

CIVIL SOCIETY REPORT ON CANADA'S IMPLEMENTATION OF THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Introduction

Purpose/objectives of the report

It has become common practice for civil society organizations (CSOs) to collaborate on drafting an alternative to the government's official report to the Committee on the Rights of the Child. Usually, these reports are written as part of a public consultation process, ensuring that there is effective public scrutiny of government assertions of compliance. However, this report has been drafted without access to the Canadian government report and does not specifically address assertions made regarding Canada's compliance with the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC). It is intended to be an independent assessment of the realization of children's rights in relation to the OPSC in the absence of CSO consultation by the Canadian government in preparing its first report to the Committee on the Rights of the Child. This report highlights gaps and challenges to be addressed by Canada in order to fully implement its obligations towards the rights of child victims or children vulnerable to commercial sexual exploitation.

In Canada, the Continuing Committee of Officials on Human Rights (CCOHR) is tasked with facilitating the preparation of Canada's report to the Committee on the Rights of the Child.¹ It coordinates input from federal and provincial governments, without any public engagement or public accountability, and without an established methodology open to public review. The Final Report of the Standing Senate Committee on Human Rights, *Children: The Silenced Citizens*, documents public concerns about the lack of transparency, the lack of public or parliamentary input in reporting and follow-up processes, and the lack of public dissemination or response to the UN Committee on the Rights of the Child's Concluding Observations.² An alternative report is the sole instrument to provide civil society organizations working on OPSC issues with a voice in reviewing Canada's implementation of the Protocol.

The Canadian Coalition for the Rights of the Child initiated the process that led to this report, by asking the International Bureau for Children's Rights (IBCR), to lead the drafting process. The International Bureau for Children's Rights, in collaboration with UNICEF Canada, the Federal Committee Against the Commercial Sexual Exploitation of Children & Youth, and the Canadian Coalition for the Rights of the Child have assembled this alternative report to provide the Committee on the Rights of the Child with input from members of Canadian civil society, the private sector and children. It has been drafted with the following objectives:

- To assess overall actions by the government, including education, awareness raising, the production of child-friendly materials, protection, coordination and child participation;

¹ Website accessed under Canadian Heritage on July 12, 2010: <http://www.pch.gc.ca/pgm/pdp-hrp/docs/crc->

² Standing Senate Committee on Human Rights, *Children: The Silenced Citizens – Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, Ottawa: April 2007, p. xii; 17-22.

- to review national legislation, policies and administrative practices for compliance with the OPSC;
- to provide effective public scrutiny of government policies as they affect CRC rights in the context of commercial sexual exploitation of children; and
- to identify weaknesses or shortcomings of domestic policies and their implementation, as related to OPSC.

The goal of this report is to foster a dialogue between Canadian authorities and civil society organizations working toward the effective implementation of children's rights in Canada on how to best achieve the aims of the OPSC.

Methodology

Gathering information in Canada is a challenge because of the multiple levels of governments involved and the geographic expanse of the country. Four main steps have been taken to ensure a systematic assessment of the implementation of the Protocol: 1) A general invitation to 242 organizations and individuals to submit their considerations and remarks on the implementation of the Protocol; 2) a more detailed questionnaire on protection issues sent to 23 Canadian organizations (with 10 respondents); 3) a literature review on the implementation of CSEC (government reports, reports from nongovernmental organizations and scientific research); and 4) a presentation of the preliminary results of this research at the Federal Committee Against the Sexual Commercial Exploitation of Children (headed by Senator Romeo Dallaire) in November 2007, where participants were invited to comment on the results. Comments and survey results have been integrated into this report.

An electronic search of all federal government departments³ implicated in the OPSC was conducted with the aim of gathering details on programming, policies and allocated budgets. Provincial legislation and policies were also reviewed. Letters were sent to all the provincial child advocates requesting information on programming and resources for OPSC implementation at the provincial and territorial level. With respect to policies and programmes for children sexually exploited through prostitution, in particular, an electronic search of select municipal agencies (Vancouver, Edmonton, Calgary, Winnipeg, Ottawa, Montreal and Toronto, among others) was undertaken to collect data on municipal by-laws and services related to the OPSC. Crime statistics in Canada were reviewed in an attempt to understand the extent of CSEC violations and potential cluster areas.

Despite these attempts to seek up to date information and documented research, we were unable to collect reliable statistics. Any data on resources devoted to CSEC or information regarding policies, planning and results of any programming, was enormously difficult to acquire, because there is no central agency to coordinate and capture information about CSEC in Canada. Nor is this information collected at provincial levels. Law enforcement statistics, assembled under the

³ Federal departments with responsibility for OPSC implementation include Justice Canada, Industry Canada, Public Safety and Emergency Preparedness Canada, the RCMP, Status of Women Canada, Public Health Agency Canada, Indian and Northern Affairs Canada, Canadian Heritage, Human Resources and Social Development Canada, Statistics Canada, Industry Canada, Foreign Affairs and International Trade, Canada Border Service Agency, Passport Office, Privy Council Office, Canadian International Development Agency, Canadian Institute of Child Health, Status of Women Canada and Citizenship and Immigration Canada.

Canadian Centre for Justice Statistics, do not disaggregate information on child sexual exploitation, making it virtually impossible to produce statistics on the occurrence of CSEC in Canada. The absence of reliable data is recognized as a serious challenge for this report; an informed discussion on reliable information about the extent and prevalence of CSEC is not possible.

Despite the challenge of securing accurate data, this review of Canada's implementation of the OPSC attempts to address six key areas: implementation, coordination, prosecution/prohibition, protection, prevention and recovery/rehabilitation.

General overview of the issues in Canada

The dynamics of commercial sexual exploitation involve a complex interplay of demand, supply and impunity. Factors contributing to the ready supply of children and women for commercial sexual exploitation are well known: poverty, marginalization, racism and discrimination, violence against females, limited employment opportunities, homelessness and vulnerability. While insufficient research has focused on those who exploit children, some of the demand factors which enable them to operate include the objectification of children's and women's bodies, the social construction of male sexuality, and socially accepted power imbalances. Impunity is evident when laws are inadequate or insufficient; law enforcement is weak; corruption interferes with the normal functions of the state; and CSEC activities remain invisible.

The Canadian legal framework to discourage the sexual exploitation of children is generally strong, with recent advances in protection from child pornography, Internet related exploitation, trafficking and the age of consent. However, any issues related to the prevention and the protection of children from actual or possible sexual exploitation remain unsolved: limited enforcement of relevant criminal laws; inadequate and inconsistent monitoring; insufficient measures to prevent and prosecute child sex tourism by Canadian citizens abroad, overrepresentation of children from native communities (both on and off reserves), lack of a comprehensive strategy to coordinate federal, provincial, and municipal policies and programming; and failure to systematically engage children and young people in the development and implementation of policies and programs.

There has been increased awareness of the extent and scale of commercial sexual exploitation of children⁴, both in Canada and internationally, over the last few years. Internet-based exploitation is the area receiving the most attention. The Canadian Centre for Child Protection (CCCP) states that over 600 reports relating to the sexual exploitation of children on the Internet are processed monthly and more than 800,000 people visit the site monthly.⁵ From its launch in 2002 to March 2007, Cybertip.ca received 18.2 million hits on their website; 18,312 reports of on-line child exploitation; 13,837 reports of child pornography; and 1,117 reports of children enticed to meet a stranger.⁶ This type of data collection is relatively new in Canada.

While Canada is beginning to amass critical information on Internet-based CSEC, data on other forms of child commercial sexual exploitation is hard to come by. Information on the

⁴ The definition of child adopted in this paper refers to anyone below the age of 18 years, as delineated in the *Convention on the Rights of the Child*, art. 1.

⁵ <http://www.protectchildren.ca/app/en/whatwek>, accessed July 13th 2010.

⁶ <http://www.publicsafety.gc.ca/prg/le/oce-eng.aspx>, accessed July 13th 2010.

commercial sexual abuse of children through prostitution tends to be collected at the level of municipalities and through police records, although the number of children and youth involved cannot be accurately determined. To date, there is no agreement upon methodology for effective data collection at sub national and national levels; different studies produce very different figures.

It is estimated that between 10-12% of individuals involved in prostitution in Canada are under the age of 18.⁷ The average age of entry has been variously reported as just under 18, close to 16 and 15.5 years.⁸ The Assistant Deputy Ministers' Committee on Prostitution and the Sexual Exploitation of Youth in British Columbia reports that most youth involved in prostitution are females (75-80%) between 15 and 18 years, although some are as young as 10 and under. It is also agreed that there is a significant overrepresentation of Aboriginal girls abused through prostitution.⁹

The extent of commercial sexual abuse of children by Canadian tourists is unknown, although it is clearly a problem. Benjamin Perrin of the University of British Columbia has found that a minimum of 146 Canadians have been charged in other countries for sexually abusing children, according to information obtained from the Justice Department.¹⁰ Professor Perrin requested data on Canadians charged abroad between 1993 and 1997 through a Freedom of Information Request. It is fully expected that child sex tourism is much more widespread than these figures indicate.

In 2008, the United Nations estimated that four million people, including 1.2 million children, are exploited through global trafficking. Canada is identified as a source, a destination and transit point for the trafficking of women and children for the purpose of commercial sexual exploitation.¹¹ Few studies of human trafficking distinguish between adult and child exploitation. As a result, accurate data on the extent of the problem for children in Canada cannot be found.

With respect to the estimated number exploited, the Royal Canadian Mounted Police (RCMP) reported that between 800-1,200 people in Canada have been victims of human trafficking, although civil society and nongovernmental organizations have estimated the figure to be as high as 15,000.¹² These figures have not been broken down to account for child victims. The numerical discrepancy has prompted the RCMP to revisit its data collection methods and review its figures.

Trafficking of children for marriage purposes also occurs between polygamous sects in British Columbia and Utah in the United States. The difference between arranged and forced marriage is that, in **arranged marriages**, the families of both spouses take a leading role in arranging the marriage, but the choice whether or not to accept the arrangement remains with the young people.

⁷ Task Force on Children involved in Prostitution, *Children involved in prostitution*, Edmonton, Alberta: Government of Alberta, 1997.

⁸ Assistant Deputy Ministers' Committee on Prostitution and the Sexual Exploitation of Youth, *Sexual Exploitation of Youth in British Columbia*, Victoria, B.C.: Ministry of the Attorney-General, 2001, p. 4.

⁹ *Ibid.*

¹⁰ *Child-sex tourism law not enforced, professor claims*, Vancouver: April 2, 2008, accessed July 13th 2010 at: [http://www.eturbonews.com/1980/child-sex-tourism-law-not-enforced-professor-](http://www.eturbonews.com/1980/child-sex-tourism-law-not-enforced-professor)

¹¹ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report – Canada*, U.S.A.: June 12, 2007

¹² The Canadian Press, *Rise in human trafficking prompts RCMP to recount Canadian victims*, Montreal: April 13, 2008

In **forced marriage**, one or both spouses do not consent to the marriage and some element of duress is involved. Duress includes both physical and emotional pressures, and consent is an issue when children are forced into marriage. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages was ratified by UN General Assembly Resolution 1763 A (XVII) on 7 November 1962 (*entry into force* 9 December 1964, in accordance with article 6).

The practice of polygamous marriages among members of the Fundamentalist Church of the Latter Day Saints in Bountiful, British Columbia, has received significant media attention. Prosecution of church leaders for sexual exploitation of minors has been difficult because witnesses were often unwilling to testify in court.¹³ The prohibition of polygamy in the *Criminal code* is also challenged as a violation of religious freedom in the Canadian Charter of Rights and Freedoms. In 2009, the BC government referred the question of the constitutionality of the prohibition of polygamy to the BC Supreme Court, and included a second question relating to age and other factors of vulnerability. The outcome of the reference will be significant for the implementation of the OPSC. The Canadian Coalition for the Rights of Children obtained intervenor status to ensure that the implications of the Convention are taken into consideration.

