



## **Submission of the Evangelical Fellowship of Canada to the Standing Committee on Justice and Human Rights on *The Protection of Communities and Exploited Persons Act (PCEPA)***

February 25, 2022

The Evangelical Fellowship of Canada (EFC) is the national association of evangelical Christians. Since 1964, the EFC has provided a national forum for Evangelicals and a constructive voice for biblical principles in life and society.

The EFC has long expressed concern for those who are prostituted. Our engagement is grounded in biblical principles that compel care for the person and uphold human dignity. These principles inform the duty of care we owe one another as human beings.

Prostitution violates human dignity and is an affront to equality between the sexes. It is grounded in the long-held belief that men are entitled to paid sexual access to the bodies of women and children.

We seek the well-being of those who are being prostituted and of all those who are vulnerable to exploitation: to ensure their needs are met, to uphold human dignity, and to allow for safe, secure, dignified options. When there are Canadians living in poverty, unable to afford housing, experiencing racism and marginalization or lack of social support, we must respond with genuine options to address those needs, rather than accepting the sale of the person's sexuality as the answer.

The EFC has made submissions to parliamentary committees on prostitution and the related issue of human trafficking numerous times, including on Bill C-36.

The EFC acted as an intervenor before the Supreme Court of Canada in *Bedford* and has applied to intervene in *Canadian Alliance for Sex Work Law Reform v. Attorney General of Canada*.

One of the EFC's goals is to work in broad coalition toward the elimination of all forms of sexual exploitation in Canada.

### **Introduction**

Although it is well past the five-year mark for the review of PCEPA and its provisions, a full study and fair assessment is not possible at this time because the law has not been fully implemented or evenly enforced across the country.

PCEPA was crafted after a Nordic or Equality Model of law and policy on prostitution. There are three elements to this approach: (i) criminalization of sex buying and pimping, (ii) significant, long-term investment in exit supports and services, and (iii) public awareness and education campaigns. These three elements are intended to work together, but we have not seen the full implementation of this approach.

The Equality Model calls for robust exit supports and services for individuals wishing to leave prostitution. Although there was an initial financial investment when PCEPA came into force, that funding was not as robust as what is required, and it has not been sustained. The Equality Model seeks to provide options for individuals in prostitution. The intention is not to remove the livelihood of vulnerable persons without providing economic and other supports.

The third component is public education, to raise awareness of the laws' provisions, objectives, and approach. In Sweden, the 10-year review of the Nordic Model found a marked change in attitudes about buying sex and strong public support for the law.<sup>1</sup> One of the keys to these changes was the public education campaign that buying sex was not just illegal, it was unacceptable, it was violence against women and contrary to gender equality.

Education about the law would have helped Canadians, law enforcement, crown attorneys and others within the justice system, as well as those who are being prostituted, to understand what is legal and illegal, and the overall intent of PCEPA. Testimony at this committee has indicated some sex workers, for example, have the misconception that PCEPA prohibits them from working in a collective or paying someone to provide goods or services to them, such as a driver, security or receptionist.

This is a failure of public education.

### **Vulnerable Populations**

Prostitution is not merely a series of interactions between purchaser and purchased that exist independently of one another. Prostitution is part of a system of exploitation that is based on structural inequalities and preys on vulnerabilities.

An individual's entry into the system of prostitution is substantially influenced by risk factors and socioeconomic factors that create vulnerability. Women and youth who experience poverty, homelessness, violence, racism and marginalization are especially vulnerable to exploitation. Other risk factors include mental health issues, disability, family breakdown or disruption, early home leaving, being in government care, or a history of childhood abuse or neglect.

The vast majority of victims in sex-trade-related offences are women, primarily young women. The most recent statistics, since PCEPA was introduced, indicate that 94% of victims are

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<sup>1</sup> <http://www.government.se/sb/d/13420/a/151488>

women. More than 4 in 10 victims in violent offences involving at least one sex-trade-related offence are 12- to 17-years old.<sup>2</sup> The median age of women victims after PCEPA is 20 years of age, an increase from 17 years of age before PCEPA.

