

Alternatives to the Criminalization and Forcible Confinement of Sexually Exploited Youth

Research Paper

Introduction

The sexual exploitation of children in Manitoba is a concern which has gained much recognition in the past few years, particularly since the government of Manitoba launched “Tracia’s Trust” a series of measures meant to address the problem. Information provided on the Manitoba Government website under Tracia’s Trust includes an estimate that “that hundreds of children, youth and adults are victimized in the visible sex trade on the streets of Winnipeg and other cities each year” and that “thousands are victimized in the invisible sex trade that takes place in hidden venues such as private homes and drug houses throughout the province.”

Information on the government website indicates that the average age of sexual exploitation victims is 14, with some victims as young as 9, and that most victims are Indigenous. Colonization and the effects of the residential school system are noted to be “frequently cited as major underlying causes” of sexual exploitation; and many of the other causes cited on the website: “poverty, classism, racism, social isolation, marginalization, peer pressure, past abuse and trauma, sex-based discrimination, mental health issues, neurological and developmental disorders, systemic gaps, inaccessible services and other social and financial inequalities” (Government of Manitoba, n.d.) have been demonstrated by research to be linked to the effects of that legacy, as will be described below under the heading: Vulnerability Factors in the Context of History and the Continued Marginalization of Indigenous People.

The Manitoba Strategy described on this website acknowledges that “Research shows that at risk or sexually exploited children, youth and adults respond most favourably to programs that are: age, developmentally and culturally appropriate; non-judgmental; victim centered; creative; responsive to individual needs; non-coercive; and staffed by individuals who are personally committed and who may have experienced similar life situations.”

The Sexually Exploited Youth Community Coalition (SEYCC) “is a network of Winnipeg organizations and community members working together to address sexual exploitation in Winnipeg” (extracted from SEYCC Terms of Reference; retrieved January 14, 2017, from: <http://www.seycoalition.org/uploads/1/3/0/6/13063784/seycctor.pdf>). Members of the SEYCC are concerned that the current approach to youth who are being sexually exploited in Manitoba is one which neither addresses the acknowledged underlying causes of sexual exploitation, nor adheres to the program elements cited as those to which youth and adults respond most favourably. Instead, coercive measures such as forcible confinement are far too frequently used, and non-governmental agencies which are led and largely staffed by Indigenous persons are increasingly underfunded and underutilized.

In this paper, we will present the research around the risk factors for sexual exploitation, the historical and current context of the vulnerability of Indigenous youth, the research regarding the use of forcible confinement to address the problem of sexual exploitation, and the research regarding best practices for working with youth who are being sexually exploited or are at risk of sexual exploitation.

Vulnerability Factors in the Context of History and the Continued Marginalization of Indigenous People

As noted on the Manitoba Government website, poverty is a known risk factor for sexual exploitation. It is also well-documented that “First Nations people, both on and off reserve, are now amongst the poorest in Canada. Indigenous women, living both on and off reserve are the poorest amongst Aboriginal peoples” (Jacobs & Williams, 2008, p. 128).

Karen Busby, a law professor and the academic director of the Centre for Human Rights Research at the University of Manitoba, noted in a recent article in the Winnipeg Free Press that “as many as 70 percent of those involved in street-level work in Winnipeg are Indigenous, and many are children.” She also draws the link between poverty and sexual exploitation, indicating: “Girls and women may become involved because it is one of the few ways they have to ensure that they are fed, housed and clothed” (December 7, 2016, p. A9).

The view that sexual exploitation is a choice is profoundly disrespectful to the women and girls so exploited, and denies the reality of the forces which drive their involvement in the sex trade.

Unfortunately, people continue to wrongly believe that girls and women choose to be sexually exploited instead of appreciating that poverty and consistent public/media messaging that Indigenous girls and women are commonly involved in CSE [Child Sexual Exploitation] often forces these women and girls into sex work in order to get their basic needs (food and shelter) met (Bennett, 2016, p, 23).

In a paper submitted to: United Nations Committee on the Rights of the Child (UNCRC) by the Canadian Council of Child and Youth Advocates (CCCYA) in 2011, it was noted that: “The adverse childhood experiences of many Aboriginal children and youth place them at high risk for exploitation and vulnerability into adulthood” (p. 10). An earlier study sponsored by Canada Save the Children Fund concluded that girls of Indigenous ancestry are overrepresented among sexually exploited youth “due to the consequences of colonial policies over the past several hundred years” (Kingsley & Mark, 2000).