Canada ratified the (OPSC) on September 14, 2005. Canada participates in other international efforts to protect children from commercial sexual exploitation. Canada has ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements the UN *Convention against Transnational Organized Crime*; the International Labour Organization's Convention No. 182 on *the Elimination of the Worst Forms of Child Labour* and the *Hague Convention on Protection of Children and Cooperation in Respect of Inter Country Adoption*. Canada also signed the *Stockholm Declaration and Agenda for Action*, as well as its follow up declaration in Yokohama.

Canada's Implementation of the OPSC

National Measures for General Implementation of the OPSC

Few international human rights conventions are incorporated directly into Canadian law¹⁴; the majority are indirectly and – in practical effect - partially implemented through existing provisions within Canadian law, policies and programs. Parts of the CRC and its Optional Protocols have been indirectly implemented under immigration and criminal law (federal jurisdictions), child protection and family law (provincial and territorial responsibilities), and the *Charter of Rights and Freedoms*.

Indirect implementation of the OPSC has a number of consequences. First of all, there is a problem with consistency in that all provinces and territories have to meet the obligations of the

¹³ David THOMPSON, for Beyond Borders, *Child brides in Canada*, Fact sheet, 2005. Available online at: <http://www.beyondborders.org/wp/wp-content/uploads/2009/06/fact-sheet-child-brides-in-canada3.pdf>, accessed July 13th 2010.

¹⁴ Examples of the government developing specific legislation securing the domestic application of international instruments include the *Crimes Against Humanity and War Crimes Act* (Rome Statute of the ICC) and the *Geneva Conventions Act*, which implements the Geneva Conventions for the Protection of War Victims.

OPSC, but they may interpret and implement the provisions in different ways. There is no clear evidence that all jurisdictions comply with the OPSC.

Secondly, federal parliament and provincial legislatures do not have a formal role in adoption or implementation of the OPSC. Convention compliance and verification are controlled by government officials, without input from the public, elected representatives, children and NGOs working on child rights issues. Moreover, there are no formal complaint mechanisms for individuals or organizations who believe that Canada has violated their rights under the OPSC or the CRC.

The Canadian government has yet to develop a national plan of action to combat the commercial sexual exploitation of children. This directly contravenes commitments made in Stockholm, when Canada adopted the *Stockholm Declaration and Agenda for Action* in 1996 and reiterated in Yokohama in 2001, when Canada stated its intention to develop a national agenda for action, including progress indicators, goals and time frames, and monitoring mechanisms or focal points, in conjunction with civil society, to develop urgently needed databases on vulnerable children, the circumstances influencing commercial sexual exploitation, and the exploiters of these children. As Canada has also failed to develop a plan more broadly addressing violence against children as it committed to do in adopting the UN World Report on Violence Against Children, there remains no national plan encompassing CSEC.

Children who are particularly vulnerable for commercial sexual exploitation require special attention, under the preventive provisions of the Convention and the OPSC. In Canada, being from an underprivileged environment, having a disability, spending time in foster or residential care, being Aboriginal and living on the streets are but some of the factors that put children at greater risk of commercial sexual exploitation. Numerous Canadian studies attest that these vulnerabilities must be addressed to combat child commercial sexual exploitation.¹⁵

In addition, the principle of participation under the CRC (art. 12) and article 9, paragraph 2 of the OPSC and related rights to information require that children be able to access and act on information that promotes their physical and mental health and social and spiritual well-being. Children must be taught to recognize and protect themselves from sexual offenders and to understand the difference between love and exploitation, and what constitutes healthy sexual development.

Comprehensive and age-appropriate sexual health education is not available to all children and youth, despite the fact that it would prepare and empower children to protect themselves. In fact, provincial governments (who are responsible for sexual education policy under education policy) including Alberta and Ontario have recently redacted sexual education curriculum, subordinating children's best interests and rights to the interests of minority lobbies. Additionally, the misperceptions children have about legislation relating to sexual activity (including legal age of consent) should be addressed through concerted education¹⁶.

¹⁵ See, for example: Assistant Deputy Ministers' Committee on Prostitution and Sexual Exploitation of Youth, *Sexual Exploitation of Youth in British Columbia*. Victoria: Queen's Printers, 2001; Report of the City of Burnaby's Task Force on the Sexual Exploitation and Prostitution of Children and Youth, Burnaby, 1998; Marie D. Hay, "Commercial sexual exploitation of children and youth", *BC Medical Journal* 46 (3) April 2004, pp. 119-122.

¹⁶ Justice for Children and Youth, Submission of Justice for Children and Youth Concerning Bill C-22,

The Canadian government has adopted a few national plans and strategies which include some provisions for CSEC, such as the *National Strategy to Protect Children from Sexual Exploitation on the Internet* and *A Canada Fit for Children*, both launched in 2004. But there is no comprehensive strategy to implement the OPSC. Several interdepartmental and intergovernmental working groups are responsible for implementing sections of the OPSC. Federal anti-trafficking initiatives are coordinated and monitored by the Interdepartmental Working Group on Trafficking in Persons (IWGTIP), co-chaired by the Departments of Justice and Public Safety. The IWGTIP brings together 16¹⁷ departments and agencies and serves as a central repository of federal expertise to strengthen federal policy on human trafficking and facilitate cooperation in addressing these issues. The Intergovernmental Committee against the Commercial Sexual Exploitation of Children and Youth is mandated to provide a forum for dialogue and preventive initiatives.

The *National Strategy to Protect Children from Sexual Exploitation on the Internet* has been well funded and the federal government has demonstrated considerable political will to coordinate police actions in this area. The government dedicated \$43 million over five years to implement a comprehensive, coordinated approach to protecting children on the Internet and aggressively pursuing those who prey upon them through technology. The three main objectives of the *National Strategy* include enhancing enforcement capacity, providing for public education and reporting to prevent victimization, and cultivating partnerships with NGOs, the e-learning industry, the private sector and other levels of government to foster effective public awareness, education and crime prevention strategies.¹⁸

One of the partnerships to emerge from the *National Strategy* is CCAICE, the Canadian Coalition against Internet Child Exploitation, a multi-sector group of industry, government, nongovernmental and law enforcement stakeholders tasked with eliminating child exploitation from the Internet while maintaining the free flow of legitimate and broad information, entertainment and education on the Internet. Also noted are the effective activities of Cybertip.ca, a child sexual abuse tip-line that was launched nationally in January 2005. This plan has not included specific dissemination and outreach activities for the Francophone parts of Canada, nor has it developed a plan for the three territories. There are no other national plans to explicitly address CSEC in Canada, and this strategy is limited to the commercial sexual exploitation of children through the Internet only.

A Canada Fit for Children recognizes the need to criminalize and penalize all forms of sexual exploitation of children for commercial purposes or other considerations, including within the family and internationally; to protect children from all forms of sexual exploitation, including sexual abuse, trafficking and abduction for sexual purposes; to strengthen law enforcement

March 2007.

¹⁷ Canada Border Services Agency, Canadian Heritage, Canadian International Development Agency, Criminal Intelligence Service Canada, Citizenship and Immigration Canada, Dept. of Justice Canada, Foreign Affairs and International Trade, Health Canada, Human Resources and Social Development Canada, Indian and Northern Affairs Canada, Passport Office, Privy Council Office, Public Safety and Emergency Preparedness Canada, Royal Canadian Mounted Police, Statistics Canada, Status of Women Canada.

¹⁸ Information accessed on the Department of Public Safety website on July 12th, 2010:

<http://www.publicsafety.gc.ca/media/bk/2005/bg20050124-eng.aspx>

mechanisms and to commit to the full implementation of OPSC and other international instruments to combat CSEC in a manner upholding the rights and dignity of all children.¹⁹ , This document does not provide a national plan to address demand, supply, impunity and deleterious effects of CSEC. Other gaps include child participation, coordination and collaboration, awareness raising, and education. Furthermore, there are no targets or resources to implement the plan, and it has become a little-used document in policy development.

Without a viable, comprehensive national plan of action, it is impossible to track progress or setbacks in combating CSEC in Canada. There are no data indicators, goals, timeframes, coordination, specific financial resources, or monitoring to assess whether small-scale actions in different parts of the country are making a difference. Non-government organizations have consistently advocated for a national Children's Commissioner whose role would be to regularly report on the state of children in Canada and monitor Canadian progress in implementing international treaties to protect children. The 2007 Senate Human Rights Committee report, *Children: The Silenced Citizens*, also highlights the need for a Children's Commissioner.

Coordination

It is impossible to devise effective approaches to these serious abuses of children's rights without collecting holistic and uniform data on policies, programs and financial resources devoted to the OPSC. The lack of federal government attention to OPSC implementation and planning results in poor coordination, no uniformity, uninformed planning, limited generation of knowledge and good practices and ineffective strategies to combat CSEC and care for its child victims. Monitoring compliance with the OPSC is thus currently impossible.

There are some specific interdepartmental and intergovernmental working groups with responsibility for implementing sections of the OPSC. The Interdepartmental Working Group on Trafficking in Persons (IWGTIP) was expected to develop a national action plan, including strategies to address the trafficking of children; this has not materialized. The Intergovernmental Committee against the Commercial Sexual Exploitation of Children and Youth is tasked with providing a forum for dialogue and information sharing, but does not promote or coordinate cross-sectoral collaboration in policy or programming.

The *National Strategy to Protect Children from Sexual Exploitation on the Internet* is implemented by Public Safety and Emergency Preparedness Canada (PSEPC), Industry Canada – through its School Net program, and the RCMP. Through the *National Strategy* a number of federal programs to coordinate activities have been established. The National Child Exploitation Coordination Centre (NCECC), a project of the National Police Services of Canada, is mandated under the *National Strategy* to coordinate, gather intelligence and collaborate with police services and justice workers to combat the global online commercial sexual exploitation of children. Through the National Missing Children Services (NMCS), NCECC assists law enforcement agencies in the investigation of missing children. NCECC is also responsible for implementing the Child Exploitation Tracking System (CETS) and the Canadian Image Database for Exploited Children (CIDECC).

¹⁹A Canada Fit for Children, accessed July 13th 2010 at:
<http://www.hrsdc.gc.ca/en/cs/sp/sdc/socpol/publications/2002-002483/canadafite.pdf>

While the specific coordinating committees are doing useful work, there is no responsible focal point for the full and comprehensive implementation, monitoring and evaluation of Canada's compliance with the Protocol. OPSC implementation requires more than legislation to protect children and punish offenders; it needs a prevention strategy, a strategy to address the demand for CSEC and the collaboration of private sector organizations, such as the fashion industry, marketing, Internet service providers, Information and Communication technologies industries, media, travel and tourism industries. A comprehensive strategy would include adequate resources for law enforcement, the development of effective community and family supports to prevent CSEC and programs to protect children victims and reintegrate those affected. A national strategy also needs to include provincial and municipal actors and actions in order to be effective.

Canada also cooperates internationally on Internet-based child exploitation task forces. The NCECC is part of the Virtual Global Taskforce (VGT), which includes membership from the United Kingdom, the United States and Australia. Recognizing the globalization of Internet child exploitation, the VGT promotes unified efforts among world law enforcement agencies in relation to prevention and awareness on the Internet. Canada participates in Interpol coordination on these issues. The NCECC also leads Canada's support and contribution to the G8 Image Database project, which collects images of exploited children to better investigate abusers and identify the children they abuse.

In early 2008, the Canadian International Development Agency (CIDA) launched the Child Protection Partnership (CPP), in collaboration with the International Institute for Child Rights and Development, UNICEF, the RCMP and Microsoft. CIDA is contributing \$2.6 million to support the (CPP) to reduce child exploitation, support rule of law and help to implement international human rights frameworks for children in a more efficient and effective way. With the extension into developing countries of the Child Exploitation Tracking System (CETS), a software solution developed by the RCMP in Canada to help combat online child abuse, the CPP will improve opportunities for children, their communities, and other vulnerable populations to be protected by the criminal justice system. The CPP will also improve access for affected children to services that will help them reintegrate safely back into their communities. It is too soon to evaluate the effectiveness of this expansion of the CETS.