Indigenous women and girls are highly over-represented among victims and uniquely vulnerable to exploitation due, at least in part, to the lasting effects of colonization and the residential schools system.<sup>3</sup> Indigenous women and girls are only four percent of the population, yet they are the majority of those trafficked and prostituted on the streets of Canada.<sup>4</sup>

In a study of sexual exploitation and trafficking of Aboriginal persons in Winnipeg, the average age of entry into sexual exploitation was 13.8 years of age and most participants remained entrenched an average of 9.75 years.<sup>5</sup>

The significant and particular harms of colonization for Indigenous women and girls began at first contact. As the report *Shattered Hearts: The commercial sexual Exploitation of American Indian Women and Girls in Minnesota* states:

From the times of earliest exploration and colonization, Native women have been viewed as legitimate and deserving targets for sexual violence and sexual exploitation.<sup>6</sup>

Anishnaabe and Cherokee survivor, researcher and professor Dr. Christine Stark explains that European colonizers brought their system of prostitution and immediately embedded it into the colonies, and into the cultural structures they were implementing throughout the land. The first victims of that system were Indigenous women and girls.<sup>7</sup> The targeting of Indigenous women and girls for sexual exploitation began with colonization and continues to this day.

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<sup>2</sup> <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00010-eng.htm#r11>

<sup>3</sup> Boyfriend or Not – Sexual Exploitation and Trafficking of Aboriginal Women and Girls in Canada: Report to the Embassy of the United States, Native Women’s Association of Canada, October 17, 2014, [https://www.nwac.ca/wp-content/uploads/2015/05/2014\\_NWAC\\_Boyfriend\\_or\\_Not\\_Report.pdf](https://www.nwac.ca/wp-content/uploads/2015/05/2014_NWAC_Boyfriend_or_Not_Report.pdf)

<sup>4</sup> Boyfriend or Not – Sexual Exploitation and Trafficking of Aboriginal Women and. Girls in Canada: Report to the Embassy of the United States by the Native Women’s Association of Canada, October 17, 2014: [https://www.nwac.ca/wp-content/uploads/2015/05/2014\\_NWAC\\_Boyfriend\\_or\\_Not\\_Report.pdf](https://www.nwac.ca/wp-content/uploads/2015/05/2014_NWAC_Boyfriend_or_Not_Report.pdf); p.5

<sup>5</sup> Protecting Sacred Lives, [http://www.firstpeoplesgroup.com/mnsiurban/PDF/women\\_children\\_youth\\_families/AMR\\_Planning\\_Protecting\\_Sacred\\_Lives\\_\(2012\).pdf](http://www.firstpeoplesgroup.com/mnsiurban/PDF/women_children_youth_families/AMR_Planning_Protecting_Sacred_Lives_(2012).pdf)

<sup>6</sup> Shattered Hearts: The commercial sexual exploitation of American Indian women and girls in Minnesota; <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1027&context=humtraffconf>; p.5

<sup>7</sup> World Without Exploitation Now & Next Speaker Series: Indigenous Survivors Speak Out, November 12, 2020; <https://vimeo.com/showcase/8219815/video/478627166>

In the case of Indigenous women and girls, the assumption that men are entitled to paid sexual access to the bodies of women and girls is also deeply rooted in racist stereotypes, beliefs and presumptions that have been present since first contact.

Canada can and must do better than to accept prostitution as a solution to poverty, racism, and a range of other underlying social issues.

The question of choice in the system of prostitution is not straightforward. It is for this reason that our laws and policies related to prostitution must focus on the one party in the transaction that is certain to be making a free choice – the sex buyer. In focusing its attention on the sex buyer and on those third parties who would profit from the exploitation of others, PCEPA recognizes and responds to the difficulty of assessing and ensuring voluntariness within the system of prostitution. It seeks to “denounce and prohibit the demand to prostitution...”<sup>8</sup> because it is the demand for paid sex that funnels women into prostitution and fuels sex trafficking.

