

THE UNIVERSITY OF BRITISH COLUMBIA



Re: *Safe Streets and Communities Act* (Bill C-10)

Chair and Members of the Committee:

I am honoured to appear as a witness before the Committee in relation to the *Safe Streets and Communities Act* (Bill C-10). Let me begin by clearly stating that I strongly support the adoption of this proposed legislation.

I will begin by discussing Bill C-10 in general terms, and then focus in particular detail on the *Protecting Vulnerable Foreign Nationals against Trafficking, Abuse and Exploitation Act* (former Bill C-56).

I. The *Safe Streets and Communities Act*

At the outset, I would like to express my strong support for the *Safe Streets and Communities Act* as a whole. There is a widely held sentiment that Canada's criminal justice process has left victims and their families behind, and that our laws have failed to keep pace with the reality of serious crimes, including terrorism, organized drug crime, human trafficking and predatory pedophiles. This is not merely a sentiment but, in many cases, a reality.

The bill introduces numerous reforms that will improve our nation's criminal justice system. I highlight just a sampling of reforms that appear in this proposed legislation to provide examples of significant gaps that are being addressed:

- Making and distributing child pornography would no longer carry a meager mandatory 90 days in jail, but a minimum of six months imprisonment.
- Sexually assaulting a child (a person under 16 years of age) using a weapon, kidnapping, forcible confinement, and abduction (by a stranger of a person under 14 years of age) would all be offences that could no longer result in house arrest.
- Two new offences would be introduced to cover the widely recognized practices used by predatory pedophiles who "groom" their young victims by exposing them to sexually explicit material, and try to arrange meetings with kids online to sexually abuse them.

- “Date rape” drugs would be classified as more serious controlled substances, resulting in higher sentences for manufacturing them.
- Importing illegal narcotics will now carry a mandatory one-year term of imprisonment.
- Provincial and territorial governments will decide at what age Crown prosecutors should consider seeking adult sentences for young offenders convicted of murder, attempted murder, manslaughter, and aggravated assault.
- Victims of crime would have a statutory right to participate in parole board hearings.
- Victims of terrorism would be able to sue terrorists and supporters of terrorism, including foreign states that support designated terrorist entities.
- Human trafficking can be prevented by allowing immigration officers to evaluate work placements to ensure they are not fronts for sex trafficking or forced labour.

These, and the vast majority of other proposed changes, are eminently reasonable and promote a sense of accountability in situations where we as a society are asked to put our collective faith in our police and judicial institutions to safeguard our children, our safety, our lives, and our property.

The *Safe Streets and Communities Act* is also not lacking in measures to enhance the possibility of rehabilitating offenders. However, rather than assuming that this sentencing principle supersedes all else, in all circumstances, and for all offenders, it takes a view of rehabilitation that is both realistic and effective.

For example, under the reforms, an offender who is addicted to drugs can be given a suspended or reduced sentence if they complete an approved drug-treatment program. Additionally, inmates serving their time will each be required to have an individual “correctional plan” that include behavioural expectations, goals for program participation, and ensuring that court-ordered restitution to victims is made and any child support obligations are met.

This package of reforms is not in response to a crime wave (although it is recognized that certain serious offences such as drug crime and child sexual exploitation offences are indeed increasing), but rather it is about rebalancing the criminal law in a way that increases accountability of offenders for the most serious and violent crimes that any person could suffer from.

These reforms are overdue, important, and consistent with the expectations that many Canadians have that individuals who commit serious crimes should be assisted in rehabilitation, but also punished for their crimes and deterred from reoffending.

II. Protecting Vulnerable Foreign Nationals against Trafficking, Abuse and Exploitation Act

One of my areas of expertise relates to human trafficking. I support the passage, in particular, of the *Protecting Vulnerable Foreign Nationals against Trafficking, Abuse and Exploitation Act*.

An effective response to human trafficking requires measures to prevent human trafficking, protect trafficked persons and prosecute traffickers. The prevention and detection of trafficked persons before they have been subject to exploitation is, therefore, a critical aspect of Canada's response to human trafficking.