Drawing on data from the 1998 Canadian Incidence Study of Reported Child Abuse and Neglect Dr. Marlyn Bennett, in a report written for Ka Ni Kanichik here in Manitoba, noted that Indigenous families experience much higher rates of poverty, housing instability, drug and alcohol misuse,

and were investigated more often for neglect or emotional maltreatment in comparison to non-Indigenous families (Bennett, 2008).

Eight years later, in a report for Manitoba's Office of the Children's Advocate, Dr. Bennett again reported on the disproportionate rates of Indigenous children and youth in the child welfare system, noting vastly disparate rates of one in ten Indigenous children experiencing foster or group home placement compared to one in two hundred non-Indigenous children (Bennett, 2016). In that same report, she also made the link to colonialism as the underlying cause: "The overrepresentation of Indigenous children in the care of the provincial child welfare systems across Canada is reflective of colonial practices that have not ended (Richardson & Wade, 2009)" (Bennett, 2016, p. 17).

The CCCYA has also noted that "many of the Aboriginal women who have been involved with the sex trade and many who have become victims of violence or homicide were formerly children in care, and had lives bereft of adequate support in childhood and youth" (2011, p. 10). These adverse childhood experiences raise the risk of such harms not only in adulthood but during adolescence, often while still involved in the child welfare system. In one study, 63% of sex workers interviewed indicated that they were in care when they became involved in the sex trade (Busby, 2003).

Another study noted that placement instability can be a path to sexual exploitation of children in care (Coy, 2009). Children who are deprived of the experience of a secure stable relationship with a primary caregiver from birth until independence may never learn to trust.

Being removed at an early age and spending years in care can lead to attachment disorders, which can magnify the impact of childhood maltreatment and increase the vulnerability of children and youth to a host of maladies: involvement in commercial sexual exploitation, gangs, and exposure to the juvenile and adult correction systems." (Bennett, 2016, p. 18)

Early in this century, Canadian researchers noted with alarm the fact that not only were Indigenous children and youth being brought into care in increasing numbers, they were increasingly being placed in group and institutional settings rather than with families.

National statistics document an 80.9 percent increase in the number of days that First Nations children spent in group or institutional care during this period. This increase is dramatic when compared to the corresponding figure for the number of days spent in foster care (37.4 percent increase; McKenzie 2002). (Trocmé, Knoke, & Blackstock, 2004, p. 580)

In Manitoba, the number of children in out of home care has continued to rise. "As of March 2015, Manitoba had 10,295 children in care, 87% of which are Indigenous (First Nation and Metis) children (Government of Manitoba, 2014, p. 88)" (Bennett, 2016, p. 17). There is every indication

that institutional placements, particularly placements in correctional facilities have also continued unabated, as current research continues to find that Indigenous youth are overrepresented in all aspects of the youth justice system (Corrado, Kuen & Margaritescue, 2014). The CCCYA, in describing this problem, cited statistics from Manitoba, where “Aboriginal youth represented 23 per cent of the provincial population aged 12 to 17 in 2006, but 84 per cent of youth in Sentenced Custody” (Canadian Council of Child & Youth Advocates, 2011, p. 6).

Being a child in care in itself raises the risk of increased involvement with the criminal justice system, especially for those youth placed in group homes (Bala, Finlay, De Fillippis, & Hunter, 2015). The tendency to place numerous conditions on youth in regard to pretrial release can actually “create crime” by resulting in youth being charged with Failure to Comply and detained in custody, even in cases where the original charges are dismissed or stayed (Spratt, 2015). This has the effect of criminalizing youth for non-criminal behavior such as staying out past a court imposed curfew, or leaving placement without permission. Bala, Finlay et al. (2015), also concerned with this trend, recommend restricting the practice of charging youth in group homes.

On the Tracia’s Trust pages of the Manitoba Government website, neurological and developmental disorders are cited among the risk factors for sexual exploitation. Fetal Alcohol Spectrum Disorders (FASD), caused by prenatal exposure to alcohol, can result in either or both of these disabilities (Green, 2007), and “initial research suggests that occurrence of FASD is significantly higher among Aboriginal populations” (Canadian Council of Child & Youth Advocates, 2011, p. 8-9).

The high levels of addiction and substance abuse in Indigenous populations would account for this, and in turn have been linked to the impacts of residential school abuse” (Chansonneuve, 2007). Dr. Brenda Saxe, an addictions specialist, describes addictive behaviours as a way of coping with emotional pain, “a way of self-soothing that is not appropriate” (Chansonneuve, 2007, p. 19). These effects can be transmitted to subsequent generations.