### **Prostitution is an exploitative system**

Our laws and policies must deal effectively with individual acts of exploitation, but also take into account the systemic nature of commercial sexual exploitation and the factors that make women and children, in particular, vulnerable to it. While there are transactions within that system that may be consensual and non-coercive, these are nonetheless situated within a system of exploitation. PCEPA recognizes the systemic nature of prostitution and maintains that “the best way to avoid prostitution’s harms is to bring an end to its practice.”<sup>9</sup>

As the Department of Justice Technical Paper on PCEPA notes, “Prostitution is an extremely dangerous activity that poses a risk of violence and psychological harm to those subjected to it, regardless of the venue or legal framework in which it takes place, both from purchasers of sexual services and from third parties.”<sup>10</sup> It is not the laws that are responsible for the violence in prostitution. The source of the violence is the buyers, pimps and traffickers who prey on and abuse prostituted women. A survivor once told EFC staff that there is danger wherever there are closed doors – whether they are car doors, hotel doors, brothel doors or a home’s doors; where there is prostitution, there is violence.

Violence is inherent to the system of prostitution, and we do not believe that violence can be reduced to acceptable levels.

In Germany, where prostitution has been legal since 2002, incidents of attempted murder of prostituted women increased between 2002 and 2017. Women in Germany’s mega brothels, which are equipped with security cameras and personnel and panic buttons, continue to suffer

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<sup>8</sup> <https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>

<sup>9</sup> <https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>

<sup>10</sup> <https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html#sec2a>

violence. The legalization of prostitution did not eliminate the murders or attempted murders of women in prostitution in Germany.<sup>11</sup>

Discussions about reducing the violence experienced by individuals in prostitution should not be centered around the prostituted making better, safer assessments of buyers or choosing safer locations, because that puts the responsibility for evading or reducing the violence on the victims, and not on the perpetrators. PCEPA does the logical and just thing in targeting the source of the violence experienced by women in prostitution – the buyers and pimps.

Witnesses before this committee have testified that PCEPA is killing sex workers.<sup>12</sup> This is not borne out by available data, which points to a significant decrease in homicide victims related to the sex trade after PCEPA came into force, despite overall homicides increasing.<sup>13</sup> Furthermore, the perpetrators were less commonly sex buyers or gang members after PCEPA, and more likely to be strangers or acquaintances.<sup>14</sup>

The exploitation of women and girls in the commercial sex industry is a significant form of systemic violence against women. It is a significant abuse of human rights. And the attitudes and beliefs that give permission to and perpetuate this exploitation and violence are a threat to the safety of all women and girls.

### **Canada's international commitments**

PCEPA moves Canada closer to fulfilling its international commitments.

The UN *Convention for the Elimination of All Forms of Discrimination Against Women* requires signatories to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”<sup>15</sup>

As international bodies and NGOs maintain, it is crucial to address the demand for trafficked women and girls because it is this demand that fuels and supports sex trafficking. Decreasing the demand for paid sex, then, is a crucial element of any efforts at eliminating sexual exploitation. Several UN instruments obligate countries to address, reduce or eliminate demand, such as Article 9.5 of the Palermo Protocol,<sup>16</sup> the United Nations General Assembly resolution 61/144 on trafficking in women and girls,<sup>17</sup> and the *Recommended Principles and*

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<sup>11</sup> <https://digitalcommons.uri.edu/dignity/vol6/iss1/4/>

<sup>12</sup> Testimony of Ms. Elene Lam, Butterfly (Asian and Migrant Sex Workers Support Network), <https://www.ourcommons.ca/DocumentViewer/en/44-1/JUST/meeting-4/evidence>

<sup>13</sup> “Crimes related to the sex trade: Before and after legislative changes,” Statistics Canada, June 21, 2021, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00010-eng.htm#r11>

<sup>14</sup> <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00010-eng.htm#r11>

<sup>15</sup> <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>, Article 6

<sup>16</sup> <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

<sup>17</sup> [http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_61\\_144.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_61_144.pdf)

*Guidelines on Human Rights and Human Trafficking* by the Office of the High Commissioner for Human Rights.<sup>18</sup>

The *UN Convention for the Elimination of All Forms of Discrimination Against Women* and the *Palermo Protocol* require that signatories address underlying vulnerabilities such as poverty and lack of opportunity. When *PCEPA* was introduced, Canada made an initial financial commitment to support services for individuals exiting prostitution, which has already been disbursed. Further investment in exit support services is needed.

