

Evangelical Fellowship Canada

Submission to the Committee on the Elimination of Discrimination Against Women (CEDAW) by the EFC's Centre for Faith and Public Life

September 9, 2024

The Evangelical Fellowship of Canada's Centre for Faith and Public Life (CFPL) is based in Ottawa, Ontario, Canada. We welcome the opportunity to participate in the consideration of Canada in the 89th session of CEDAW.

From the List of issues and questions prior to the submission of the tenth periodic report of Canada, we are responding to questions 11, 14 and 15.

Question 11. Discriminatory stereotypes and harmful practices

In 2021, Canada passed legislation to create a second track for medical assistance in dying (MAiD), making people with disabilities or chronic illness eligible for euthanasia even if their natural death wasn't "reasonably foreseeable." With this change, MAiD became available on the basis of disability, putting people with disabilities outside of the protections offered to other Canadians.

Since this expansion, there have been many instances of people with disabilities seeking MAiD because they are unable to access or afford adequate medical or social supports, because of poverty or housing insecurity, or intolerable conditions in long term care. Many have had MAiD suggested to them by medical professionals, sometimes repeatedly. Eligibility on the basis of disability endangers and devalues the lives of disabled Canadians.

Discrimination against persons with disability is implicit in Canada's MAiD regime, and government data suggests this discrimination is experienced acutely by women with disability or chronic illness. In 2022, the overall number of MAiD deaths were relatively equal between men and women (51.4% and 48.6%, respectively). However, under Track 2, the ratio of women to men is significantly skewed: 59% of those who died by MAiD were women and 41% were men.

In a webinar titled "Feminism, Ableism and MAiD", which we strongly commend to this committee, Dr. Isabel Grant describes how women are disproportionately impacted by chronic illness, poverty, male violence, social isolation and medical ableism. She argues that it is not possible to separate suffering caused by disability from all the "accompaniments of disability" – such as poverty, social isolation and marginalization.

In the same webinar, Dr. Elizabeth Sheehy details how women are more likely than men to experience disability, to be isolated and living with fewer supports. Women with disabilities are at higher risk of intimate partner violence and sexual assault, and male violence is a cause of female disablement. Women are over-represented among low-income families and individuals in Canada, and more likely to experience food insecurity. Sheehy cautions it is entirely predictable that women with disabilities who are poor would be offered MAiD or driven to it in disproportionate numbers because they cannot find stable safe housing, appropriate treatment or other forms of social and community support.

This existing disparity and discrimination against women under Track 2 MAiD are even more concerning given the scheduled expansion of eligibility on the basis of mental illness alone, set to take effect in March 2027.

Evidence from other jurisdictions tells us that psychiatric MAiD overwhelmingly ends the lives of women. In the Netherlands, 65% of those who received psychiatric euthanasia between 2012 and 2018 were women and 35% were men. Studies of psychiatric euthanasia in Belgium and the Netherlands indicate a clear gender gap, with women accounting for the majority (69%–77%) of those who request and receive psychiatric euthanasia.

The gender disparity for psychiatric euthanasia in the few countries where it is legal mirrors the ratio of female-male suicide attempts. While suicide attempts by men are lethal at twice the rate of those by women, women attempt suicide at twice the rate men do, but are less likely to cause themselves pain or violence in attempts to end their lives. A British Medical Journal on Mental Health study suggests that "the availability of [euthanasia and assisted suicide] in the Netherlands may render more effective the wish to die of women whose suffering from mental illness

is unbearable.”

Mental disorders and suicidal behaviour that are common among persons requesting psychiatric MAiD in Belgium and the Netherlands have gendered risk factors, such as gender-based violence, gender-based discrimination, poverty and social isolation.

In *Feminism, Ableism and MAiD*, Dr. Grant discusses how diagnoses in psychiatry are themselves gendered. Women, for example, are more than twice as likely to be diagnosed with depression. Diagnoses of PTSD, borderline personality disorder, anorexia, all of which have led to psychiatric euthanasia deaths in the Netherlands and Belgium, are also deeply gendered.