The psychological and social effects of forcibly removing Aboriginal children from their families have passed from generation to generation. Survivors and their descendants report difficulties forming trusting attachments with others, including their spouses, children, and grandchildren. The inability to form trusting, supportive attachments, compounded by the inability to self-soothe in healthy ways, has contributed enormously to the level of addictive behaviours in the Aboriginal population (Chansonneuve, 2007, p. 19).

Substance misuse in a family affects children in ways which raise their vulnerability to sexual exploitation even if they have not been exposed in utero. “Children of substance-abusing parents suffer low self-esteem, depression, self-mutilation, suicide, panic attacks, truancy, and sexual promiscuity, and will replicate later in life the drug and alcohol abuse problems they witnessed in

their parents (National Centre on Addiction and Substance Abuse, 1999)” (Chansonneuve, 2007, p. 26).

Research enabled by the Aboriginal Healing Foundation makes the case that “the current vulnerability of Aboriginal women and youth is linked directly to the impacts of colonization, including the residential school system and the social environment that created it” (Jacobs & Williams, 2008, p. 121). Research has linked residential school attendance to “problems of alcoholism, drug abuse, powerlessness, dependency, low self-esteem, suicide, prostitution, gambling, homelessness, sexual abuse, violence, and . . . missing and murdered women” (Jacobs & Williams, p. 126). That system has left a legacy that continues to affect the children and grandchildren of those who attended as explained below.

Intergenerational or multi-generational trauma happens when the effects of trauma are not resolved in one generation. When trauma is ignored and there is no support for dealing with it, the trauma will be passed from one generation to the next ... Children who learn that physical and sexual abuse is “normal,” and who have never dealt with the feelings that come from this, may inflict physical and sexual abuse on their own children ... This is the legacy of physical and sexual abuse in residential schools (Aboriginal Healing Foundation, 1999:A5) (Chansonneuve, 2007, p. 23).

Too often, the effects of that legacy, and of the continued marginalization of Indigenous women and girls are disregarded as causal to sexual exploitation.

Public awareness of the continued impact of the residential school system continues to be a need. As one researcher points out, the view that that “residential school experience was injurious in itself, and not just in instances of physical and sexual abuse, is shared by only a small proportion of Canadian citizens, in contrast to the view of most First Nations, Inuit, and Metis people” (Castellano 2008, p. 386). As Bennett has pointed out: “Indigenous people and their families have been undermined for more than 500 years. This history of colonization and racism makes our young people vulnerable, whether they are in care or not” (2016, p. 41).

The Use of Forcible Confinement

Canada has had a long history of excessive incarceration. “By the early years of the millennium Canada had one of the lowest rates of youth diversion and one of the highest rates of youth custody in the world” (Bala, Carrington & Roberts, 2009, p. 132). One of the major goals of the *Youth Criminal Justice Act* (YCJA) which came into effect in 2003, was to reduce the rates of use of courts and custody, without increasing youth crime (Doob & Spratt, 2009). Some success has been recorded in the initial years following the introduction of the YCJA, as youth custody sentencing did decrease without any attending increase in youth crime (Bala, Carrington & Roberts; Doob & Spratt). However, Bala, Carrington and Roberts have noticed a concerning trend towards increasing detainment of youth on remand. This trend is in direct contravention of the United Nations Convention on the Rights of the Child (UNCRC) (Committee on the Rights of

the Child, 2007). The emphasis on custody and detention and the emphasis on punishment over rehabilitation are also in contravention of the UNCRC (Denov, 2004).

The consensus opinion expressed in the youth justice literature is that forcible confinement of youth should be restricted to violent offenders, and only as a last resort (Blue Sky Planners and Consultants, 2005; Justice Policy Institute, 2009; Doob & Sprott, 2009; Lambie & Randell, 2013; Mann, 2014; Jones, 2015; Campbell, 2015). This position has been reinforced by the Supreme Court of Canada (Bala, Carrington & Roberts, 2009).