The fact that no national *rapporteur* or clearinghouse has been established to collect relevant data on CSEC is alarming. The importance of national and provincial statistics is paramount, for they provide specific information about the need for and type of resources to combat the problem, as well as providing insight into victims, offenders, their offences, contexts and influencing factors and the impacts of these activities. Without this data, it is difficult to develop a targeted plan to combat CSEC.

Manitoba and British Columbia stand out as provinces which have adopted provincial strategies to combat the sexual exploitation of children (Manitoba) and human trafficking, including the trafficking of children (BC). Alberta has passed the *Protection of Sexually Exploited Children Act*. In the event where a child does not wish to end their involvement in prostitution, the Act allows the police and caseworker to apprehend and confine in a safe place the sexually exploited child, with or without a court order, for up to five days. After procuring emergency care and assessing the situation, a long-term plan to assist the child to exit prostitution is developed. This Act also enables children and young people to access a variety of community services. Other provinces have enacted similar legislation, while still others are considering it. Child rights'

organizations have raised concerns about the detention of child victims of sexual exploitation, which in effect may deter other child victims from accessing services and violate their rights. Others believe that the best interests of children are served through the careful and effective design of the supportive services – a key consideration in emulating Alberta's model.

Enforcement and prosecutions

Commercial sexual exploitation of children

Law enforcement agencies need to be mandated and adequately resourced to make CSEC a priority area and develop more effective ways to detect and investigate these crimes, in order to charge more abusers, secure successful convictions and impose adequate sentences. Judicial agents, such as prosecutors and judges, require a better understanding of CSEC crimes and their deleterious effect on children. Implementation of legislation requires multisectoral efforts and coordination.

Bill C-2 (2005)²⁰, the *Tackling Violent Crime* bill, proposed an increase in the age of consent for non-exploitative sexual activity from 14 to 16 years and tighter other regulations for adolescents. For example, complainants of 12 or 13 years of age can only provide consent as a defence to the accused if he or she is less than two years older. For complainants 14-15 years of age, the accused must be less than five years older in order for consent to be used as a defence. *Bill C-22: An Act to Amend the Criminal Code (Age of protection)*, which formally raised the age of consent/age of protection from 14 to 16 years, came into force on May 1, 2008.

Effective implementation of the Act requires more than passage of legislation. NGOs recommend the following measures:

- An education program for young people is needed across Canada. Polls show that young people are not aware of the law and that the law does not affect choices beforehand; but it may negatively affect openness after sexual activity that has health implications. With regard to education and prevention, messages need to emphasize that youth who engage in sexual activity with peers (which is not illegal) should consult health care services, especially to learn about sexually transmitted diseases and non-voluntary pregnancy. Because of their limited understanding of what is now a complex law, young people under the new age of consent may be more reluctant to seek health information related to their sexual activity with peers.
- A focused strategy for the enforcement of sexual exploitation provisions of the *Criminal Code*.
- Special attention to protect the rights of young persons involved in polygamous communities and other religious and cultural groups who practice early marriage.

Child pornography

Under s. 163.1 of the *Criminal Code*, prohibited child pornography is defined as using a child under or depicted as being under the age of 18 as the subject of pornography materials for a sexual purpose. The Code targets producers, distributors, sellers and possessors of these illegal

²⁰ Bill C-2 (2004) *An Act to amend the Criminal Code* and to make consequential amendments to other Acts (*Tackling Violent Crime Act*)

images, writings or recordings. In 2006, the International Centre for Missing & Exploited Children developed “model legislation” that was used to analyze all Interpol member states’ legislation with respect to the issue of child pornography. With the exception of not requiring mandatory reporting specific to ISPs and other private sector actors, Canada was found to meet all “model legislation”, as listed below:

- A definition of “child” as anyone under the age of 18, irrespective of the age of sexual consent;
- A definition of “child pornography” that includes computer and Internet-specific references;
- The inclusion of child pornography specific offenses in the criminal code, including possession, downloading and/or viewing images on the internet, regardless of whether there is any intent to distribute;
- Penalizing parents or guardians who assent to their child’s participation in pornographic activities;
- Assurances that those who make known to others places to find child pornography are penalized;
- The inclusion of grooming children as an offense;
- Criminalizing attempt crimes;
- Requiring mandatory reporting from healthcare and social service professionals, teachers, law enforcement officials, photo developers, IT professionals, ISPs, credit card companies and banks who become aware of the abuse of children for pornography;
- Ensuring that children abused through pornography have no criminal liability; and
- Increasing penalties for repeat offenders, organized crime and other aggravating factors for consideration when sentencing.²¹

Currently Canada’s federal privacy legislation (PIPEDA) does not oblige Internet Service Providers (ISPs) to provide information to law enforcement about clients who distribute child pornography and related content. Consequently, the legislation has been variously interpreted by ISPs, leading to different standards for the provision of this information.

It should be noted that Manitoba amended its Child and Family Services legislation in November 2007 to compel all citizens, including computer technicians and ISPs, to report any images or examples of child pornography to Cybertip.ca. Failure to report can result in up to two years’ jail time and a \$50,000 fine. On March 20, 2008, Ontario legislature approved a similar bill in its second reading and its adoption should be imminent.²² Other provinces should be encouraged to take the lead of Manitoba and Ontario in requiring mandatory reporting. On October 16 2007, the House of Commons completed the first reading of Bill C-214²³, presented by a private member, Mr. Peter Stoffer (New Democratic Party of Canada). It stipulates that ISPs would be required to block access to sites that carry child pornography. The Minister would also be able to exercise special powers in order to facilitate electronic searches in cases where there are reasonable grounds to believe that websites host child pornography.

²¹ INTERNATIONAL CENTRE FOR MISSING AND EXPLOITED CHILDREN, *Child Pornography: Model Legislation & Global Review 2006*.

²² Canadian Press, Ont. Bill to Mandate Reporting of Child Porn One Step Closer to Becoming Law, accessed July 13th 2010 at: http://www.citynews.ca/news/news_20830.aspx

²³ Bill C-214, *An Act to prevent the use of Internet to distribute pornographic material involving children*.

Other measures to update the law in the area of Internet-based child sexual exploitation offences include Bill C-15A (2002)²⁴, which amended the *Criminal Code* to include Internet offences such as luring children through the Internet, accessing child pornography, the transmission of child pornography, making available child pornography and exporting child pornography as offences with a maximum penalty of 10 years' imprisonment. Judges are granted enhanced powers to order the deletion of child pornography posted on computer systems and the forfeiture of any materials or equipment used in the commission of a child pornography offence. Known sex offenders can be subject to prohibition orders, long-term offender designations and one-year peace bonds to keep them away from children.

This amended legislation was challenged as unconstitutional by John Robin Sharpe, a man charged with two counts of possession under s. 163.1(4) of the *Criminal Code* and two counts of possession of child pornography for the purposes of distribution or sale under s. 163.1(3). Prior to his trial, the accused brought a preliminary motion challenging the constitutionality of s. 163.1(4) of the *Code*, alleging a violation of his constitutional guarantee of freedom of expression.²⁵ The British Columbia Supreme Court struck down s. 163.1 (4) of the *Criminal Code*, declaring it unconstitutional since it violated section 2(b) of the *Canadian Charter of Rights and Freedoms*. The Court of Appeal upheld the decision, which was then appealed to the Supreme Court of Canada.

The Supreme Court determined that s. 163.1 (4) of the *Criminal Code* should be upheld. Two exclusions should be noted however, since they refer to the possession of two distinct categories of material that one would not normally think of as 'child pornography' and that pose little or no risk of harm to children:

"The first class consists of self-created, privately held expressive materials. Private journals, diaries, writings, drawings and other works of the imagination, created by oneself exclusively for oneself [...]. The second class of material concerns privately created visual recordings of lawful sexual activity made by or depicting the person in possession and intended only for private use [...]"²⁶

The use of new technologies has become an integral part of our lives, especially for young people. Education on the risks of new technologies, privacy, and respect for the rights of others should be readily available to young people across the country. Canada's Privacy Commissioner in partnership with the provincial child advocates launched in 2009 a guidance report on how to strengthen youth privacy online.

Further amendments to the *Criminal Code* sections referring to child sexual exploitation, pornography and protection as victims and witnesses in criminal proceedings have been recently adopted. With respect to protecting children from child pornography, Bill C-2 broadens the definition, creates a new prohibition against advertising child pornography and narrows existing defences to a single legitimate purpose defence: "legitimate purpose related to the administration of justice or to science, medicine, education or art." Bill C-2 further specifies that the material in question must not pose an undue risk of harm to persons under the age of 18. Testimony by child

²⁴ Bill C-15A (2002) *An Act to amend the Criminal Code and to amend other Acts (Criminal Law Amendment Act, 2001)*.

²⁵ *R. v. Sharpe* [2001] 1 S.C.R. 45.

²⁶ *Ibid.*, pp. 38 and 39.

victims and witnesses is facilitated through the use of testimonial aids and privacy measures. The bill increases maximum sentences for other child-related offences such as sexual offences against children, failure to provide the necessities of life, abandonment of children and considers child abuse as an aggravating factor for sentencing purposes. Finally, under this Act, two new voyeurism offences have been developed, prohibiting secret observations and recordings where there is reasonable expectation of privacy and prohibiting the intentional distribution of material that was knowingly obtained through an act of voyeurism.

Robin Boissonneault, one of the latest men to be charged with possession of child pornography, pled guilty to two counts and received a six-month jail sentence for his crimes. After he completes his jail term, Boissonneault will be on probation for two years, forbidden to own or use any computer with Internet access except for the purpose of employment and with the approval of his probation officer, banned for 10 years from locations where there are young children and required to submit a DNA sample to the DNA databank. This provides an example of Canada's enforcement of its new child pornography laws in a case with "...the vilest form imaginable depicting young children and adults engaged in sexually explicit acts."²⁷

In another case, Marcel Deslauriers was charged with one count each of possession and distribution of child pornography for his role as a chat room administrator in one of the largest worldwide investigations into a child pornography ring that involved over 40 people in Australia, Britain, the United States and Canada. He was sentenced to a 20-month prison term and probation of three years. While on probation, he will be required to undergo therapy and is banned from computer ownership, Internet use, being near a park or school and holding a job involving any authority over children. He is also required to submit a sample of his DNA to the national criminal database.²⁸

Guidelines for sentencing, stipulated in section 163.1 (3) a) of the *Criminal Code*, include maximum penalties of 10 years' imprisonment for distribution of child pornography. The two cases above indicate that actual sentences fall far short of the maximum, even for the most heinous violations. Integrated Internet Child Exploitation Units (ICE) have been established as part of law enforcement agencies in all provincial jurisdictions, with the exception of Prince Edward Island where the Attorney General has recently requested funding for an Internet child exploitation unit from the provincial cabinet in response to evidence of hundreds of addresses of Internet Providers involved in child sexual exploitation.²⁹ The 2008-2009 Saskatchewan budget has committed \$1.12 million annually to fund the four existing police officers dedicated to the ICE unit, as well as adding seven new positions to serve major cities in Saskatchewan.³⁰ At the same time, the British Columbia ICE team struggles to carry out its duties because of a lack of resources. The inspector overseeing the ICE Unit stated that "the demands on ICE are 'far in excess of its capacity to deliver' ...and, as result, 'individual staff members are mentally and

²⁷ Jessica Young, "Vilest of child porn: Judge; Timmins man gets six-month jail term following guilty plea", Timmins: Timmins Daily Press, 20 April 2008.

²⁸ Paul Cherry, "Kiddie porn ringmaster sent to prison", *The Montreal Gazette*, April 18, 2008.

²⁹ CBC News, *PEI police want help with child porn cases*, March 31, 2008.

³⁰ Government of Saskatchewan, *\$1.12 million from province to battle internet child exploitation*, News Release – March 28, 2008.

emotionally exhausted' ... leading to a 'potential delay in rescuing children from active abuse'".³¹

Under the National *Strategy to Protect Children from Sexual Exploitation on the Internet*, funded with \$43 million over five years, the RCMP-based National Child Exploitation Coordination Centre (NCECC) works with local police forces to promote effective investigations, intelligence gathering and tactics to combat child pornography on the Internet; it has developed a national database of child pornography images, linked to the G8 database project; and implements enhanced investigational tools, such as the Child Exploitation Tracking System (CETS), software designed to give investigators secure communications to share information and intelligence, as well as a tracking system.