This expansion is set to take place in Canada without any additional legislated safeguards specific to the complexities of mental health, and without any study of gender disparity in rates of euthanasia under Track 2 generally, or for psychiatric euthanasia specifically.

There is no requirement or mechanism within Track 2 MAiD to consider the impact that experiences of violence, abuse, exploitation, trauma or poverty have on women’s requests for euthanasia.

The EFC recommends the Government of Canada study and take steps to mitigate the risk factors of Track 2 MAiD on women.

We recommend Canada repeal the expansion of eligibility on the basis of mental illness alone.

Question 14. Human trafficking

The Government of Canada has long recognized that trafficking is a serious violation of human rights. Canada was among the first countries to ratify the United Nations Palermo Protocol, and has acknowledged the importance of a comprehensive, coordinated and multi-faceted national approach to respond to human trafficking in its national strategies.

However, Canada’s National Strategy to Combat Human Trafficking is set to expire this year, without another in place. It is essential that Canada enact a permanent, responsive strategy with stable funding to effectively fight human trafficking. Time-limited strategies can result in gaps in funding, policy and response.

As noted in the Statistics Canada report, *Trafficking in Persons in Canada, 2022*, the vast majority of trafficking victims (94%) in Canada are women and girls. The majority of cases where human trafficking-specific charges have been laid in Canada are domestic and involved sexual exploitation. In Canada, human trafficking almost always involves the sexual exploitation of young women and girls. As Dr. Melissa Farley has said, “Prostitution is where human trafficking happens.” This is not conflation. It is reality.

Canada must therefore resist the narrative which seeks to delink prostitution from human trafficking. While prostitution and sex trafficking are not the same, they are inextricably linked, and the demand for paid sex is the direct cause of commercial sexual exploitation of women and children.

We know from other jurisdictions that when prostitution is legalized or decriminalized, the sex industry expands, and so does trafficking. A study of European cross-country data reveals that human trafficking is most prevalent in countries where prostitution is legalized. Another study of European Union data finds that, when other factors are controlled, legalized prostitution increases the rate of human trafficking. An empirical analysis of 150 countries concluded that “On average, countries where prostitution is legal experience larger reported human trafficking inflows.”

Canada’s laws on prostitution, found in the Protection of Communities and Exploited Persons Act (PCEPA), prohibit the purchase of sexual services, procuring and financially benefiting from the sale of another person’s sexual services. A decision of the Ontario Superior Court of Justice in *CASWLR v. Attorney General of Canada* (CASWLR), released in September 2024, found all of PCEPA’s provisions to be constitutional. In the decision, Justice Goldstein found that “there is a clear link between sex work and human trafficking. In fact, there is a considerable body of evidence that many sex workers are manipulated or coerced into sex work or trafficked while in it.” (par. 179)

Human trafficking is not just a serious crime with devastating impacts, it is also one that is often hidden, difficult to detect and hard to prosecute. The large majority (89%) of human trafficking charges between 2018 and 2019 were withdrawn, stayed, dismissed or discharged. Less than 1 in 10 charges (7%) ended in a guilty finding, compared to 31% of violent offences.

It is critical to have ongoing training and enforcement, efforts to raise awareness and increase prevention, and funding for victims' services, alongside legislative efforts to combat trafficking.

The EFC recommends the Government of Canada establish a permanent national anti-trafficking strategy that includes a survivor advisory committee, stable funding for victim services, and training for law enforcement and frontline personnel.

Canada must also maintain and enhance measures to reduce the demand for paid sex, such as PCEPA, to effectively prevent and combat sex trafficking.

Question 15. Prostitution and PCEPA

Addressing the demand for paid sex

Article 6 of the Convention for the Elimination of All Forms of Discrimination Against Women requires signatories to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." We support this provision and urge it be maintained.