Manitoba's Children's Advocate has also expressed concern regarding the excessive use of incarceration with youth, noting in her 2015/16 Annual Report that "Manitoba has the highest rate of youth incarceration in the country. Further to that, youth held in pre-trial detention, or remand, have outnumbered youth in sentenced custody since 2007-2008, according to Statistics Canada" (Office of the Children's Advocate, 2016, p. 35). Her report further states:

Regardless of whether a youth in care is held in remand or has been convicted and sentenced, the effects are the same. They are separated from their families and communities and exposed to an environment that is proven to be further destructive to their ability to develop positive social skills and disengage from peers with unhealthy behaviours. Research has shown that incarceration of youth is expensive, is rarely as effective as community-based programs, and may result in the youth becoming gang-involved or solidifying gang involvement." (Office of the Children's Advocate, 2016, p. 35)

Provisions in Section 39(1) of the YCJA explicitly states "that a youth court 'shall not' use custody as a substitute for a child protection, mental health, or other social measure" (Bala, Carrington & Roberts, 2009). Holding victims of commercial sexual exploitation in custody against their will runs counter to this provision on all three accounts.

The Impact of Forcible Confinement on Sexually Exploited Youth

The literature has increasingly noted the inherent unfairness of prosecuting and/or punishing youth who are, in essence, victims rather than perpetrators of commercial sexual exploitation (Boyer, 2008; Etienne, 2016). It is now recognized that keeping youth in custody has many negative effects on youth, and can actually impede rehabilitation (Justice Policy Institute, 2009; Lambie & Randall, 2013; Schnittker & John, 2007). The Justice Policy Institute outlines a number of negative impacts which forcible confinement can have on youth:

- "Incarceration can increase recidivism" (p. 16)
- "Residential placement can slow the natural 'aging out' process of delinquency" (p. 17)
- "Incarceration does not meet the mental and developmental needs of youth" (p. 17)

- “Secure confinement contributes to barriers to education and employment that limit a person’s ability to contribute to society, which may negatively impact public safety in the long run.” (p. 18)

The Winnipeg Regional Health Authority recently released a position statement on harm reduction as a strategy for dealing both with substance misuse and with adults working in the sex trade. While they take the position that sexual exploitation of youth is a separate matter and should remain against the law, they make it clear that it is the persons sexually exploiting youth who are committing a criminal offence, not the youth who are being exploited. Their position on a harm reduction approach clearly is consistent with the points we are making regarding the fact that charging and/or locking up sexually exploited youth causes rather than reduces harm.

This Position Statement acknowledges the harms caused by stigma and criminalization. In particular, it acknowledges that the harms of criminalization are borne disproportionately by Indigenous peoples in Canada. The Statement recognizes that while people make their own health decisions, these decisions are only one factor influencing health outcomes. It also confirms harm reduction as an effective and viable approach throughout the organization.” (Winnipeg Regional Health Authority, 2016, p. 2)

Proponents of locking up youth who are victims of commercial sexual exploitation argue that the purpose of confining these youth is protection from further exploitation. However, attempts to confine victims against their will is not an effective way of protecting them (Boyer, 2012; Human Rights Project for Girls, 2015), and may result in less safety due to the girls being “driven underground” in their attempts to avoid confinement (Busby, 2003). For example, they may “may spend more time on the streets seeking clients, sell services they normally would not (including condomless sex), and/or work in isolated areas to avoid police surveillance (Winnipeg Regional Health Authority, 2016, p. 12).

A major concern regarding the forcible confinement of sexually exploited youth is the danger of causing already traumatized youth further trauma (Broughton, 2012; Human Rights Project for Girls, 2015). Youth involved with the criminal justice system have high rates of complex trauma in their histories, and this is particularly true for girls in detention, who are 8-10 times as likely as boys to report a history of sexual abuse, 33% more likely to have PTSD, and 11 times more likely to die while in custody (Ford, Chapman, Connor & Cruise, 2012). A history of complex trauma is also common among sexually exploited youth (Boyer, 2008). Children may be particularly vulnerable to lasting disturbances in their functioning if they are abused, neglected or suffer separation from primary caretakers, as the central nervous system is still in the process of development during childhood (van der Kolk et al., 2002). Children and youth so affected are at increased risk for exploitation.

A meta-analysis of studies identifying possible risk factors for the development of Post Traumatic Stress Disorder (PTSD) found that the factor with the greatest strength in predicting PTSD was a

lack of social support. Other factors identified, in order of strength of findings, were: stress occurring after the traumatic event, trauma severity, other adverse childhood events, low intelligence, low socio-economic status, childhood abuse, female gender, psychiatric history, and lack of education (Brewin, 2003). As noted in the section above, most of these are also risk factors for sexual exploitation. Other research has found that the rate of PTSD is particularly high when the traumatic event is sexual in nature (Tull & Roemer, 2002).

