

RECOMMENDATIONS

SCHEDULE E

RECOMMENDATIONS: Sexual Exploitation – Human Trafficking and Sexual Violence

Prepared by Dr. Robyn Bourgeois
Assistant Professor, Centre for Women's and Gender Studies
Brock University

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1. **The Government of Canada needs to recognize that it is a fundamental part of the problem when it comes to the sexual exploitation and human trafficking of indigenous women and girls**

The Government of Canada has created and sustains the social conditions which make indigenous women and girls vulnerable to sexual exploitation and human trafficking. The historical and ongoing theft and occupation of indigenous lands and domination over indigenous peoples that has and continues to make the Canadian nation state possible has always been ideologically underpinned by the racist beliefs surrounding the inferiority of indigenous peoples. However, in addition to racism and white supremacy, the colonial Canadian nation state is inherently heteropatriarchal and misogynist and, consequently, these racist ideas of indigenous inferiority are also explicitly gendered. One of these core beliefs involves the hypersexualization of indigenous femininity: within settler colonial logic, indigenous women and girls are dehumanized through conflating indigenous femininity with promiscuity to establish their inherent deviance while simultaneously authorizing and normalizing sexual violence against indigenous women and girl.¹ Critical to this process has been the historical and ongoing conflation of indigenous femininity with prostitution/involvement in the sex trade.²

¹ See, for example, Janice Acoose, *Iskwewak Kah' Ki Yaw Ni Wahkomakanak - Neither Indian Princesses nor Easy Squaws* (2nd Ed), (Toronto, ON: Women's Press, 2016); Sherene H. Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George," pp. 121-156 in S.H Razack (Ed), *Race, Space and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines Press).

² See Robyn Bourgeois, "Race, Space, and Prostitution: The Making of Colonial Canada," *Canadian Journal of Women and the Law* (Special edition devoted to the work of Sherene Razack), Forthcoming 2018. A draft of this article has been submitted to the Inquiry.

These racist and heteropatriarchal beliefs have and continue to be actualized through the actions of the Government of Canada. With respect to MMIWG, sexual exploitation and trafficking this has included:

- Creation and maintenance of abject poverty and economic exclusion and exploitation for many indigenous peoples, their communities, and nations through historical and ongoing land theft and occupation; the reservation system and *Indian Act* control over these lands; and enforced welfarism³. Poverty is a driving force behind sexual exploitation and human trafficking.⁴
- Exposing generations of indigenous peoples to sexual predation and abuse through the Indian Residential school system and creating generations of intergenerational trauma and abuse within indigenous communities. Having a history of violence and/or neglect has been identified as a significant risk factor for sexual exploitation and human trafficking.⁵
- The *Indian Act*: this not only legislates indigenous women and girls (and, indeed, all Indians) into existence as separate and unequal to Canadian citizens but has, for generations, separated and isolated indigenous women and their children from their home communities, families, and other supports through sexist status membership provisions. Being Indigenous has been indicated as a significant risk factor for sexual exploitation and human trafficking.⁶
- There are currently more indigenous children in the care of the Canadian state than there ever was at the height of Indian residential schools. Living in provincial care, group homes, or foster care has been identified as a significant risk factor for sexual exploitation and human trafficking.⁷
- As I have argued elsewhere, the Government of Canada has, by its own legal definition, regularly engaged in the human trafficking of indigenous peoples.⁸

³ See Hugh Shewell, *Enough to Keep Them Alive: Indian Welfare in Canada 1873-1965* (Toronto, ON: University of Toronto Press, 2004).

⁴ National Task Force on Sex Trafficking of Women and Girls in Canada. *"No More": Ending Sex-Trafficking in Canada* (Toronto, ON: Canadian Women's Foundation, 2014) at 4.

⁵ National Task Force, *supra* note 1, at 28.

⁶ *Ibid.*, at 30-31.

⁷ *Ibid.*, at 28.

⁸ Robyn Bourgeois. "Colonial Exploitation: The Canadian State and the Trafficking of Indigenous Women and Girls in Canada," *UCLA Law Review* 62 (2015).