To increase the reporting of suspicious activities on the internet, the *Strategy* funded the Canadian Centre for Child Protection to expand the operations of Cybertip.ca as the national reporting centre. Cybertip.ca provides the public with an anonymous reporting mechanisms and triages reports to ensure that law enforcement receives only legitimate reports. Cybertip.ca is also mandated to keep records and statistics on the scope and extent of the problem to contribute to the policy process and evaluations of Canada's *National Strategy*.

Civil society groups have developed prevention programs to increase the personal safety of children and reduce their risk of sexual exploitation on-line. "Kids in the Know" is an interactive safety education program developed by the Canadian Centre for Child Protection. In order to effectively combat child pornography, it is crucial to devote funds to expand the reach of such programs, as well as provide outreach to a greater number of children, parents and schools regarding safety online. However, such programs are proliferating and a due evaluation should suggest which are most effective for further investment and expansion as part of a national plan.

Child sex tourism

Bill C-15A also amended the child sex tourism law in 1997, to permit Canadian prosecution for overseas offences without the requirement that the state in which the Canadian violated the *Criminal Code* request prosecution from Canadian authorities. This is an important amendment; however, gaps remain. Extraterritorial legislation enacted in the U.S., Germany and Australia prohibits the promotion of child sex tours, enabling the prosecution of tour promoters. "The absence of such legislation is a glaring omission in Canada's child sex tourism provisions."³²

Implementation of the child sex tourism law has been weak. Early experience suggests areas for attention to effectively enforce this law: (1) sending more liaison officers to regions in the world where Canadian nationals are most present and the exploitation of children is a recognized concern; (2) providing further training for Canadian officials posted abroad in matters of CSEC; and (3) allocating sufficient resources to enable officials to fully enforce the sections of the *Criminal Code* relating to extraterritorial legislation on the issue of child sexual abuse and exploitation.

³¹ Jonathan Fowlie, "Not enough funds for Integrated Child Exploitation Unit: internal e-mail", *The Vancouver Sun*, February 21, 2008.

³² Melissa FERENS, *An Evaluation of Canada's Child Sex Tourism Legislation Under International Law*, University of Manitoba, December 2004.

The first person convicted under the act, in 2005, was Donald Bakker, who pled guilty, a was convicted of 10 sexual assaults on girls aged between 7 and 10 in Cambodia, and was sentenced to 10 years.

At the time of writing, there are two other trials pending under the extraterritorial legislation. Denis Rochefort and Armand Huard (arrested on the 20th February 2008), Canadian aid workers accused of sexually assaulting Haitian boys in the orphanage they worked in, face multiple charges after the Haitian government contacted the UN, which informed the RCMP.³³ Both men have been released under strict conditions and \$2,000 bail.³⁴ Kenneth Klassen, the second Canadian facing child sex tourism charges, is alleged to have exploited girls as young as nine in various countries. His trial is scheduled for July 2008 in Vancouver.

In a well-known case, Christopher Neil, a Canadian was arrested in Thailand in October 2007 on charges of abusing a nine-year-old boy (after Interpol unscrambled his digital image from the files he posted on the Internet). Thai officials laid charges. The Canadian embassy in Thailand has been helping with efforts to get legal counsel for Christopher Neil.³⁵ Another Canadian, Orville Mader, who is wanted in Thailand to face three counts of sexual abuse charges, has not been charged for these offences in Canada, nor has he been extradited to Thailand, since Bangkok has not formally asked for his return. However, upon his arrival in Canada, Mader was arrested by Canadian authorities. He was held under a protective order after a provincial court judge ruled that he could present a threat to children, under section 810.01 of the *Criminal Code*. He has subsequently been released from custody, but ordered to comply with various conditions, such as not being in contact with children under 14 years of age, not being present in places usually frequented by children and he cannot use a computer.³⁶

Benjamin Perrin, professor at the University of British Columbia, believes that Canada has one of the worst records at enforcing its own child sex tourism law. "To date, the Canadian policy has been to not aggressively, or even actively, enforce our own child sex tourism law and that needs to change."³⁷

Trafficking in children for the purposes of CSEC

Before 2005, human trafficking was handled by Immigration Canada, which focused mainly on the immigration aspects of the crime. Under s. 118 of the *Immigration and Refugee Protection Act (IRPA)*, trafficking carries a maximum penalty of life imprisonment and a \$1 million fine for anyone knowingly organizing "the coming into Canada of one or more persons by means of abduction, fraud, deception or use of threat of force or coercion."³⁸ The Act allows courts to

³³ Camille Bains, "At least 146 Canadians charged overseas for child sexual abuse: Justice Dept.", Vancouver: The Canadian Press, April 1, 2008.

³⁴ Marianne White, "Aid worker denies touching boys", Montreal: Canwest News Service, February 21, 2008.

³⁵ CBC News, «Canadian sex crimes suspect pleads not guilty in Thailand.» January 11, 2008: <http://www.cbc.ca/canada/british-columbia/story/2008/01/11/thailand-charges.html>

³⁶ CTV.ca News staff, «BC Court grants bail to suspected pedophile.» November 8, 2007.

http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20071108/bail_mader_071108?s_name=&no_ads=

³⁷ Supra. 28

³⁸ Immigration & Refugee Protection Act, 2001, ch. 27, s. 118(1) ("IRPA").

order forfeiture of any property seized in relation to the offence.³⁹ This bill also amends the *Immigration and Refugee Protection Act* by allowing immigration officers to refuse authorization to foreign nationals to work in Canada if they are judged to be at risk of exploitation.

Bill C-49, which came into force in 2005, added provisions 279.01 –279.04 to the Criminal Code. These sections create offences for engaging in activities related to the trafficking of persons, including accepting financial or material benefits, knowing that the benefits result from the trafficking of persons and destroying or otherwise making unavailable identification documents of a person with the intent of committing an offence under 279.01 [1]. Consent is not a defence under any circumstances for any trafficking situation regardless of the person's age (279.01[2]). Internal human trafficking is also a crime under the *Criminal Code*. Amendments under Bill C-49 also allow for DNA samples to be collected in cases of human trafficking, as well as authorizing the interception of private communications. The law proscribes a maximum penalty of 14 years' imprisonment for trafficking and up to 10 years in prison for benefitting financially or materially from trafficking. Withholding or destroying a victim's identification or travel documents is punishable by up to five years in prison. Imprisonment for life can be given as a sentence if there is evidence of kidnapping, aggravated assault or aggravated sexual assault against, or cause death to, the victim (section 279.01 (1) a) *Criminal Code*).

In 2007-2008, thirteen criminal charges under section 279.01 of the *Criminal Code* and four others under section 279.03 of the *Criminal Code* were laid. They are the first to be filed since Canada criminalised human trafficking.⁴⁰

Encouraging training and awareness initiatives have been put into place. In order to have a significant impact, it is important that they be pursued on a mid- and long-term basis. The lack of protocols and guidelines for trafficking investigations has been identified as a problem for the enforcement of trafficking legislation. This results in a weak capacity among law enforcement organizations to identify and subsequently be able to protect victims. Also, law enforcement officers and prosecutors are not always aware of how to best lay charges in trafficking situations, which makes it difficult to prosecute offenders under the new legislation.⁴¹ Judges and prosecutors require training to understand the *IRPA* and *Criminal Code* provisions for trafficking in persons. The RCMP has developed a Human Trafficking National Coordination Centre to coordinate federal law enforcement efforts and to assist municipal, provincial and territorial investigations, yet there is very little evidence to date that this has improved how trafficking in persons is addressed.

Immigration and Refugee Protection Regulations (R. 249c) stipulate that special considerations must be taken by officers when deciding if a minor should be placed in an immigration detention facility. There are no protocols or guidelines for investigators to deal with children who are being trafficked involved in trafficking. Victims need to feel secure enough to report these crimes, testify against their violators and seek help in their recovery. Fear of detainment or deportation is a significant barrier to securing victim testimony. Detention should only be used when in the best interests of children, and for the shortest possible time as more durable solutions are sought. All

³⁹ *Ibid.*, s. 137(1).

⁴⁰ Trafficking in persons report, June 2008, U.S.Department of State.

⁴¹ Yasmin Ratansi, *Turning outrage into action to address trafficking for the purpose of sexual exploitation in Canada*, Report of the Standing Committee on the Status of Women, February 2007, p. 27.

such children require access to independent legal representation. Currently, it is unclear how such children exit the immigration system into a protective plan.

The legislation complies with minimum standards for the elimination of trafficking and is a model for proposed penalties. Canada needs to increase investigations and prosecutions of those suspected of trafficking. Due to the complexity of trafficking cases, significant time, person and financial resources are required to conduct thorough investigations. In order to verify the details of victims' stories, it may be necessary to travel to victims' countries of origin. Sergeant Matt Kelly of the Vancouver Police Department provides an example of this resource intensity in relation to the first person charged under the trafficking provisions of the *Immigration and Refugee Protection Act*, where the vice unit focused exclusively on the Michael Ng case for six months:

That was one sergeant and eight detective constables for two victims of human trafficking – a quarter of a million dollars and all of our time, going 24/7, for two people. That's how much has to be invested in these types of files.⁴²

*R v. Ng*⁴³ was the first human trafficking trial in Canada and has set a precedent for what is required to obtain a conviction under section 118 of the *Immigration and Refugee Protection Act*.⁴⁴ According to the judge in the case, the Crown should have proven beyond a reasonable doubt that the accused organized the alleged victim's entry into Canada by using "abduction, fraud, deception or use or threat of force or coercion." Justice MacLean did not feel that the facts and evidence filed in this case supported this allegation. Furthermore, the judge did not find the alleged victims to be credible witnesses due to their inconsistent testimonies. Justice MacLean noted that their testimonies could have been altered so they could avoid being charged for illegal entry into Canada.⁴⁵ It is however important to note that according to section 279.01 (2) of the *Criminal Code*, the initial consent given by a person, such as an agreement with a trafficker to undertake a migratory trajectory, is not equivalent to consenting to be exploited. Also, since there were very few constraints on the alleged victims' movements and since they were able to socialize and have contact with their families in China, it was determined that Mr. Ng did not hold any control over the alleged victims. The psychological aspects of control were not examined in a detailed manner. This interpretation of the law underscores the importance of legal reform to ensure that the rights of trafficking victims are fully protected.

Four people in Toronto have recently been charged with numerous human trafficking offences when two victims came forward separately to the Toronto police and reported being forcibly confined and made to work as escorts when they were lured to Canada under false promises of a modelling career.⁴⁶ Trial dates have not yet been determined.

⁴² Standing Committee on the Status of Women, *Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada*, Ottawa: Communications Canada, February 2007, p. 43.

⁴³ *R. v. Ng*, 2007 B.C.J. No. 1388-British Columbia Provincial Court.

⁴⁴ *IRPA*, *supra*, note 38, s. 118.

⁴⁵ *Op. Cit.* 54

⁴⁶ Linda Nguyen, "Second victim comes forward in Toronto human trafficking ring", *The Montreal Gazette*, January 14, 2008.

In June 2008, Canada secured its first human trafficking conviction.⁴⁷ Imani Nakpangi pleaded guilty to human trafficking charges, living off the avails of prostitution of a minor, and possession of counterfeit money. The victims in this case were Canadian women and girls. Nakpangi was sentenced to three years for human trafficking and two years for the other charges.

Commercial sexual exploitation of children through prostitution

It is very difficult to determine the extent to which children are sexually exploited through prostitution in Canada. Besides the challenge of investigating clandestine activities, young people are afraid to report on this form of exploitation, believing that they will be charged and detained, reported to child protection agencies, or deported, in cases where they have been trafficked to Canada. The commercial exploitation of children through prostitution is most visible when these activities take place on the street; yet sexually exploited children are mostly found in a variety of off-street venues, such as massage parlours, brothels, escort agencies and sometimes even suburban homes. It is estimated that street prostitution accounts for only between 5-20% of all prostitution-related activities, despite the fact that it accounts for more than 90% of prostitution incidents reported by the police.⁴⁸

Prostitution is legal in Canada, but the act of solicitation of sexual favours is not. Section 213 of the *Criminal Code* prohibits solicitation in public places for the purpose of prostitution. It is frequently enforced to control street prostitution, but it often results in those selling sex services moving from one place to another, which further increases the vulnerability of young persons in the control of pimps who benefit from them.