Beck describes panic and posttraumatic anxiety as having in common, the experience of dread combined with the perception of inescapability (Levine, n.d.). This combination is present in many situations of ongoing trauma such as child abuse. Southwick et al. contend that for persons with PTSD, “a wide variety of stimuli that were present at the time of the trauma can become conditioned to the attendant feelings of terror and extreme anxiety” (1994, p. 256). In this way, defensive responses such as fight, flight or freezing, and their attendant feelings of rage, panic and terror may be triggered in a person through pattern recognition even before the situation is registered in the person’s consciousness (Levine, n.d.).

One of the diagnostic criteria for PTSD is that a person’s response to the traumatic event involved “intense fear, helplessness or horror” (American Psychiatric Association, 1994). One of the symptoms prevalent in persons with PTSD is “intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event” (AMA, 1994). The experience of forcible confinement can mirror the helplessness that a youth experienced during previous traumatic experiences, such as child abuse. Traumatized youth may be at a particular disadvantage when locked up against their will as explained below.

Survivors of childhood trauma have the dilemma of having experienced both the overwhelming arousal of abuse, and the absence of adequate soothing and comforting. Thus, survivors are both often in a state of hyperarousal *and* particularly unskilled at self-soothing” (Chansonneuve, 2007, p. 19).

Erickson (2012) notes that incarceration is not only ineffective in dealing with youth affected by major mental health issues, it also “may worsen some youths’ symptoms and long term prognosis” (p. 404). The Ombudsman and Child and Youth Advocate in New Brunswick (2008), reporting on the circumstances leading to the death of Ashley Smith while in custody cautions that “youths suffering from mental illness or struggling with a severe behavioural disorder should not be sent to a correctional facility” (p. 4). Other researchers recommend more comprehensive screening measures to identify mental health concerns in youth involved in the justice system, and advocate for greater use of the sections of the YCJA which allow specialized assessment and sentencing of youth offenders with mental health problems (Peterson-Badali, McCormick, Vitopoulos, Davis, Haqanee & Skilling, 2015).

An additional negative outcome of forcible confinement youth in care is a tendency for those youth to then mistrust the child welfare system. “Those who have had the experience of being

apprehended by child welfare and placed in secure confinement are extremely suspicious of mandated services whereas those who have never had this experience tended to be more supportive of voluntary services” (Bennett, 2016, p. 25). This can result in those youth then running away from placement at the first opportunity. Bennett cites a report prepared for the Winnipeg Police Board in 2015, “which highlights that the vast majority of persons reported as missing are short-term chronic runaways and mostly involving vulnerable Indigenous youth (girls) in the care of the Child and Family services” (Bennett, 2016, p. 22).

When youth run from placement, they often end up spending at least some time homeless and on the street. In a study of homeless youth in Winnipeg, all of the youth spoken to by the researchers reported either witnessing or being the victim of violence while on the street, and all spoke of using substances as a coping mechanism for dealing with the harshness of life on the street (Wingert, Higgitt, & Ristock, 2005, p. 68). The researchers noted that “Youth who were still struggling to meet their basic needs for shelter, food, clothing, safety, and security were not able to develop concrete plans for making their dreams a reality” (Wingert, Higgitt & Ristock, 2005, p. 74). All of these experiences would serve to increase the vulnerability of these youth to sexual exploitation, given the risk factors cited on the Tracia’s Trust website.

While proponents of forcible confinement of sexually exploited youth contend that this is necessary because of the risk that they will run away from a less secure setting, depriving these youth of their freedom can serve to make them less accessible to any other efforts to assist them, as described below.

From a policy perspective there is a conundrum, the category of children most in need of services are for the most part children ‘on the run’ from ‘controlling’ agencies ... which are the agencies most securely funded to provide the services. Thus the evolution of securely funded programs with a mandate to protect child sexual abuse victims may have the unintended effect of frightening these children/youth away because of their fear or aversion to the ‘control’ components of these services (p. 10).” (Quote from Berman and Jiwani (2002) on p. 27 of Bennett, 2016).