As this brief discussion makes clear, the Government of Canada is not only responsible for creating the social conditions the fuel sexual exploitation and trafficking but also normalize this violence through its own ongoing use of human trafficking against indigenous peoples. For these reasons, **the Government of Canada must recognize that it is a fundamental part of the problem when it comes to the sexual exploitation and human trafficking of indigenous women and girls.**

2. The Government of Canada needs to meaningfully address its complicity with sexual exploitation and human trafficking

The following recommendations include specific proposals for how this can be done.

3. The Government of Canada must decolonize

The settler colonialism that underpins the Canadian nation state is the root cause of *all* forms of violence against indigenous women and girls: its grounding logic lies in racist and heteropatriarchal beliefs about the inherent inferiority of indigenous femininity that serves to justify and legitimate the social marginalization, exploitation, and elimination of indigenous women and girls. In other words, settler colonialism and the Canadian nation state *are the source of the ideas that it is okay to abuse and murder indigenous women and girls.*

Decolonizing the Canadian nation state is the most important thing that can be done to end violence against indigenous women and girls, including sexual violence and human trafficking. At the most basic level, this requires:

- *Recognizing indigenous sovereignty and self-determination*

Prior to the arrival of white settlers on Turtle Island (the term many indigenous peoples use to describe the land currently occupied by Canada and the US), indigenous nations were sovereign and self-determining. Indeed, some of our first treaties with white settlers reflect this: The Two-Row Wampum or Guswenta⁹, for example, represents a **nation-to-nation** treaty established originally between the Haudenosaunee Confederacy and Dutch in 1613 and transferred to the Britain and then Canada with their occupation of traditional Haudenosaunee in present day southern Ontario. The indigenous interpretation of this treaty is clear: while settlers are invited to share these lands, they must honour and respect the right of indigenous peoples to be self-determining through a commitment to non-interference (something that is also

⁹ For information about the Two-Row Wampum/Guswenta, see Onondaga Nation, *Two Row Wampum Renewal Campaign*, <http://honorthetworow.org/learn-more/history/>.

guaranteed, in turn, for white settlers). At the same time, the Wampum makes clear that we are, metaphorically, travelling down the same river together and, for this reason, our journeys of self-determination must be conducted in the spirit of friendship and peace with each other. The duration of this treaty, according to indigenous interpretations, is forever.

To decolonize, Canada must recognize indigenous sovereignty and inherent right of indigenous nations to be self-determining. And this doesn't mean supporting the existing self-governance process which offloads carefully selected elements of governance to indigenous communities while simultaneously retaining Canadian state control over other critical elements (and, indeed, the entire process of establishing self-governance agreements). Canada must acknowledge and respect the sovereignty of indigenous nations and honour its treaty obligation of non-interference: Canada has no right to decide how indigenous nations practice self-governance.

- *Return indigenous lands and/or provide fair compensation for the historical and ongoing occupation of these lands*
- *Return indigenous children to their families and communities and provide funding for indigenous nations and communities to establish their own child wellbeing institutions*
- *Uphold and comply with all existing treaties, and expediently negotiate with the full and equitable participation of indigenous peoples all outstanding and any future treaty claims.*
- *Repeal the Indian Act without (a) withholding recognition of the existence of indigenous peoples and nations; and (b) undoing Canada's existing and future treaty obligations to Indigenous peoples*

4. The Government of Canada must expose and eradicate dominant social systems of oppression

This needs to include, at the very least, addressing white supremacy, colonialism and racism; sex, gender and sexuality-based discrimination and heteropatriarchy; capitalist exploitation and economic marginalization; and ableism. This will not only require a change in ideology but also dismantling the institutionalization of these systems within *all* Canada state institutions.

5. The Government of Canada should immediately decriminalize aspects of Canada's prostitution laws that target individuals selling sex

Existing prostitution laws that criminalize the sale of sex by individuals contribute to multiple forms of violence:

- These laws establish the bodies and spaces of prostitution as criminal and confirm the dominant societal belief these people are inherently deviant and outside the protections of humanity and, therefore, securing the white supremacist, heteropatriarchal, and capitalist elite
- In turn these laws, as the cases of MMIWG demonstrate, contribute to the social marginalization and isolation of those in the sex trade which makes them vulnerable to exploitation and violence.
- They contribute to the conditions where people in the sex trade are overpoliced but under protected, as exemplified in the Canadian state response to Vancouver's Missing Women. Indeed, Canadian state representatives to BC's Missing Women Commission of Inquiry used the criminalization of the sale of sex to explain away their failure to protect the Missing Women from serial predation and violence.