While s. 213 applies equally to children and adults, police now consider children exploited through prostitution to be victims, and not criminals. Police currently use their discretion most often to employ alternative approaches – educational and protective, instead of laying charges. “In 2003, juvenile prostitution offences accounted for less than 1% of all prostitution-related offences, with the number of police-reported incidents dropping from 181 in 1994 to 41 in 2003.”⁴⁹

There has likewise been a legislative shift from focusing on the criminality of child prostitutes to that of buyers and pimps. With respect to *Criminal Code* amendments, sections 212 (2) (1) and (4) make it a criminal offence to live wholly or in part off the avails of prostitution of another person under the age of 18 years; attempts to obtain or secure sexual services from a person under the age of 18 or who is believed to be under 18 years of age are also aggravated offences. This makes communicating for the purpose of buying sex with a child an indictable offence. If convicted of these offences, perpetrators could face imprisonment terms of up to 5 and 14 years, respectively. Additionally, parents or guardians of children who procure that child for the purpose of engaging in any sexual activity with another party are in violation of the *Criminal Code*.

⁴⁷ Tamara Cherry, “Trafficking in human beings gets tougher: Landmark case will send a signal.” Toronto Sun, June 26, 2008.

⁴⁸ Standing Committee on Justice and Human Rights, *The Challenge of Change: A Study of Canada's Criminal Prostitution Laws*, Ottawa: December 2006, p. 14.

⁴⁹ *Ibid*, p. 55.

Since May 2008⁵⁰, a minor must be at least 16 years of age for consensual sexual activity;⁵¹ violators can face imprisonment for up to 10 years if convicted.⁵² The same punishment applies to any person who invites, counsels or incites a minor under the age of 16 to engage in illicit sexual acts.⁵³ The *Criminal Code* notably has a "close-in-age" exemption, which applies when the accused is less than five years' older than a complainant between the ages of 14 and 16. One concern is that the exemption does not include consensual sexual activity between two homosexual or bisexual young persons.⁵⁴

The provinces and territories have implemented various legislative measures for dealing with the exploitation of children through prostitution. Arrested offenders may also face prosecution under provincial law. Manitoba can fine convicted perpetrators of child sexual exploitation up to \$50,000 and /or imprison them for up to 24 months. Moreover, offenders' cars can be seized and held, and their drivers' licences suspended. Alberta has similar legislation.

Alberta was the first jurisdiction to draft legislation providing for the apprehension and detention of any person under 18 years of age suspected of being exploited through prostitution. The Protection of Children Involved in Prostitution Act was passed in 1999 and amended in 2000. Now entitled the Protection of Sexually Exploited Children Act⁵⁵, it provides for a child who wishes to end his or her involvement in prostitution to access community support programs. A child who does not wish to end his or her involvement can be apprehended by police and taken to a protective safe house, where he or she can be confined for up to 5 days. Two additional confinement periods of up to 21 days each can be applied for by the Director of Protection of Children involved in Prostitution. As soon as the child is confined, he or she is informed in writing as to the reasons for confinement, the duration of his or her confinement, court dates and the right to legal representation. Each child is able to contact Legal Aid, as well as request a court review of the confinement. The legislation also introduced legal penalties for customers and pimps, who can be charged with child sexual abuse, fined up to \$25,000 and jailed for up to two years.⁵⁶

Several other provinces, including B.C. Saskatchewan, Manitoba, Nova Scotia and Ontario, have enacted similar legislation. Ontario legislation goes even further in allowing the province to sue pimps and others who sexually exploit children for profit to recover the costs of treatment and services required by their victims. In 2002, the government of Manitoba developed its *Strategy Responding to Children and Youth at Risk of, or Survivors of, Sexual Exploitation* with a focus on prevention. Cities, such as Edmonton, Victoria, Ottawa, Toronto and Montreal have also developed their own approaches to combating child exploitation through prostitution, including neighbourhood community-based strategies.

Prosecuting perpetrators in cases of child exploitation through prostitution is extremely difficult since child victims subjected to this exploitation tend to have profound distrust in justice and

⁵⁰ Kimberly Shearon, *L'âge de consentement sexuel passé à 16 ans*, Cyberpresse.ca, April 30th 2008

⁵¹ *Tackling Violent Crime Act*, 2nd Session, 39th Parliament, 2e session, 39e législature, 56 Elizabeth II, 2007 & *Criminal Code*, L.R., 1985, ch. C-46, s. 150.1(1).

⁵² *Criminal Code. supra*, note 51, s. 151.

⁵³ *Ibid*, s. 152.

⁵⁴ Shearon, *supra*, note 50; *Criminal Code, supra*, note 51, s. 159(1), (2)

⁵⁵ *Protection of Sexually Exploited Children Act*, R.S.A. 2000, c. P-30.3

⁵⁶ *Ibid*, s. 9b)

social protection systems and are unaware of the importance of holding perpetrators accountable. Moreover, they are difficult to keep track of, since they tend to move freely within the country. They also tend to be among the most vulnerable and traumatized of children, due to personal history and economic or social marginalization. That makes it even less likely that they will be comfortable coming forward with complaints.

When prosecution does occur, the relatively short sentences are unlikely to deter others. For example, David William Ramsay, who attacked four Aboriginal girls between the ages of 12-16 after picking them up and paying money to sexually abuse them, pled guilty to one count of child sexual abuse under s. 151 (sexual touching); 1 count of child sexual abuse under s. 152 (invitation to sexual touching); 1 count of sexual assault (s.271); 1 count of sexual assault with a weapon, threats or causing bodily harm (s. 272); and 1 count of procuring/sexually exploiting a young person under 18 years (s. 212.4) in 2004. He received 7 years' imprisonment and was scheduled for a parole hearing in September 2007.⁵⁷ Many allege that the sentences do not reflect the serious impact of these offences for children.

Sexual Exploitation of children through child marriage

While early and forced marriage has not been reported as an extensive problem in Canada, it does exist; based on anecdotal evidence from persons close to communities where it occurs.

International laws prohibit forced marriage. Canada has ratified the following four treaties regarding consent to marriage, the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), the *Convention on the Rights of the Child* (CRC), the *International Covenant on Civil and Political Rights* (ICCPR), and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). It has yet to sign and ratify the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*.⁵⁸

The age of consent for marriage differs from province to province. For example, in most provinces (Alberta, Manitoba, New Brunswick, Saskatchewan, Quebec, Ontario and Prince Edward Island), the age of consent is 18 years; however, a child over 16 but under 18 can marry with parental or court consent. Consent for marriage is 19 years in British Columbia, Nova Scotia, Newfoundland, Northwest Territories, Y and Nunavut, with parental or court consent required if the child is over 16 and under 19. In Ontario, any person 18 years or older can obtain a license to be married. Children between 16 and 18 years require the consent of both parents in writing. In Yukon, parental or court consent is required if the child is between 15 and 19.

Consistent age of consent for marriage legislation should be pursued to provide greater rights equity, and should achieve the standards recommended by the UN Committee on the Rights of the Child jurisprudence as age 18. In addition, the Canadian government should ensure that effective assistance is provided for victims in Canada and Canadian citizens who are coerced into marriage in other countries. In the United Kingdom, the Forced Marriage Unit – FMU was put into place in an effort to prevent forced marriage and help British victims both in and out of the country.

⁵⁷ Justice for girls, *Court Case Summaries*, accessed July 12th 2010 at:

http://www.justiceforgirls.org/justicesystemmonitoring/index.html#courtcase_summaries.

⁵⁸ *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* 7 November 1962, 521 U.N.T.S. 231 (entered into force 9 December 1964).

Trafficking of children for marriage purposes has occurred between polygamous communities in British Columbia and Utah in the United States.⁵⁹ Claiming that the children have “consented” to sexual relations has been the stated reason for BC courts not proceeding with charges.⁶⁰ The case of polygamous marriages among members of the Fundamentalist Church of the Latter Day Saints in Bountiful, British Columbia, has received significant media attention due to the youth of female brides.

Laws in Canada prohibit sex with anyone under the age of 18 where the person is in a position of trust or authority⁶¹. In Bountiful's polygamous families, not only are the men typically much older than the young girls they marry, but also some of the child marriages and sexual relations have been with the head of the polygamous branch of the Mormon church, and other community leaders. “These children have been isolated from the outside world in a closed community. This is an apparent violation of Article 3 1(a) of the Protocol, which requires states to ensure that the following acts and activities are fully covered under criminal law -“offering, delivering or accepting by whatever means, a child for the purpose of sexual exploitation”.⁶² This is one of the factors for consideration in the polygamy reference that is before the BC Supreme Court, as mentioned earlier.

Protection

Child protection work is aimed at preventing, responding to, and redressing the exploitation and violence children have been exposed to through CSEC. It requires close collaboration among all agencies working with sexually exploited children as well as children vulnerable to exploitation and abuse. It includes law enforcement, customs and border officials, prosecutors, legal counsel, child protection agencies, health service providers, shelter or residential staff, counsellors, teachers and vocational trainers and other providers of services to these children.

Protection for trafficking victims

In its 2006 publication, *Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims*, the Future Group gave Canada a failing grade for its systematic failure to meet international obligations to protect victims of human trafficking.⁶³ The report asserted that Canadian practices re-victimisation, by detaining and often deporting human trafficking victims as illegal migrants, who sometimes face criminal charges as prostitutes; by refusing to provide formal protective measures to protect victims; and through the lack of government-funded health or counselling support.

Since the time of the publication, the Canadian government has expanded protection for trafficking victims by authorizing renewable temporary residency permits - TRPs (for a maximum of 180 days) for foreign victims and granting access to essential and emergency

⁵⁹ Submission from the Bountiful Round Table (British Columbia).

⁶⁰ Thestar.com, *Not enough evidence to charge Bountiful members: Prosecutor*, April 1 2007. Available online on July 12th 2010 at: <http://www.thestar.com/News/article/242313>.

⁶¹ Submission from Justice for Children and Youth.

⁶² Submission from Justice for Children and Youth.

⁶³ The Future Group, *Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims*, Alberta: Future Group Publications, 2006.

medical care, dental care and trauma counselling.⁶⁴ It is important to note that victims who receive a temporary residency permit are not obligated to assist authorities in investigations related to the trafficker and the processing fee for the permit is waived for trafficking victims.

At the time of the research for this report in 2008, 'four trafficking victims received TRPs'.⁶⁵ These were not offered to children⁶⁶; however, the same conclusion about insufficient protection for adults can be applied to children. Inadequate information is provided to victims and/or their legal representatives about options available to them, including the TRP.

Support entails responding to the immediate needs of the trafficked child – shelter, medical, dental and counselling services. Very quickly, these requirements expand to include education or vocational training, stable housing, legal representation, and repatriation in some cases – which should only be a course of action if a durable solution in the child's best interests. Support for victims of crime, including trafficking victims, is provided by the provinces and territories. Without a guiding framework to support trafficking victims, it is not surprising that services are unevenly offered and differ considerably across jurisdictions. British Columbia established an Office to Combat Trafficking in Persons in July 2007 with a mandate to coordinate the province's strategy to address situations of human trafficking in and across the province, keeping the rights and needs of trafficked individuals at the centre of any response. This is the only office of this kind in the country; time will tell if it is able to make a difference in the protection of victims and enforcement of anti-trafficking laws.

Protection for unaccompanied minors

Canada has special protection obligations for unaccompanied children. Unaccompanied or separated minors are defined under Citizenship and Immigration Canada policy as children under 18 years who arrive at a port of entry into Canada and are not accompanied by a parent or adult who is legally responsible for them.⁶⁷ Identification of such children can be challenging, particularly when there is no satisfactory proof of age. In Canada, the burden of proof to establish age rests on the claimant who will be treated as an adult if the immigration officer is not satisfied he or she is a minor. In cases where a minor refugee claimant is unaccompanied, and in cases where there are doubts about the relationship between a minor and an adult accompanying or arriving to meet the child, immigration officers are required to notify the provincial authority for child welfare.