Several UN instruments obligate countries to address, reduce or eliminate demand, such as Article 9.5 of the Palermo Protocol, the United Nations General Assembly resolution 61/144 on trafficking in women and girls, and the Recommended Principles and Guidelines on Human Rights and Human Trafficking by the Office of the High Commissioner for Human Rights.

In 2014, Canada enacted the Protection of Communities and Exploited Persons Act, (PCEPA), crafted after the Nordic or Equality Model of law and policy on prostitution.

PCEPA treats prostitution as a form of sexual exploitation that disproportionately and negatively impacts women and girls. The objectives of PCEPA, as laid out in the Attorney General of Canada's factum in CASWLR, are to "reduce the demand for prostitution with a view to discourage entry into it, deterring participation in it and ultimately abolishing to the greatest extent possible, in order to protect communities, human dignity and equality."

The purchasing prohibition is the lynchpin of PCEPA and takes aim at the root of sexual exploitation in Canada – the demand for paid sexual services. In his decision in CASWLR, Justice Goldstein found the prohibition against purchasing sexual services to be consistent with the objectives of the law.

Prostitution is a system of exploitation

Prostitution is not merely a series of interactions between purchaser and purchased that exist independently of one another. Rather, prostitution is part of a system of exploitation that is based on structural inequalities and preys on vulnerabilities. While there are transactions within that system that may be non-coercive, these are nonetheless situated within a system of exploitation. PCEPA recognizes the systemic nature of prostitution and maintains that "the best way to avoid prostitution's harms is to bring an end to its practice."

In her report Prostitution and violence against women and girls, the UN Special Rapporteur on Violence Against Women and Girls recognizes prostitution as a system of exploitation and violence, which reduces women and girls to commodities.

Further, as the report makes clear, it is not possible to protect voluntariness or prevent abuse and coercion within the system of prostitution. Globally, neither decriminalization nor legalization has been capable of safely carving out consensual, non-coercive interactions from the broader system of exploitation.

The question of choice in the system of prostitution is not straightforward. In criminalizing the purchase of sex and third-party exploitation, PCEPA recognizes and responds to the difficulty of assessing and ensuring voluntariness within the system of prostitution. It seeks to "denounce and prohibit the demand to prostitution..." because it is the

demand for paid sex that funnels women into prostitution and fuels sex trafficking.

Prostitution is a form of violence against women and girls

As the Department of Justice Technical Paper on PCEPA notes, “Prostitution is an extremely dangerous activity that poses a risk of violence and psychological harm to those subjected to it, regardless of the venue or legal framework in which it takes place, both from purchasers of sexual services and from third parties.”

This framing is confirmed by the Special Rapporteur’s findings that prostitution is both intrinsically linked to different forms of violence against women and girls and constitutes a form of violence in and of itself.

Violence is inherent to the system of prostitution. In CASWLR, Justice Goldstein found that violence and the threat of violence are present in the everyday lives of many prostituted persons. Further, he wrote that “violence is a feature, not a bug of sex work.” (par. 216) We do not believe that violence can be reduced to acceptable levels.

Justice Goldstein rejected the argument that PCEPA has led to an upsurge in violence against prostituted persons (par. 219). Rather, he pointed to the latest Juristat, which notes a significant decrease in homicide victims related to the sex trade after PCEPA came into force, despite overall homicides increasing. It is simply not accurate to say that PCEPA has led to an increase in violence against prostituted persons.

The source of violence is the belief that men are entitled to paid sexual access to women’s bodies, and that this paid access entitles men to do what they want. If those beliefs are not challenged, the misogynistic attitudes and behaviours that are the source of the violence will persist.

Prostitution is highly gendered

The system of prostitution is fundamentally contrary to equality between the sexes. It is both based in and relies on that inequality to exist. In CASWLR, Justice Goldstein pointed to evidence that sex work is highly gendered, with the overwhelming majority of sex workers being female and customers being male.