The *Protecting Vulnerable Foreign Nationals against Trafficking, Abuse and Exploitation Act* provides an important new tool to prevent human trafficking and I support its passage. The proposed amendments to the *Immigration and Refugee Protection Act* are important for several reasons, particularly they:

1. Advance Canada's international commitments to prevent human trafficking;
2. Confront deception and fraud used by traffickers;
3. Prevent exploitation and suffering; and,
4. Recognize federal responsibility to conduct due diligence to prevent human trafficking.

1. Canada's International Commitments to Prevent Human Trafficking

These proposed amendments are consistent with Canada's commitment under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* ("U.N. Trafficking Protocol"), which was signed by Canada on December 14, 2000 and ratified on May 13, 2002. Specifically, Article 11(1) of the Protocol states:

Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Confronts Deception and Fraud Used by Traffickers

In seeking entry to Canada, a trafficked person may not be aware that they will be subject to exploitation. The definition of "trafficking in persons" in the U.N. Trafficking Protocol explicitly recognizes that victims of human trafficking may be moved as a result of fraud or deception: see article 3(a), U.N. Trafficking Protocol.

Known and suspected cases where Canada has been a destination country for human trafficking include instances where immigration visas have been used by traffickers to bring trafficked persons into the country. This Bill provides a legal and transparent framework whereby immigration officials can intervene to prevent such practices.

3. Prevents Exploitation and Suffering

Preventing exploitation and suffering is always preferable to needing to respond after the fact. Measures that assist in preventing trafficked persons from being brought into Canada, or transited through our country, will prevent them from being exploited here. Countries around the world are currently active in raising their own border integrity standards to better identify trafficked persons. Every country has a role to play in the common project of trafficking prevention, since human trafficking relies on the "weakest link" in a chain of countries to flourish.

4. Recognizes Federal Responsibility

The federal government and the provinces share responsibility for confronting human trafficking. Provincial governments are required to bear many of the financial costs associated with providing for the protection of victims of human trafficking if they are discovered and require support. These costs include housing, income support, translation services, legal aid, and employment assistance. For example, the B.C. Office to Combat Trafficking in Persons is continuing to develop a protocol to provide such services. This bill is a measure that is within the federal responsibility over immigration to prevent and detect trafficked persons.

5. Ensuring the Effectiveness of the Protecting Vulnerable Foreign Nationals against Trafficking, Abuse and Exploitation Act

Enhanced cooperation and training involving law enforcement, immigration officials and other relevant authorities will be required on an ongoing basis to identify the means, methods and documents that have been used by traffickers to bring individuals across the Canadian border, in order to ensure the effective implementation of this Bill.

I also note the significant commitment that has been made by the Government of Canada to develop and implement a National Action Plan to Combat Human Trafficking, beginning in 2012. As such, this Bill is part of a comprehensive response.

6. Responding to Criticism of the Protecting Vulnerable Foreign Nationals against Trafficking, Abuse and Exploitation Act

The opponents of this Bill have made several arguments in opposition to it. I respond to those arguments as follows:

<i>Criticism</i>	<i>Response</i>
<ul style="list-style-type: none">• Accountability of Ministerial guidelines	<ul style="list-style-type: none">• Ministerial guidelines are an appropriate flexible tool of delegated authority, given that human trafficking is an elusive, illicit activity• The guidelines must be published in <i>Canada Gazette</i> upon coming into force, as well as upon revocation, to facilitate public knowledge of their