These children are entitled to a range of social services while awaiting status determination or an appeal. In addition, children's claims are to receive priority processing. Social services are provided by different agencies, depending upon the province. In Québec, PRAIDA (Programme régional d'accueil et d'intégration des demandeurs d'asile) is notified by CIC as soon as an unaccompanied minor arrives. PRAIDA is a group of varied community service representatives with expertise and experience offering services for refugees and immigrants. Minors are assigned one caseworker for the immigration and refugee board (IRB) process and one caseworker for

⁶⁴ IRPA, supra, note 38, ss. 24 (3).

⁶⁵ US Department of State, *Trafficking in Persons Report*, June 2008, p.87.

⁶⁶ Standing Committee on the Status of Women, *Turning Outrage into Action to Address Trafficking for the Purpose of Sexual exploitation in Canada* Ottawa: Communications Canada, February 2007, p. 37.

⁶⁷ CIC, *PPI: Processing Claims for Refugee Protection in Canada*, 2006, Section 14.4, p. 66, accessed July 12th 2010, at <http://www.cic.gc.ca/english/resources/manuals/pp/index.asp>.

settlement services. The Ministry of Children and Family Development in BC has a Migrant Services team responsible for providing representation at IRB hearings and reception, screening and placement services for unaccompanied minors. A panel of immigration lawyers acts as the designated representative for unaccompanied minors before the IRB in Ontario and the Children's Aid Society or Catholic Children's Aid Society provide child protection services for children up to the age of 16. Clearly, this is a problem for young people of 16 and 17 years who are not provided necessary services in Ontario, as required under the CRC and OPSC.

Children are often housed in group or foster homes, although 95 unaccompanied children were kept in detention for 2005-06.⁶⁸ It must be recognized that detention of trafficking victims often results in their re-victimization and generally does not provide adequate protection. Under the Manitoba Child and Family Services Acts (CFSA), when providing for the safety of an exploited child, 'the legislation specifically provides that they cannot be taken to a "detention centre"⁶⁹.

Separated children also have the right to attend school and should be able to access community services, although in reality they are often not able to do so. Schools often require children to provide immunization records and refugee claimants who wish to attend college or university must pay foreign student fees. Library cards and bank accounts are also difficult to obtain for unaccompanied children, since they cannot provide necessary information on the applications. As a result, separated minors are unable to fully participate in Canadian society. The distress is worse for those minors who have been trafficked for sexual exploitation, as they are unable to fully recover and insert themselves into the community. Other barriers to obtaining necessary services include: 'having to produce identification, needing a permanent address, having to notify parents/guardians, limited hours of operation, age restrictions'⁷⁰.

Protection for child witnesses

Canada has a witness protection program, although it is unknown if any CSEC victims have been involved in the program. Special protections for child and youth victims and witnesses who testify in criminal court on any charges include the following provisions:

- Testifying by closed circuit television or behind a screen that shields the witness from the accused;
- Having a support person present to make children more comfortable;
- Requiring that the public leave the courtroom during all or part of the court proceedings involving children as witnesses or victims;
- Having a lawyer appointed to conduct the cross-examination of children when the accused is self-represented;
- Publication bans on any information that could identify a child victim or witness; and

⁶⁸ Standing Senate Committee on Human Rights, *Children: The Silenced Citizens*, April 2007, p. 133.

⁶⁹ Professor Karen BUSBY, Dr. Pamela DOWNE, Kelly GORKOFF, Kendra NIXON Dr. Leslie TUTTY, Dr. E. Jane URSEL, Examinations of innovative programming for children and youth involved in prostitution, 2000. Available online on July 12th 2010 at: <http://www.harbour.sfu.ca/freda/reports/gc204.htm>.

⁷⁰ URBAN NATIVE YOUTH ASSOCIATION, *Full circle*, 2002, pp. 51-52. Available online on July 12th 2010 at: <http://www.unya.bc.ca/resources>.

- Videotaping children's evidence and witness statements to use at trial instead of asking them to repeat their testimony in court (although children may be cross examined on this evidence).⁷¹

These testimonial aids can reduce the trauma of testifying for children, and permit them to more fully answer questions about their experiences⁷². Concerning the child's capacity to testify, the main principle is stated in subsection 16.1 (1): [a child] "under fourteen years of age is presumed to have the capacity to testify." However, a significant modification to a competency inquiry states at s. 16.1(7) that "[no] proposed witness under fourteen years of age shall be asked any questions regarding their understanding of the nature of the promise to tell the truth for the purpose of determining whether their evidence shall be received by the court." Thus, if a child does not give an oath, one shall not discount the evidence⁷³. While these provisions are very promising, they are not systematically applied due to a lack of knowledge, technical assistance, resources and training.⁷⁴

Adequate and safe shelters are essential to assure that the victim and his or her family will not be subjected to pressure and harassment with respect to the prosecution^{75 76}. Protection methods that aim at reassuring families are lacking, though crucial in 'avoid[ing] reprisals from the part of the criminal organizations'⁷⁷. Shelter takes on various forms - overnight services, transitional housing to cater to the 18-25 year olds, affordable housing for children who live in the streets, and short term options where social interveners are not obligated to notify the Director of Youth Protection. All are crucial in responding to the needs of victims^{78,79,80}.

Protection for children on the street

The benign and not so benign neglect of thousands of runaway and homeless street children is a failure to protect children from exploitation. Children in these environments are at much greater risk of exploitation and require the care and concern of the state in order to protect them.

A holistic approach is needed to providing services to these children. At a minimum, the following gaps need to be addressed:

⁷¹ *Criminal Code, supra*, note 51, s. 486.

⁷² Gordon PHANEUF, for the Child Welfare League of Canada, Presentation to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, April 19th, 2005. Available online on July 12th 2010 at: <http://www.cwlc.ca/files/file/policy/BillC-2BriefingNote.pdf>.

⁷³ N. BALA, K. DUVALL-ANTONACOPOULOS, R. LINDSAY, K. LEE, & V. TALWAR, (2005), *Bill C- 2: Reforming Canada's Child Witness Laws*.

⁷⁴ N. BALA, R. LINDSAY, & E. MCNAMARA, "Testimonial Aids for Children: The Canadian Experience with Closed Circuit Television, Screens and Videotapes" (2001), 44 *Crim L. Q.* 461.

⁷⁵ Submission from Lawrence-Thierry Bernard.

⁷⁶ INTERNATIONAL BUREAU FOR CHILDREN'S RIGHTS, *International dimensions of the sexual exploitation of children - Global report*, International tribunal for children's rights, 2000, p. 47. Available online on July 12th 2010 at: http://www.ibcr.org/editor/assets/thematic_report/4/2000_global_report_sec_en.pdf

⁷⁷ Submission from Lawrence-Thierry Bernard.

⁷⁸ CONSEIL JEUNESSE DE MONTRÉAL, *La rue mise à nue : prostitution et gangs de rue*, hiver 2005-2006 p.30-31.

⁷⁹ Conseil Permanent de la Jeunesse, *Prostitution de rue : avis*, April 2004, p. 13.

⁸⁰ Submission from Lawrence-Thierry Bernard.

- More outreach personnel;
- Detoxification and treatment beds for youth;
- Residential mental health facilities.⁸¹

Prevention

Primary prevention plans involve public awareness and education aimed at changing actual and potential offenders' behaviours and changing the social perception of CSEC. It also includes awareness, empowerment and early responses among communities, families and peers. The federal government has devoted resources to increasing awareness and education about the sexual exploitation of children on line, as well as developing mechanisms to track known offenders with the aim of preventing reoffending.

Preventing repeat offences

The National Sex Offender Registry (NSOR) is a national database whose purpose "is to help police services investigate crimes of a sexual nature by requiring the registration of certain information relating to sex offenders"⁸². It came into force on December 15, 2004. "Recently amended section 490.012 of the *Criminal Code* states that a court shall, on application of the prosecutor, make an order requiring a person to be listed on the registry."⁸³ The information contained in the registry can be accessed by police officers for investigational, research of statistical purposes.⁸⁴ Individuals listed can also have access to their own file.

The reality is that many convicted sex offenders are not listed on the registry, as "the registry does not automatically include all convicted sex offenders and courts are given discretion for whom to place an order on."⁸⁵ The province of Alberta has identified twenty-seven sex offenders who are at risk of re-offending and who are not included in the registry because they have already served their sentence.⁸⁶ These offenders are not being tracked and do put children at increased risk. Furthermore, the passports of convicted sex offenders are not restricted; foreign authorities

⁸¹ Assistant Deputy Ministers' Committee on Prostitution and the Sexual Exploitation of Youth (2001). *Sexual Exploitation of Youth in British Columbia*. Victoria, BC: Ministry of the Attorney General.

⁸² *Sex Offender Information Registration Act*, S.C. 2004, c. 10, s. 2(1).

⁸³ David THOMPSON, for Beyond Borders, "Loopholes in the National Sex Offender Registry", 2005. Available online on July 12th 2010 at: <http://www.beyondborders.org/Publications/Fact%20Sheet%20-%20Sex%20Offender%20Registry3.pdf>.

⁸⁴ *Sex Offender Information Registration Act*, *supra*, note 33, s. 16.

⁸⁵ David THOMPSON, Beyond Borders, "Loopholes in the National Sex Offender Registry", 2005. Available online on July 12th 2010 at: <http://www.beyondborders.org/wp/wp-content/uploads/2009/06/fact-sheet-loopholes-sex-offender-registry3.pdf>.

⁸⁶ Robin MacKay, "Bill C-16: Sex Offender Information Registration Act," available online on July 12th 2010 : Library of Parliament http://www.parl.gc.ca/common/bills_ls.asp?Parl=37&Ses=3&ls=c16, quoted in David THOMPSON, for Beyond Borders, "Loopholes in the National Sex Offender Registry", 2005, available online on July 12th 2010 at: <http://www.beyondborders.org/wp/wp-content/uploads/2009/06/fact-sheet-loopholes-sex-offender-registry3.pdf>.

most often do not receive notification of a previously convicted Canadian sex offender's plans to travel to their country.⁸⁷

Prevention of Internet exploitation

In 2001, the *Canadian Strategy to Promote Safe, Wise and Responsible Internet Use* (Cyberwise) was developed by the federal government, in partnership with NGO and private sector organizations, to increase public awareness of issues relating to illegal and offensive Internet content by providing parents and teachers with access to a broad collection of tools and resources distributed to schools and libraries across Canada and through their website:
www.cyberwise.gc.ca.

Federal support was provided to Child Find Manitoba to make Cypertip.ca a national project. In addition to accepting anonymous reports concerning suspicious content and activities on the internet, Cybertip.ca also provides educational information and referral services to the public. Child Find Manitoba is also responsible for the establishment of CCAICE, the Canadian Coalition Against Internet Child Exploitation, which includes as part of its activities a national campaign to raise public awareness on the impact and dangers of online sexual exploitation of children. CCAICE's membership includes Beyond Borders and representatives from Canada's leading Internet companies, the federal and provincial governments, law enforcement, and is chaired by Cybertip.ca. CCAICE has also created and publicized a list of proprietary and commercially available parental internet controls and hardware filtering solutions, among other efforts.

In November 2006, Project Cleanfeed Canada was launched by Cybertip.ca, with CCAICE. Formed in 2004, "Cleanfeed is intended to make the Internet safer for Canadians and their families by reducing their chances of accidentally coming across images of child sexual exploitation on the Internet. Project Cleanfeed Canada is named after a similar initiative implemented very successfully by British Telecom in the UK and subsequently adopted by a number of other European ISPs."⁸⁸

School Net, a program of Industry Canada, has also received funding to enhance its website to serve as a clearinghouse of existing educational resources related to the protection of children from sexual exploitation. School Net's partnerships and projects have included the following:

- Media Awareness Network/Reseau Education Medias, an organization offering resources and support to young people in their development of critical thinking skills about the media and the Internet;
- Young Canadians in a Wired World, Phases I and II, a database outlining the challenges and questions young people have when using the Internet; and
- Reality check/Au-dela des faits, a tool designed for children in grades 9 to 12 to bring practical skills and a critical mind to the web.