For these reasons, I recommend that Canada retain criminal code provisions protecting those selling their own sexual services from criminal prosecution in relation to purchasing, advertising, material benefit, and procuring; **and extending this exemption to communicating.**

6. The Government of Canada should continue to criminalize pimping and human trafficking

It is critical that we protect indigenous women and girls from sexual exploitation and the criminalization of pimping and human trafficking sends a strong societal message that profiting from selling the bodies and sexual services of others is not only unacceptable but will result in severe punishment.

There is, however, a major problem in the application of existing human trafficking law: While most traffickers are men¹⁰ - a fact that draws attention to the operations of heteropatriarchy within this systems of sexual exploitation and human trafficking – the Canadian legal system has predominantly prosecuted females under these laws.¹¹ In other words, these laws have been applied in the service of heteropatriarchy to criminalize women and simultaneously erase the involvement of men in this violence. This **must** end if we hope to eliminate sexual exploitation and human trafficking.

¹⁰ National TaskForce, *supra* note 1, at 36.

¹¹ *Ibid.*, at 17.

7. The Government of Canada should continue to criminalize demand for sex

Sexual exploitation and human trafficking exist because there is demand for sex, so criminalizing demand is an important strategy for eliminating this violence. We know that, by far, the majority of people buying sex are white, middle-class men¹² – illuminating once again how sexual exploitation and trafficking are organized by white supremacy, heteropatriarchy, and capitalist exploitation. As with pimping and human trafficking criminal code provisions, it is *essential* that these legal provisions not replicate white supremacy and heteropatriarchy by being applied solely to marginalized social groups and not to the white, middle-class males who make up the bulk of the demand for sex.

8. The Government of Canada must include, in a meaningful and equitable way, indigenous women and girls who are survivors of sexual exploitation and human trafficking in all decision-making and other governmental processes that will impact their lives and the lives of other indigenous women and girls.

The strongest and most effective responses to sexual exploitation and human trafficking are those that are survivor-led and centre their experiences and needs in creating appropriate responses/services.

9. The Government of Canada should immediately provide increased and ongoing funding for indigenous-led organizations addressing sexual exploitation and human trafficking

While there is a need for services and supports for all peoples experiencing sexual exploitation and trafficking, there is a desperate need for more indigenous-led services and supports that focus on the specific context and needs of indigenous women and girls.

10. In conjunction with municipal and provincial/territorial governments, the Government of Canada needs to ensure “wrap-around services” for survivors of sexual exploitation and human trafficking.

In the Niagara region where I currently reside, community-based anti-violence organizations and service providers, including the RCMP and Fire Services, have been working to develop a “wrap around” service provision strategy that ensures coordination between groups and enhanced access to services needed by survivors of

¹² *Ibid.*, at 36.

sexual exploitation and human trafficking. This system is survivor-centered, meaning that each individual decides which supports and services they need and have secure access to them. This collaboration has also been critical to promoting knowledge sharing and capacity-building among all service partners. This, I believe, is a powerful model for responding appropriately to the survivors of sexual exploitation and human trafficking and think it should be replicated across the country. In say things, it is particularly critical that these "wrap around" strategies (a) include indigenous-led service providers and (b) provide ongoing education and training to *all* service providers that prepare them to appropriately address the specific contexts/needs of indigenous women and girls.

Exhibit: National Inquiry into Missing and Murdered Indigenous Women and Girls		
Location/Phase: <u>Parts 2/3 St. John's</u>		
Witness: <u>Robyn Bourgeois</u>		
Submitted by: <u>Christa Big Canoe</u>		
Add'l info: <u>P02-03P04P0301</u>		
Date: <u>OCT 16 2018</u>		
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