Boyer (2012) recommends a non-criminal response to victims of sexual exploitation. She notes that attempts to protect victims of sexual exploitation from their pimps by arresting them are ineffective as “a short time in detention offers absolutely no guarantee that a child will not return to a pimp upon release” (p. 6). Leaving the sex trade “required establishing a safe connection for youth. This seldom occurs via the juvenile justice system” (p. 6). The idea that arrest and/or prosecution can be deterrents to sex trade involvement by youth is seen as a myth, “predicated on the belief that prostitution is a choice. . . Adults should be able to make the decision to protect child victims of sexual violence and not punish victims for being victimized.” (Boyer, 2012, p. 6)

This view, that sexual exploitation is a choice made by the victims, serves to further victimize these youth.

The mistreatment and exploitation of Indigenous girls and women has been normalized by society historically and this is still happening today. For instance, this is reflected in the terminology that labels Indigenous girls and women as prostitutes or they are described as willingly involved in the sex trade industry (Bennett, 2016, p. 43).

Community advocates interviewed by Dr. Bennett reported hearing some people working in public systems make comments to the effect that Indigenous girls “exploit themselves”, or that “they are prostituting themselves, or even: “Indigenous girls enjoy that kind of lifestyle” (Bennett, 2016, p. 55). This view is another form of blaming the victim.

The Need to Change Current Practices

There is a growing consensus regarding the need to change our approach with children and youth at risk of sexual exploitation. “Many interventions continue to prioritize short term crisis-oriented fixes at the expense of strong, coordinated planning for improved future outcomes” (Bennett, 2016, p. 79). The Canadian Council of Child and Youth Advocates (CCCYA) have noted in regard to this population that:

Intervention strategies and policy initiatives over the last 25 years have not helped in reducing the numbers, and there is a strong consensus across a broad spectrum of service providers and professional groups that the present situation cannot continue without serious consequences for both Aboriginal youth and Canadian society.” (2010, p.10)

The Winnipeg Regional Health Authority (2016) cautions that “In Canada, the criminalization of any act, especially those linked to street economies, disproportionately impacts Indigenous peoples” (p. 11). They further note the need to address the ongoing criminalization of Indigenous peoples, and their over-representation in the justice system.

Indigenous people are more likely to be sentenced to prison than non- Indigenous people (TRCC, 2015b), and are over-represented in indicators like serving more of their sentence behind bars, parole revocations, and segregation placements (Office of the Correctional Investigator, 2012). (Winnipeg Regional Health Authority, 2016, p. 11)

They urge policy makers to recognize that the systematic oppression and marginalization of Indigenous people “has not only contributed to existing social and health inequities, but also continues to profoundly negatively impact on the health of Indigenous peoples” and propose that “Redressing social dislocation, family separation, incarceration, poverty, and pain is key to reducing harms (Rhodes, 2002; 2009)” (Winnipeg Regional Health Authority, 2016, p. 7).

A compelling reason for change in the practice of using forcible confinement of sexually exploited youth is that this practice contravenes the rights of youth under the United Nations’ Convention on the Rights of the Child (UNCRC). Article 3.1 of that convention states that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of

law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (United Nations Committee on the Rights of the Child, 1990). The best interests of these youth are clearly not served by forcible confinement, as demonstrated by the research on the potential harms related to this practice as described earlier in this report.

Article 39 of the UNCRC states that:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child United Nations Committee on the Rights of the Child, 1990).

Incarcerating youth who have been sexually exploited does nothing to promote their psychological recovery, and may cause them further damage, as described in the previous section of this report.

As Manitoba’s Children’s Advocate has pointed out in her most recent Annual Report, the current treatment of incarcerated youth also contravenes the *Canadian Charter of Rights and Freedoms* (the Charter).

S.7 of the Charter provides that Manitoba children have “the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” S.12 provides that Manitoba children have “the right not to be subjected to any cruel and unusual treatment or punishment.” S.15 provides that Manitoba children have the right to the “equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on... age or mental or physical disability” (Office of the Children’s Advocate, 2016, p. 35).

The Office of the Children’s Advocate has received complaints from youth regarding the use of oleoresin capsicum spray, also known as “pepper spray” while incarcerated in Manitoba’s youth correctional facilities. “Accounts indicate that the noxious substance may be being used not as a last resort due to imminent danger of injury or harm, but rather as a method of controlling behavior” (Office of the Children’s Advocate, 2016, p. 35). The Office of the Children’s Advocate has also received “reports of youth being restrained or kept in isolation under circumstances that appear to be in response to behavioural or mental health issues (Office of the Children’s Advocate, 2016, p. 35). Given these experiences of incarcerated youth, there is reason for concern when our most vulnerable youth are similarly confined.