### **The intersection of prostitution and trafficking**

Prostitution and sex trafficking are not the same, but they are inextricably linked.

The demand for paid sex is the direct cause of commercial sexual exploitation of women and children. Traffickers are motivated by profit, and unrestricted demand increases the potential for profit. As long as there is a demand for paid sex, there will be traffickers to guarantee a steady supply of women, girls and boys are available for purchase. If there was no demand for paid sex, traffickers would not have a financial incentive to sexually exploit those who are vulnerable.

The majority of cases where human trafficking specific charges have been laid in Canada are domestic and involved sexual exploitation.<sup>19</sup> In Canada, it is primarily Canadian women and girls who are being trafficked for commercial sexual exploitation. As Dr. Melissa Farley has said, “Prostitution is where human trafficking happens.”<sup>20</sup> This is not conflation. It is reality.

It is vital, then, that any assessment of *PCEPA*’s effectiveness and impact consider the intersection between human trafficking and prostitution. *PCEPA* must be evaluated in light of – and as part of – the government’s commitment to fighting human trafficking.

### **Effects of decriminalization**

Globally, neither decriminalization nor legalization has been capable of safely carving out consensual, non-coercive interactions from the broader system of exploitation.

We know from other jurisdictions that when prostitution is legalized or decriminalized, the sex industry expands, and so does trafficking. When the prostitution industry flourishes, rates of trafficking of women and children into the commercial sex trade increase. A study of European cross-country data reveals that human trafficking is most prevalent in countries where

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<sup>18</sup> <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>19</sup> <https://www150.statcan.gc.ca/n1/pub/85-005-x/2021001/article/00001-eng.htm#r1>

<sup>20</sup> Presentation at the End Sexual Exploitation Global Summit, April 5, 2018.

prostitution is legalized.<sup>21</sup> Another study of European Union data finds that, when other factors are controlled, legalized prostitution increases the rate of human trafficking.<sup>22</sup> An empirical analysis of 150 countries concluded that “On average, countries where prostitution is legal experience larger reported human trafficking inflows.”<sup>23</sup>

In contrast, France, which implemented its version of the Equality Model in 2016 has noted a 54% increase of criminal proceedings for pimping and trafficking in human beings, a 7-fold increase in the number of identified victims of trafficking in human beings, and nearly 5,000 sex-buyers arrested since 2016.<sup>24</sup>

It is worth noting that women’s groups and coalitions of former prostitutes in countries like New Zealand and Germany, where prostitution was decriminalized or legalized are beginning to call for legal reform, saying that decriminalization has failed them.<sup>25,26</sup> They argue that their working conditions and their safety didn’t significantly improve, nor was the stigma they experienced as prostitutes reduced.<sup>27</sup> Police in Christchurch, NZ have expressed concern over the “fairly common” victimization of prostituted persons in the capital.<sup>28</sup>

The source of violence and stigma is not the laws a given country has on paper. Rather, it is the belief that men are entitled to paid sexual access to women’s bodies, and that this paid access entitles men to do what they want. If those beliefs are not challenged, the misogynistic attitudes and behaviours that are the source of the stigma and violence will persist.

Canada must not remove measures to reduce the demand for paid sex, such as PCEPA, or the incidence of sex trafficking would surely increase to meet an unrestricted demand.

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<sup>21</sup> Niklas Jakobsson and Andreas Kotsadam, “The law and economics of international sex slavery: prostitution laws and trafficking for sexual exploitation,” *European Journal of Law and Economics*, February 2013, pp 87-107.