⁸⁷ David THOMPSON, for Beyond Borders, "How Canada allows its convicted sex offenders to freely travel abroad", 2005, available online on July 12th 2010 at: <http://www.beyondborders.org/wp/wp-content/uploads/2009/06/fact-sheet-how-canada-allows.pdf>.

⁸⁸ BEYOND BORDERS Newsletters, Issue no. 10, Spring 2007, p.8. Available online on July 12th 2010 at: <http://www.beyondborders.org/wp/wp-content/uploads/2009/06/spring-07-issue-final.pdf>.

The Department of Foreign Affairs and International Trade has a publication on child sex tourism on its website.⁸⁹ Some information on the topic is also available in the booklet "Essential Information for Canadian Travellers".⁹⁰ The publication is intended for online consultation only and is not widely distributed. It is also available in alternative formats upon request.

Internet exploitation receives the most attention in educational programming by the federal government. More preventive education is needed in other areas, such as trafficking for CSEC, the exploitation of children through prostitution and child marriage.

Various initiatives in the private sector have been undertaken, such as the Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism, which has been adopted to date by one Canadian tourism or travel company, with several more in development.⁹¹ As of March 2005, 241 companies operating from 21 countries had signed the Code⁹².

Since November 2005, One Child, through its Kids Horizon's program, has been working in partnership with Air Canada to raise awareness about child sex tourism. An in-flight video plays on many of Air Canada's routes and warns travellers of Canada's extraterritorial legislation on the issue of child abuse, explaining that people can be charged in Canada for crimes committed elsewhere.⁹³ The "video initiative was the result of direct children/youth action from start to finish, including the creation of the video itself".⁹⁴

The federal Interdepartmental Working Group on Trafficking in Persons (IWGTIP), co-chaired by the departments of Foreign Affairs and Justice, coordinates federal activities to address trafficking, including:

- Producing and distributing an information booklet in 14 languages to warn potential trafficking victims;
- Organizing a professional training session on human trafficking for police, Crown prosecutors, immigration, customs and consular officials;
- Developing a tool kit, including a training video, to enable all law enforcement agencies to identify potential trafficked victims and their traffickers, as well as outlining criminal offences;
- Assisting in the establishment of the RCMP's Human Trafficking National Coordination Centre to coordinate federal law enforcement efforts and to assist municipal, provincial and territorial investigations;

⁸⁹ DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA, *Child Sex Tourism: It's a Crime*. Available online on July 12th 2010 at: <http://www.voyage.gc.ca/publications/child-crime-enfants-eng.asp>.

⁹⁰ DEPARTMENT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA *Bon voyage, but... Essential Information for Canadian Travellers*, 2007/2008. Available online on July 12th 2010 at: <http://www.voyage.gc.ca/publications/bon-voyage-eng.asp>.

⁹¹ ECPAT INTERNATIONAL, *Global Report on the status of action against commercial sexual exploitation of children – Canada*, 2006, pp. 15-16.

⁹² ECPAT INTERNATIONAL AND UNICEF, *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism - Signatory Companies*, April 2005. Available online on July 12th 2010 at:

<http://www.thecode.org/dokument/images/downloads/Signatories-04-05.pdf>.

⁹³ <http://www.one-child.ca/accomplishments.html> (Not available anymore)

⁹⁴ Submission from One Child

- Hosting a conference on trafficking in persons, especially youth, children and women, to raise awareness and knowledge about the situation of trafficking victims and explore community based prevention strategies; and
- Consulting with NGOs and academics about the possibility of a federal anti-trafficking strategy.

Various prevention materials are produced and used by NGOs across the country. One example is a comic strip named “Le silence de Cendrillon” (Cinderella’s Silence), which was developed by the Centre jeunesse de Montréal - Institut universitaire (Montreal Youth Center). Another prevention tool, a play entitled “The charming snake”, was created in Quebec by the Théâtre Parminou. Both of these prevention tools are intended for young people in order to raise awareness on child trafficking and sexual exploitation. Many of the materials produced by NGOs are excellent; the challenge is reaching more people to ensure that a broad base of the population is aware and informed about what they can do to help prevent sexual exploitation of children.

Prevention workshops should be included in the school curriculum, not only to make children aware of CSEC, but also to inform them adequately on the subject (victim profiles, recruiting methods, work conditions, how to report abuse and violations, etc.).⁹⁵ Education campaigns and programs aimed at preventing children from entering prostitution should also be developed and established in schools and communities.^{96 97 98} Special prevention programs are needed for First Nations children and they should be developed with the involvement of children from the start and validated by the communities. National educational programs should be culturally adapted for First Nations⁹⁹ and should teach alternatives to violence and abuse.^{100 101}

A recent survey conducted by the Marie-Vincent Foundation states that almost seven Quebecois out of ten underestimate the impact of sexual aggression on children. Just over 22 percent of the respondents are unaware that solid proof is not necessary to report a case of sexual exploitation to the authorities. According to the results of the survey, half of the adult population believes that, in order to report instances of sexual aggression towards children, anal or vaginal sexual intercourse must have occurred. More than half of the respondents revealed they do not know what resources are out there to help exploited children.¹⁰²

Children need to be educated by parents, schools, communities, media and public programmes to recognize and protect themselves from sexual predators, and to differentiate between love and exploitation. Children should be taught that gifts and rewards such as clothing, technological devices, protection, good marks at school, cigarettes, alcohol or drugs can be signs of luring.

⁹⁵ Mélanie M. GAGNON and Catherine GAUVREAU for the International Bureau for Children’s Rights, Research paper: *Strategic Action Plan for the Protection of Victims of Child Trafficking in Quebec*, February 2007, pp. 41-42.

⁹⁶ CONSEIL JEUNESSE DE MONTRÉAL, *supra*, note 79.

⁹⁷ CONSEIL PERMANENT DE LA JEUNESSE, *supra*, note 80.

⁹⁸ Report of the Standing Committee on Justice and Human Rights, *The Challenge of Change: A Study of Canada’s Criminal Prostitution Laws*, p. 87.

⁹⁹ Yasmin RATANSI, *supra*, note 41, p. 13.

¹⁰⁰ Commercial sexual exploitation of Inuit Children and Youth, February 2007.

¹⁰¹ Assembly of First nations, Sexual exploitation abuse of first nations children, p.14

¹⁰² RADIO-CANADA, «Un sondage préoccupant», June 12th, 2007. Available online on July 12th 2010 at: <http://www.radio-canada.ca/nouvelles/societe/2007/06/12/002-sondage-agression-enfant.shtml>.

Sexually exploited young people themselves emphasize the importance of education to reduce vulnerability.

Prevention for boys

“In all communities, the focus of programming and service provision is girls and women, with little knowledge about the roles of males. Recent research has shed light on the prevalence of the phenomenon of boy and young male prostitution, such as the April 2004 report by Quebec’s Conseil Permanent de la Jeunesse, “Vu de la rue: les jeunes adultes prostituées” or the report released in March 2005 by Dr. Sue McIntyre, “Under the Radar: The Sexual Exploitation of Young Men”. More programs must be developed to look at the particular place of sexually exploited boys and male sex trade workers. Additionally, interest was expressed in focusing more on preventing young men from becoming offenders, johns, pimps and recruiters.”¹⁰³ Prevention, intervention and re-integration materials should be adjusted to reflect the risks of the sexual exploitation trade for both genders.¹⁰⁴ A national campaign for young boys would be an important addition to prevention programs in Canada.

Most secondary prevention initiatives are undertaken at provincial and municipal levels. A good example of public education and engagement is Manitoba’s *Neighbourhood Solutions: Working together to address sexual exploitation on our streets* and Edmonton’s (Alberta) *Working Together to Address Sexual Exploitation in Edmonton: A snapshot of initiatives and insights*. Nongovernmental organizations who work with victims of crime, child advocacy and vulnerable youth have been the main sources of prevention initiatives in the areas of child exploitation through trafficking and prostitution. Access to long-term funding is a core issue for all of those working on prevention.

Tertiary prevention programs are aimed at changing the habits and behaviours of children currently involved in commercial sexual exploitation activities. These involve “rescuing” victims, sheltering them (when necessary) and developing programs that educate them about health risks, legal opportunities, life skills and alternative living and economic arrangements. Where possible, families of victims should be contacted to explore the suitability of reintegration and seek ways for the family to support the child. These programs are overwhelmingly found among NGOs, church organizations and child advocacy and legal support agencies. The government is notably absent from tertiary prevention.

Reintegration initiatives

Support services for CSEC victims are largely provided through provincial government facilities, child welfare agencies, and NGOs. There is no national strategy, guidelines, protocol of treatment, nor coordination of programming in this area. Services are not necessarily accessible – particularly outside of large urban centres, and information about them is not widely disseminated. This makes it more difficult for children in northern communities or outside of the

¹⁰³ Sarah HUNT for the Justice Institute of British Columbia, Centre for Leadership and Community Learning,

Violence in the *Lives of Sexually Exploited Youth and Adult Sex Workers in BC*, 2006, p. 59-61.

¹⁰⁴ Dr. Sue McIntyre, *Under the Radar: The Sexual Exploitation of Young Men*, March 2005, p. 16-17.

Available online on July 12th 2010 at:

<http://www.child.alberta.ca/home/documents/childintervention/undertheradar.pdf>.

largest cities to access them. An inquest report into the suicide of a 14-year-old Manitoba girl recommended improvements to the child welfare agency and increased efforts to combat child sexual exploitation. Several recommendations called for protocol and policy changes and more staff training for child and family services employees, as well as urging police, child welfare workers, justice officials, community groups, aboriginal organizations and government agencies to create a strategy to attack the “horrific” CSEC in Winnipeg.¹⁰⁵

Coordination of services

There is a lack of networking between relevant stakeholders, to enable professionals to actively work together and complement each other in their intervention on cases of commercial sexual exploitation of children. Relations at the international, national, and local levels between governmental, inter-governmental and non-governmental agencies should be further developed.¹⁰⁶ As an example, children who are victims of sexual exploitation in Quebec are usually placed by Youth Protection and referred to a psychologist for consultation. Most often, complementary and alternative intervention options are not considered. It is important that community expertise be recognized as well, since most programming tends to be non-governmental and community-based. Peer to peer support and the expertise of children themselves also need to be recognised and utilized.

Resources for community social services

Many criticize the three government levels (federal, provincial and municipal) for not supporting those working on the front-line with stable resources or sufficient time to work intensively with children. For example, in British Columbia the 2006/07 Annual Service Plan Report from the Ministry of Public Safety and Solicitor General, reports that it was able to fund only 287 out of 331 planned projects devoted to community based programming in the area of youth crime, violence, bullying and sexual exploitation, due to changes in the funding priorities of the National Crime Prevention Centre.¹⁰⁷ Many organizations have expressed frustration with the lack of funding from the Government of Canada in order to help sexually exploited children, especially for community organizations and First Nations communities.^{108 109 110 111 112 113} The 2007 Budget of Canada allocated \$6 million to combat the sexual exploitation of children and human trafficking, both domestically and abroad¹¹⁴.

In recent years, funding cuts in the area of social services have reduced services for young people. A 2006 report from Prince George, British Columbia, for example, stated that: “funding cuts

¹⁰⁵ CBC News, *Inquest report urges more help for sexually exploited teens*, January 16, 2008, accessed July 12th 2010 at: www.cbc.ca/canada/manitoba/story/2008/01/16/owen-inquest.html.

¹⁰⁶ INTERNATIONAL BUREAU FOR CHILDREN'S RIGHTS, *Recommendations: Strategic Action Plan for the Protection of Victims of Child Trafficking in Quebec*, May 2007, pp 1-2.