An additional argument for the need to change the current practice of forcible confinement of sexually exploited youth is that it is a practice that does not meet the Standards of Practice for Social Workers. Section 3g of that standard refers to social workers’ obligation to “respect and promote clients’ right to self-determination” (CASW, 1995). Section 6 requires that social workers develop agreements with clients which, among other things, “a) help clients to define the

problem”, and “b) involve clients in resolving the problem” (CASW, 1995). Section 8b calls on social workers to “utilize clients’ personal strengths and resources to promote their sense of power and competence” (CASW, 1995). Confinement of these youth against their will runs counter to each of those standards.

Best Practice

In view of the above, it is essential that we look to what the research has to say about best practice with this vulnerable population. The work that must take place needs to occur on many levels and include all the systems presently involved. Fortunately, there is considerable research and expertise which can be accessed for this purpose.

Approaches to assisting youth who are victims of commercial sexual exploitation which are recommended in the literature include:

- Using screening measures to identify victims, and divert them from juvenile detention (Salisbury, Dabney & Russell, 2014);
- Providing community supports, and safe housing for victims (Seshia, 2005; Wingert, Higgett & Ristock, 2005);
- Using a victim-centered, non-criminal approach (Boyer, 2011);
- Ensuring that services such as counselling, addictions treatment, and education upgrading are accessible when the youth is ready to utilize these services (Wingert, Higgett & Ristock, 2005)
- Involving youth victims in the development of programs to assist youth in surviving and/or exiting the sex trade (Kingsley & Mark, 2000); and
- Holding the perpetrators of sexual exploitation accountable through the criminal justice system (Bennett, 2016).

Services must respect the autonomy of the youth (Wingert, Higgett & Ristock, 2005). Given the role of past trauma in the lives of many of these youth, services must be trauma informed. Judith Herman, a recognised expert in the treatment of trauma states that “the first principle of recovery is the empowerment of the survivor” (1992, p.133).

A number of authors have identified three major goals or components of treatment with survivors of trauma:

1. processing of the traumatic events, and assigning meaning to them, which enables the survivor to integrate the traumatic experiences appropriately into their personal life narrative,
2. mastering the physiological and biological stress reactions, and

3. regaining, on the part of the survivor, of a sense of control and personal efficacy, through the development or re-establishment of social connections and personal coping skills. (Baldwin, 1997; van der Hart et al. 1993; van der Kolk et al., 2002)

In the treatment of posttraumatic stress, it is particularly important to be careful of timing and pacing, and of ensuring safety in the process, as there is a danger of causing further damage if the therapist is not cautious (Levine, 2003, Ogden & Minton, 2000, van der Hart et al.).

Trauma recovery cannot proceed in the absence of safety. The healing process cannot be forced, and must proceed when the client is ready, and feels safe to do so. As such, personal and cultural safety are necessary elements of successful Aboriginal healing programs (Archibald, 2006, p. 32).

There is a growing awareness that an essential part of healing for Indigenous youth involves reconnecting with their culture and also understanding the history and impacts of the residential school system and other colonial practices (Chansonneuve, 2007; Castellano, 2008, Bennett, 2016). Reconnection to culture and teachings “teachings provide Indigenous girls with a strong foundation that lends to the sense of belonging and community connectedness, which is vitally important to their sense of safety” (Bennett, 2016, p. 83).

Reclaiming spiritual teachings and practices is not only an important counterpoint to the shame-based identity fostered in Aboriginal children by residential schooling, it is also a way of building healthy relationships and reducing social isolation. These are key aspects of sustaining recovery over the long term (Chansonneuve, 2007, p. 36).

Another important component of any plan to meet the needs of sexually exploited youth is safe housing. In order to keep them safe, facilities for youth must feel safe to them. Wingert, Higgitt and Ristock, in their study of street youth in Winnipeg, found that “Most of our interviewees did not want to live in group homes or foster care run by child protection or other agencies that controlled their daily activities” (2005, p. 76). Professionals interviewed in Bennett’s recent study on best practices with sexually exploited youth “expressed that the more control that is placed on young people the more it destabilizes them” (Bennett, 2016, p. 64). Controlling measures are often seen as necessary to manage the difficult behaviours of youth who “act out” as a result of trauma, FASD, or lack of trust in caregivers. Behaviour management specialists such as Nathan Ory (2007) provide a range of suggestions for managing difficult behaviours without compromising the person’s dignity or causing further escalation.