<https://link.springer.com/article/%2010.1007%2Fs10657-011-9232-0>

<sup>22</sup> Rachel Tallmadge and Robert Jeffrey Gitter, “The determinants of human trafficking in the European Union,” *Journal of Human Trafficking*, vol. 4, issue 2, 2018.

<https://www.tandfonline.com/doi/full/10.1080/23322705.2017.1336368>

<sup>23</sup> Seo-Young Cho, Axel Dreher and Eric Neumayer, “Does legalized prostitution increase human trafficking?” *World Development*, January 2013, pp 67-82. <https://www.sciencedirect.com/science/article/pii/S0305750X12001453>

<sup>24</sup> <http://www.fondationscelles.org/en/news/295-the-interministerial-evaluation-mission-of-the-law-of-13-april-2016-shows-that-when-the-law-is-fully-implemented-it-works?eType=EmailBlastContent&Id=511f571b-816e-41ce-aca6-aa19311077ea>

<sup>25</sup> <http://www.stuff.co.nz/national/politics/9428778/Ex-prostitutes-call-for-law-change>

<sup>26</sup> <http://www.dailystar.com.lb/Culture/Lifestyle/2013/Nov-20/238344-germany-having-second-thoughts-on-legalized-prostitution.ashx#ixzz2lB98B02g>

<sup>27</sup> <http://www.nationalpost.com/news/story.html?id=6f3f724d-3cda-4f51-be91-b87e2638e915>

<sup>28</sup> <http://www.stuff.co.nz/the-press/10200534/Sex-workers-deserve-protection>

## **PCEPA is an essential tool in the fight against sexual exploitation**

PCEPA treats prostitution as a form of sexual exploitation that disproportionately and negatively impacts on women and girls. In *Bedford*, the Supreme Court found that the harms imposed by the impugned provisions were grossly disproportionate to the laws' stated objectives of preventing public nuisance and community disruption. PCEPA's objectives are to protect those who sell *their own* sexual services; to protect communities, and especially children, from the harms caused by prostitution; and to **reduce the demand** for prostitution. These objectives offer a radically different context for the evaluation of the laws.

The purchasing prohibition is the lynchpin of PCEPA and takes aim at the root of sexual exploitation in Canada.

The Ontario Court of Appeal in its February 24, 2022, decision in *R. v. N.S.* has upheld the constitutionality of PCEPA's provisions on procuring, receiving a material benefit, and advertising.<sup>29</sup> We commend the decision in *R v. N.S.* to the committee in its consideration of PCEPA.

In the decision, Justice Hoy confirms that sex workers are permitted to work cooperatively with others selling their own sexual services, to obtain, for example, security services on a shared, cooperative basis, and to give advice to a person who has decided to sell their own sexual services.<sup>30</sup> The analysis in this decision confirms that some witnesses before the Committee have misunderstood PCEPA's provisions.

We urge the committee to support and uphold PCEPA and its objectives. We will comment briefly on some of PCEPA's provisions.

### **286.2 (1) Material Benefit from Sexual Services**

Testimony before this committee indicates that some sex workers believe PCEPA prohibits them from working in collective and that those with whom they might have business relationships, such as drivers or receptionists, are engaging in criminal activity.

We note, however, that PCEPA does not prevent those who sell their own sexual services from entering into business relationships on the same basis as anyone else.<sup>31</sup> Section 286.2 (4) is an appropriate response to concerns raised by the Supreme Court of Canada in *Bedford* about women being able to hire drivers, bodyguards and so on. It clarifies that those who are prostituted are able to obtain goods and services, which allows them to hire staff and receive professional services.

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<sup>29</sup> <https://www.ontariocourts.ca/decisions/2022/2022ONCA0160.htm>

<sup>30</sup> Decision of the Ontario Court of Appeal in *R v. N.S.*, at par. 93, <https://www.ontariocourts.ca/decisions/2022/2022ONCA0160.htm>

<sup>31</sup> Technical Paper: BillC-36, Protection of Communities and Exploited Persons Act, <https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>



Justice Hoy explained that third parties may receive a financial benefit from providing security services, for example, so long as the relationship is not exploitative and the individuals sharing or receiving the service are selling their own sexual services.<sup>32</sup>

### **286.3 (1) Procuring**

PCEPA prohibitions against procuring, or pimping, are essential. Decriminalization, or the repeal of this provision, would not reduce instances of procuring and pimping – rather, it would create a permissive environment for exploiters and criminals, which would result in increased exploitation.