¹⁰⁷ Ministry of Public Safety and Solicitor General, *2006/07 Annual Service Plan Report*, B.C., p. 40

¹⁰⁸ Mélanie M. GAGNON and Catherine GAUVREAU, *supra*, note 96, p. 44.

¹⁰⁹ Sarah HUNT for the Justice Institute of British Columbia, *supra*, note 104, p. 58.

¹¹⁰ Submission from Project Intervention Prostitution Québec.

¹¹¹ First Nations Child Welfare, *Making Children a National Priority – Issue for Election 2006*.

¹¹² Yasmin RATANSI, *supra*, note 41, p. 12-13.

¹¹³ Submission from Manitoba Association of Friendship Centres.

¹¹⁴ 2007 Budget of Canada, available online July 12th 2010 at : <http://www.budget.gc.ca/2007/index-eng.html>

have eliminated important positions in the community, such as the sexually exploited youth outreach worker and housing project. Without these programs, the community is lacking programs that address the specific needs of sexually exploited youth.”¹¹⁵ The “lack of long term, consistent, adequate, and specific programs dealing with the issue of sexually exploited children and youth is seen as a major difficulty or challenge.”¹¹⁶ A national strategy needs to include stable and adequate funding for community-based initiatives to provide specific programs and services to help sexually exploited children and victims of human trafficking.^{117 118}

Quality, training, consent, and privacy in services for children

Victim recovery processes require quality standards with respect to staff training, the development of multidisciplinary networks to protect, serve and care for children, and the creation of an enabling policy framework and recognition of the rights of children. The young people represented in the *Out from the Shadows* report highlight the need for intersectoral and integrated approaches to healing, recovery and reintegration, because they look at the child holistically and address the range of needs.

Communities for Children, an NGO from Saskatchewan which works with young victims of sexual exploitation, provides a good example of ‘an inclusive, multi-service for women and girls in [their] community’ where women and girls will be provided with ‘the skills and resources they need to achieve full and equal participation in society’. ‘[...] [their] new action of programming through the Girls Action Information Network (GAIN) service [...] spotlights programming on children at risk.’¹¹⁹

Specifically, this service provides support to girls and works in conjunction with existing programs in an attempt to assist the girls in dealing with many of the underlying issues that initially led to their being at risk, educating them about their options for being safer on the street, as well as encouraging and supporting an exit from a life of victimization. Once girls have decided to make a life change, GAIN will provide skill-based activities, support options, peer programming and referrals to formal counselling to help the girls deal with their underlying issues in a nonjudgmental, safe environment. The support includes prevention and awareness in the areas of street life, pimp tactics, types of sexual exploitation, survival skills, and living a healthy lifestyle.¹²⁰

Consent and privacy rights must be respected in services that are provided for children and should be based on the ‘capacity to understand treatment and its consequences rather than an arbitrary age’.¹²¹ Yet, tests for capacity can be arbitrary and difficult to administer. ‘The fundamental challenge for policy makers is to determine how to strike the right balance between respecting the rights and autonomy of the children/youth exploited through prostitution and ensuring their best

¹¹⁵ Sarah HUNT for the Justice Institute of British Columbia, *supra*, note 104, p. 58.

¹¹⁶ Submission from Manitoba Association of Friendship Centres.

¹¹⁷ Yasmin RATANSI, *supra*, note 41, p. 19.

¹¹⁸ Helene BERMAN, Ph.D., R.N. & Yasmin JIWANI, Ph.D., *Recommendations and conclusions - Violence Prevention and the Girl Child: Phase Two Report*, available online on July 12th 2010 at: <http://www.harbour.sfu.ca/freda/reports/gc207.htm>.

¹¹⁹ Submission from C4.

¹²⁰ Submission from C4.

¹²¹ Submission from Justice for Children and Youth.

interests through quality services with secure funding to the NGOs that provide a range of voluntary services along the harm reduction and advocacy continuum.¹²²

Legal services

Access to legal services, is difficult for children who find themselves in vulnerable situations. At the community level, financial support is the main obstacle in providing services to these children. "In civil actions young persons under 18 years of age are non sui juris and therefore require the power and guardianship of a "next friend" or "guardian ad litem" and are restrained against litigating in their own right. While the guardian does not replace the young person they instruct counsel and are generally accountable to the court.¹²³ Moreover, there "is no requirement that the courts hear directly from the young person. In the case of sexual victimization, keeping a child out of the legal process has been found contrary to a child's well being and best interests. Further difficulty arises because the guardian is held responsible for indemnification of the other party's legal expenses."¹²⁴ "Young persons who wish to take civil action against those who are legally responsible are not able to access free legal services in many provinces in Canada. Further, in provinces that do offer legal aid, it may only be available in cases where institutions, not individuals, may be liable."¹²⁵

"Children must be able to avail themselves of free legal services in all parts of Canada in order to exercise their right to seek legal compensation from those who victimized them. Further, they must be informed of that right."¹²⁶

Services for victims of trafficking

With particular respect to child trafficking, Canada needs to take the recovery and repatriation of children more seriously. At one time Canada provided funding for International Social Services, a non-profit agency that provided linkages to social services agencies worldwide. It helps to resolve individual and family problems resulting from the movement of people across national borders, including international custody, trafficking and reunification cases. The federal government cut the funding for this program as of March 31, 2007.

Before repatriating a person back to their country of origin, Canadian authorities must conduct a risk assessment to determine if there are sufficient measures to ensure the protection of a victim of trafficking. In a recent decision, the Ontario Federal Court¹²⁷ indicated that a willingness to provide adequate protection to victims of gender violence is not enough for a finding of State protection to be considered reasonable. The ability of a State must be seen to include not only the existence of an effective legislative and procedural framework, but the capacity and the will to effectively implement that framework. A stay of the execution of the removal order was ordered until the deposition of the leave application and the assurance that leave would be granted.

¹²² Professor Karen BUSBY, Dr. Pamela DOWNE, Kelly GORKOFF, Kendra NIXON, Dr. Leslie TUTTY, Dr. E. Jane URSEL, *supra*, note 70.

¹²³ Submission from Justice for Children and Youth p. 11.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Monica Streanga v. Citizenship and Immigration Canada*, Ontario Federal Court, July 29th, 2007.

Some countries, such as the United Kingdom, have set up special offices in countries where a significant problem in child marriages exists with the objective to facilitate the repatriation of the child victims back to their country, in this instance the United Kingdom. To date, Canada has not followed suit.¹²⁸

Canada has not yet signed the *Inter-American Convention on International Trafficking in Minors*, the *Convention for the Suppression of Trafficking and Prostitution*, and the *Convention on Migrants, Workers and their Families*.¹²⁹ Representatives from the Canadian government have participated in the negotiation of the Regional Guidelines for Special Protection in Cases of Repatriation of Child Victims of Trafficking (Guidelines).¹³⁰ These Guidelines fail to reflect the obligation of States, under the Convention on the Rights of the Child, to make the best interests of the child a primary consideration in the decision whether or not to repatriate. To determine if repatriation is in the best interests of the victim, the following elements must be considered: the family situation of the victim, the protection measures available, and the possibility of reintegration in the country of which the victim is a national or a resident.¹³¹

Child participation

It has been demonstrated that continued collaboration with children is a key component to address sexual exploitation in an effective manner.¹³² For example, in 2004, the North Okanagan Youth and Family Services Society conducted a research project to gain insight into the scope of the problem of sexual exploitation of children in the North Okanagan. As part of the project, interviews were conducted with children who had been sexually exploited.¹³³ Similar activities were undertaken in 2004 by the Community against Sexual Exploitation of Youth in Prince George.¹³⁴ "For each of the participants, the interview was the first forum in which they had spoken of their experiences. They were passionate about wanting to create change and make a difference for those younger than themselves."¹³⁵ Additionally, involvement of Aboriginal peoples who have experienced sexual exploitation is seen to be important because they can understand firsthand the experiences of other children.¹³⁶

¹²⁸ Submission from Justice for Children and Youth.

¹²⁹ CANADIAN COUNCIL FOR REFUGEES, Comments on draft Regional Guidelines for Special Protection in cases of the Repatriation of Child Victims of Trafficking-April 2007.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² CASEY (Prince George), *Effective Youth Collaboration and Engagement: Key Issues*, April 30th, 2004, p.6. Available at: <http://www.myfoundation.ca/youth-collaboration.pdf>. (N'est plus disponible en ligne).

¹³³ NORTH OKANAGAN YOUTH AND FAMILY SERVICES SOCIETY, *Giving youth a voice: Experiential youth in the North Okanagan*, May 2004, p. 3. Available online at: http://www.myfoundation.ca/pdf/giving_youth_voice.pdf (N'est plus disponible en ligne).

¹³⁴ Addressing the Sexual Exploitation of Our Youth: Building Community Capacity for Effective Response, p.6.

¹³⁵ McCreary Youth Foundation – Research and links: <http://www.myfoundation.ca/academic.html>. (N'est plus disponible en ligne)

¹³⁶ Cindy BLACKSTOCK, Sarah CLARKE, James CULLEN, Jeffrey D'HONDT, Jocelyn FORMSMA for FIRST NATIONS CHILD AND FAMILY, *Keeping the promise: The Convention on the Rights of the Child and the Lived Experiences of First Nations Children and Youth*, April 2004, pp. 183-84. Available online on July 12th 2010 at: <http://www.fnfcs.com/docs/KeepingThePromise.pdf>.

Children are too often left out of the discussion and action on issues that affect them.¹³⁷ “Child and youth participation should be maximized, and their networks should be supported as part of a civil society force against child sexual exploitation.”¹³⁸ It is important to “acknowledge that there are children and youth who are mobilizing in Canada and producing results.”¹³⁹ The federal government should also “dedicate resources towards ensuring that children’s input is given considerable weight when laws, policies and other decisions that have a significant impact on children’s lives are discussed or implemented at the federal level.”¹⁴⁰ Moreover, Aboriginal children with experience in the commercial sex trade should be involved in designing programs, services and policies directed at them.^{141,142} Finally, an effective national strategy needs to include Aboriginal children and organizations as key partners.¹⁴³

In Canada, “there is a lack of information and awareness about the UN Convention on the Rights of the Child and the Protocol. The majority of those who work in youth-serving agencies in some provinces are not even aware of the existence of international laws that protect children, or of the rights they afford children in Canada. Furthermore, information on the Protocol is not included in the curriculum of most school boards. Even young people themselves are unaware of their rights under Canada’s international treaties.”¹⁴⁴ “Children must know their rights before they can promote and exercise them. [...] Children should know that adult sex with children is child abuse. Children’s rights education teaches decision-making, improves self-esteem and helps build stronger links between young people, their families and their communities.”¹⁴⁵

There is broad agreement that a comprehensive strategy is needed to inform Canadian children, decision-makers, professionals, and the general public about the rights of children under the Convention and its Optional Protocols.”¹⁴⁶

¹³⁷ Submission from One Child.

¹³⁸ INTERNATIONAL BUREAU FOR CHILDREN’S RIGHTS, *International dimensions of the sexual exploitation of children - Global report*, International *supra*, note 77, p. 62. .

¹³⁹ Submission from One Child.

¹⁴⁰ Standing Senate Committee on Human Rights, “Children: The Silenced Citizens: Effective implementation of Canada’s international obligations with respect to the rights of children”, April 2007, p. 60.

¹⁴¹ David THOMPSON, for Beyond Borders, *Commercial Sexual Exploitation of Children in Canada*, 2005.

¹⁴² BEYOND BORDERS Newsletters, *supra*, note 89, p.2.

¹⁴³ FIRST NATIONAL CHILD AND FAMILY, *At risk: When basic needs are not met - The sexual exploitation of aboriginal young people*, February 19th, 2007.

¹⁴⁴ Submission from Justice for Children and Youth.

¹⁴⁵ CANADIAN INTERNATIONAL DEVELOPMENT AGENCY, *Out from Shadows: Good Practices in working with sexually exploited Youth in the Americas*, 2001, p. 89-90. Available online on July 12th 2010 at: [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Childprotection/\\$file/E26.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/Childprotection/$file/E26.pdf).

¹⁴⁶ Submission from Children for Justice and Youth.