	status and contents
<ul style="list-style-type: none"> • It may prevent legitimate migration 	<ul style="list-style-type: none"> • This bill requires two immigration officials to agree that the individual is at risk of exploitation. This provides a sufficient check on their discretion, particularly if sufficient training is provided, as recommended above.
<ul style="list-style-type: none"> • This bill is “paternalistic”, “patronizing” or “moralizing” 	<ul style="list-style-type: none"> • Human trafficking is recognized as a grave crime and serious affront to human rights. As noted above, traffickers use fraud or deception to target certain vulnerable people seeking to migrate, thus, preventing them from making a free and informed choice. Certain vulnerable individuals will <i>not</i> have the ability to conduct their own meaningful inquiries into the nature of their employment offers. It is Canada’s obligation to establish a legal framework that permits intervention to prevent human trafficking where there is a reasonable suspicion of exploitation.
<ul style="list-style-type: none"> • This bill fails to address root problems – a broader approach is required 	<ul style="list-style-type: none"> • This bill is one tool that will be available to assist with improving the prevention and detection of human trafficking. That it is but one step in a broader set of reforms required is no reason to delay its adoption. I agree that a comprehensive response to human trafficking remains needed, we will have that with the anticipated National Action Plan to Combat Human Trafficking.
<ul style="list-style-type: none"> • This bill deals with a problem that has already been fixed 	<ul style="list-style-type: none"> • While significant problems with the exotic dancer visa program no doubt spurred this Bill, the amendments are drafted to permit immigration officials to head off known and new visa scams that are used as a cover for human trafficking. This Bill provides the necessary legal framework to do so.
<ul style="list-style-type: none"> • This bill will drive exotic dancers underground, where 	<ul style="list-style-type: none"> • This bill is designed to detect existing exploitation, which is already not being discovered. The sex trade will always remain open to the view of authorities because it must also reach sex users. Therefore, arguments about it going

conditions will be worse	“underground” to the point of being undetectable are not persuasive.
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Thank you for considering these submissions.

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APPENDIX: Biography

Benjamin Perrin is an Assistant Professor at the UBC Faculty of Law and is a Faculty Associate at the Liu Institute for Global Issues and Peter Wall Institute for Advanced Studies. He is also a Senior Fellow at the Macdonald-Laurier Institute for Public Policy and is a member of the Law Society of British Columbia. Professor Perrin holds law degrees from the University of Toronto and McGill University, where he was a Wainwright Scholar and Max Stern Fellow, and a management degree from the University of Calgary. His teaching and research interests include Canadian and international criminal law, international humanitarian law, and international human rights law.

Professor Perrin's first book *Invisible Chains: Canada's Underground World of Human Trafficking* (Viking Canada, 2010) became a bestseller and was named one of the top books of the year by the Globe and Mail. He is co-editor of *Human Trafficking: Exploring the International Nature, Concerns, and Complexities* (CRC Press, forthcoming 2012), and editor of *Modern Warfare: Armed Groups, Private Militaries, Humanitarian Organizations and the Law* (UBC Press, forthcoming April 2012). Professor Perrin's latest project is a book with Thomson Carswell for police, prosecutors, and judges on the investigation, prosecution and trial of human trafficking cases. His academic articles deal with human trafficking, migrant smuggling, child sexual exploitation, war criminals, and private military and security companies.

Prior to joining UBC in 2007, Professor Perrin served as a law clerk at the Supreme Court of Canada, and was senior policy advisor to the Minister of Citizenship and Immigration. He was the assistant director of the Special Court for Sierra Leone legal clinic which assists the Trial and Appeals Chambers, and completed an internship in Chambers at the International Criminal Tribunal for the former Yugoslavia in The Hague.

Professor Perrin is the founder and former executive director of The Future Group, an international non-governmental organization (NGO) that combats human trafficking. He has testified before several Parliamentary committees studying this issue and is consulted on matters related to human trafficking and child sexual exploitation by the RCMP, municipal

police forces, Crown prosecutors, Aboriginal leaders, the B.C. Office to Combat Trafficking in Persons, NGOs, and the media.

In 2010, Professor Perrin worked with MP Joy Smith who introduced amendments to the Criminal Code that were adopted by Parliament to enact stiffer penalties for child trafficking (Bill C-268) - the only private member's bill to become law between 2008 and 2010 and only the fifteenth time since Confederation that the Criminal Code had been amended by a private member's bill.

The U.S. Department of State has recognized Professor Perrin as a "hero in the fight against modern-day slavery". He has also been honoured by the Governor General of Canada and victims' groups for his efforts.