### **Section 213 – Offences in Relation to Offering, Providing or Obtaining Sexual Services for Consideration**

When Bill C-36 was being considered, we expressed concern that sections 213(1) and 213(1.1) could undermine the intent of the legislation to criminalize the activities of johns and pimps only. Those engaging in street level prostitution are among the most vulnerable, and their criminalization only creates further barriers to their exit. **We recommend these subsections be repealed.**

### **286.5(1) – Immunity Provisions**

It has been suggested to this committee that sex workers continue to be arrested under PCEPA. However, this section makes it clear that individuals are not to be prosecuted for selling, receiving a material benefit from or advertising the sale of their own sexual services.

Justice Hoy affirmed the Technical Paper statement that “...the immunities provided for in s. 286.5 “mean that individuals cannot be prosecuted for selling their own sexual services, whether independently or cooperatively, from fixed indoor or other locations, as long as the only benefit received is derived from the sale of their own sexual services” (emphasis added).”<sup>33</sup>

## **Conclusion**

Criminal laws are not merely penal. They give expression to the social norms that undergird a society. They both express and reinforce the basic commitments that bind a society together. In a very real sense, the law is a teacher.

Gunilla Ekberg, one of the authors of Sweden’s ban on the purchase of sexual services, says of the approach taken in Sweden: “As with all laws, the Law has a normative function. It is a concrete and tangible expression of the belief that in Sweden women and children are not for sale. It effectively dispels men’s self-assumed right to buy women and children for prostitution

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<sup>32</sup> R. v. N.S., section VI, <https://www.ontariocourts.ca/decisions/2022/2022ONCA0160.htm>

<sup>33</sup> R. v. N.S., at par. 83, <https://www.ontariocourts.ca/decisions/2022/2022ONCA0160.htm>

purposes and questions the idea that men should be able to express their sexuality in any form at any time.”<sup>34</sup>

As we approach law and policy, we must consider what kind of society we hope to create and to leave for our children and grandchildren. We should strive for a society where all women and girls enjoy greater equality, greater safety and freedom from abuse and exploitation, and where our children grow up with a healthy respect for themselves, for one another, and for their sexuality. PCEPA affirms and promotes human dignity and the understanding that human bodies are not commodities to be bought and sold.

### **Recommendations**

The EFC recommends that PCEPA be upheld, with minor changes to ensure consistency of approach. It is essential to curbing the demand for paid sexual services that fuels exploitation. The laws must be fully implemented and enforced across the country, which hasn't happened to date. The other critical components of this approach – public education and significant, ongoing funding for exit supports and services – must also be implemented.

Specifically, the EFC strongly recommends that:

- all of the provisions of PCEPA, with the exception of s.213, be upheld;
- s.213 be repealed;
- the government initiate public awareness campaigns and education about the law;
- the government commit to significant, ongoing funding for exit supports and services;
- comprehensive and standardized education and awareness for law enforcement, as well as clear communication with provincial Attorneys General and Crown Attorneys, should be undertaken so that the spirit and intent of the legislation is well understood and every encouragement is made to ensure that this is upheld in enforcement of the laws;
- the government conduct a review after five years of consistent enforcement;
- A measurement and data collection mechanism be developed to determine the law's impact;
- funds paid for fines under s. 286.1(1) should be directed toward exit programs and services for individuals who are prostituted;
- prostitution-related charges incurred by prostituted persons pre-PCEPA should be expunged; and,
- encourage the provinces to continue diversion programs (john schools or prostitution-offender programs) for first time prostitution offenders.

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<sup>34</sup> Gunilla Ekberg, “The Swedish Law That Prohibits the Purchase of Sexual Services,” *Violence Against Women*, Oct 2004, p. 1205.