aspects of the commercial sex trade. Furthermore, it is imperative that resources be devoted to services that directly intervene and support young people exploited in the sex trade, as relying solely on enforcement risks further isolating and marginalizing young people increasing the threat of harm. ICEC also urges the federal task team responsible for investigating child pornography to be allocated increased resources.

The Role of the Community

Within the community children and youth are often commercially sexually exploited in a wide number of very public and private venues. Stereotypically the public perception of those that profit from the buying and selling of children for sex is a pimp. The reality is that the child sex trade is a multi-billion dollar industry where many facilitate and profit either directly or indirectly. Many nightclubs, restaurants, taxi companies, bathhouses, bars, hotels, brothels, massage parlours, public washrooms and parks directly facilitate and profit from the child and youth commercial sex trade. Indirectly whole community economies can be directly affected by the sex industry while the community facilitates through silence and shaming the young people.

It is a first step to engage those businesses that thrive on the income generated by the buying and selling of children and to commit them to stop. It is a second step for the community most affected by the commercial sex industry to attempt to create safe environments and easily accessible services and opportunities for young people at risk, and those exploited. Furthermore, each member of the community has various opportunities to intervene in supportive ways by questioning the well being of those young people engaged in the sex trade. Opportunities like the 7-11 clerk asking a young person out at three am buying a package of condoms if they are okay. Opportunities exist for the desk clerk of a hotel checking in an adult and young person late at night, to ask that young person if they are okay. It is time the community started to ask questions and to challenge the choices and behaviours of the adults who purchase sex from children and not judge or marginalize those children abused and exploited.



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ICEC encourages the development of a public awareness campaign against CSEC as part of the implementation of Bill C-20. As an integral part of the awareness campaign it is important to encourage community to development safe supportive strategies that challenge those businesses in the community who profit, while designing supportive, safe services and outreach designed to create safe interventions, exits, and alternatives to those young people at risk or currently commercially sexually exploited.

The Role of the UNCRC and Other International Instruments

It is imperative that Canada ratifies the United Nations Convention on the Rights of the Child Optional Protocol on the Sale of Children. Not only does it provide clear definitions of the prostitution, trafficking and pornography of children, it provides explicit definition of those in need of protection and offers a clear guideline for the development of legislation. In ratifying Canada states their commitment to ending the buying and selling of children for sex and profit, not only at the domestic level, but worldwide. Furthermore, it offers Canada the opportunity to cooperate with other leading countries in promoting the global ratification of the UNCRC optional protocol.

Canada has long been a leader in addressing CSEC as we were host to the first ever Out From the Shadows - International Summit of Sexually Exploited Youth, national campaigns funded through Justice Canada, and promotion of the UNCRC as a tool to combat CSEC with a child rights approach.

Canada is party to the ILO protocol 182. This protocol allows is a tool to challenge those companies, businesses, and working environments that facilitate and profit from the child sex trade both internationally and here at home.

Canada is also party to the optional protocol on Trafficking in Persons, obligating Canada to develop mechanisms to address the trafficking of children in a way that reflects the understanding of the child as victim, while maintaining the integrity of our borders.

Conclusion

With available international instruments that Canada is current party to, and obligated by, it is important that government develop practical applications for



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the domestic and international implementation of these instruments as tools for real change. It is time we get beyond voicing outrage and to practical solutions that stem the now growing abuse and torture of children and youth for sex and profit. Practical solutions must include strong legislation that protects children and youth and holds those responsible for the rape and torture of children accountable. We must stop criminalizing and jailing our children and youth.

As a country we must commit real resources to prevent and intervene in this modern form of child slavery that exists in our communities. As a people, we must help those children that have been abused, exploited and tortured to escape and to heal. We must include the voices of those exploited children and youth as they hold us accountable to the promises we have made to the world. Canada has long held a proud reputation as a world leader and advocate for child rights. If we think we are doing only what is right for children we miss the opportunity to understand that we are healing what is weak in us that would allow the commercial child and youth slave trade to not just survive in shadow, but thrive in our country and in our world. By engaging young survivors of commercial sexual exploitation in the development of solutions, we find inspiration and redemption in the idea that however brutal their experiences, that they would believe it could be different. As a country, as humans, we must honor that hope.