The most recent statistics, since PCEPA was introduced, indicate that 94% of victims are women, many of them young women and girls. More than 4 in 10 victims in violent offences involving at least one sex-trade-related offence are 12 to 17 years old.

Prostitution is a system of inequality and discrimination The UN Special Rapporteur recognized prostitution as a system of inequality and discrimination based on sex and other intersecting grounds. As her report highlights, there are societal contexts that create vulnerability to exploitation in prostitution, and these contexts are critical to any analysis of the voluntariness of prostitution.

In CASWLR, Justice Goldstein found that Parliament’s view of the harms of the sex trade is well grounded in the evidence (par. 384). He pointed to the evidence that significant numbers of prostituted persons come from marginalized and racialized groups – particularly Indigenous girls and women.

Indigenous women and girls comprise just four percent of the population, yet are the majority of those trafficked and prostituted on the streets of Canada. Indigenous women and girls are highly over-represented among victims of exploitation due, at least in part, to the lasting effects of colonization and the residential schools system.

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

In CASWLR, Justice Goldstein noted that “a significant number of women and girls lured or coerced into sex work have pre-existing vulnerabilities, including contact with the child protection and foster care system; mental health or cognitive challenges; substance abuse challenges; or a combination of all these things” (par. 191).

The CEDAW and Palermo Protocol require that signatories address underlying vulnerabilities to exploitation, such as poverty and lack of opportunity. When PCEPA was introduced, Canada made an initial financial commitment to support services for individuals exiting prostitution, which has already been disbursed. Further investment in exit

support services is needed.

Failure of public education

The Ontario Court of Appeal in its 2022 decision in *R. v. N.S.* upheld the constitutionality of PCEPA's provisions on procuring, receiving a material benefit, and advertising. In the decision, Justice Hoy confirms that sex workers are permitted to work cooperatively with others selling their own sexual services, to obtain, for example, security services on a shared, cooperative basis, and to give advice to a person who has decided to sell their own sexual services.

In CASWLR, Justice Goldstein noted there are significant misunderstandings about what the law allows and what it prohibits. He wrote:

...the Applicants' evidence, especially the expert evidence, betrays a basic misunderstanding and misreading of the challenged offences. ... sex workers should understand that PCEPA, properly interpreted, does not prohibit them from accessing safety measures, working in association with each other, and accessing the services of non-exploitive third parties. ... Sex workers should also understand that when PCEPA is properly interpreted, they can seek police assistance without fear that they will be charged for selling their sexual services, receiving a material benefit from the own sexual services, communicating with customers in relation to their own sexual services, or advertising in relation to their own sexual services. (par. 11)

This misunderstanding of PCEPA demonstrates a failure to educate the Canadian public about the law's provisions and intent.

PCEPA is an appropriate response In CASWLR, Justice Goldstein concluded that, overall, he finds that "Parliament's response to a pressing and substantial concern is a carefully crafted legislative scheme that prohibits the most exploitive aspects of the sex trade while immunizing sex workers from prosecution"(par. 501).

The system of prostitution must not be normalized or legitimized. Canada must do better than accept prostitution as a solution to female poverty, racism, and a range of other underlying social issues.

We support the comprehensive and evidence-based recommendations of the Special Rapporteur on Violence Against Women and Girls that States Parties recognize prostitution with its connected variations, such as pornography, as a system of exploitation and violence; adopt the abolitionist legal framework and its five pillars; and work to end demand for buying sexual acts.

It is essential that the framing of prostitution as a system of violence and exploitation be maintained and reflected throughout all UN protocols/treaties, including the CEDAW.

The EFC recommends the Government of Canada uphold and continue to defend PCEPA as essential to curbing the demand that fuels trafficking and all forms of sexual exploitation, and take measures to ensure its full and consistent enforcement across Canada.

Canada must also implement the other components of the Nordic or Equality Model after which PCEPA is crafted, including public education and awareness about the laws and their intent, and significant, ongoing funding for exit supports and services.