A further problem with facilities in which youth perceive as controlling rather than empowering is that young people will run from them. One of the participants in the study conducted by Bennett suggested that “instead of assessing a residential facility based on standards that don’t address the needs of vulnerable Indigenous girls, the evaluation should be based on “how many times Indigenous kids go running from these placements” (Bennett, 2016, p. 68). Another participant

advocated for increased funding to existing Indigenous organizations which are already serving this population with some success.

We need to put something in place that is Indigenous if we are working with Indigenous people and it can't come from their mindset, their belief systems, their standards, it can't. It hasn't worked. Why do you think there are so many kids missing? Why do you think there are so many kids in child welfare services? It's not working. We've been saying that for years. Give us the resources. Give us the time and place to work with our young girls, our young boys. We know. We've come to know what works for us and what doesn't work for us (Bennett, 2016, p. 76).

This view is echoed in another report recently completed for the Office of the Children's Advocate. The Phoenix Sinclair Inquiry final report notes that there are several such organizations that are well received by their communities. These include: Andrews Street Family Centre, Ma Mawi Wi Chi Itata Centre, Wolseley Family Place, Native Women's Transition Centre, Ka Ni Kahnichihk, Eagle Urban Transition Centre, Manidoo Gi Minii Gonaan.³¹⁸ They succeed by building trust with families, declining the authority to apprehend children, finding staff and volunteers in the community, and build relationships (Milward, 2016, p. 60).

Safe places for youth to access even while they remain on the street are recommended as a means of beginning to engage with youth who have become alienated from helping systems (Wingert, Higgett & Ristock, 2005). Those interviewed by Bennett echo that need.

It was stated that government needs to take a courageous step forward in re-allocating and redirecting funds to better support Indigenous girls and women so they are able to access "independent, stand-alone support drop-in centres" so that if girls and/or women are at risk and stuck on the streets, they have access to "Indigenous spaces" where they can "crash for the night," get food, do laundry, or take a shower. These safe spaces must be available day and night, and must also be a beautiful space and a welcoming space with Elders and supports that are also always available" (Bennett, 2016, p. 49).

N'Dinawe is an excellent example of this type of resource.

In addition to meeting the immediate needs of youth who are or have been sexually exploited, it is important to also address the underlying causes of the problem of sexual exploitation, including the reasons that Indigenous girls are overrepresented in this population, which include both the Legacy of colonial practices, as well as present day factors. "Indigenous people who migrate to urban centres face racism and economic marginalization (O'Brien-Teengs & Travers, 2006), which can lead to survival sex work (ALST, 2013, 3)" (Winnipeg Regional Health Authority, 2016, p. 11). Trocmé, Knoke, & Blackstock concur: "In order to correct the effects of an Aboriginal history of colonization and the forced removal of children, a comprehensive set of measures must address the social problems that these communities inherit" (Trocmé, Knoke, & Blackstock, 2004, p. 596).

The Winnipeg Regional Health Authority also urges that both immediate needs and long term solutions need to be addressed.

A public health approach to sex work prioritizes the physical, social, and mental well-being of sex workers. It promotes evidence-informed, ethical, and pragmatic approaches to supporting the health and well-being of sex workers, while addressing the structural factors that may push some individuals into sex work, like poverty, colonialism, and racism (CPHA, 2014b). These factors are not only ignored by the narrow lens of criminalization, but are worsened by it, due to the inequitable impact of policing and justice systems on poor, Indigenous, and racialized communities (Winnipeg Regional Health Authority, 2016, p. 10).

One important of addressing the Legacy of colonial practices is public education. As pointed out by Castellano (2008), non-Indigenous Canadians “also need healing from the false assumptions and blind spots that led to the imposition of the residential school system and today perpetuate powerlessness, dependency, and lack of trust” (p. 397). Rupert Ross echoes that point of view.

If truly respectful relationships are to ever emerge, non-Aboriginal Canadians must come to understand that there were healthy, vibrant, and sophisticated societies on this continent at the time of contact. They must understand that it was the determined policies of assimilation, including residential schools, that were primarily responsible for the *damage done* to those societies and the tragedies we see today. (Ross, 2008, p. 146)

Of utmost importance when working on legislation, policy, funding decisions and programming with relation to dealing with the problem of sexually exploitation is the need for consultation (Winnipeg Regional Health Authority, 2016). “There is generally a need to engage in a consultation process beforehand in any effort to set up a new child welfare initiative, but it is especially so when it comes to Aboriginal initiatives” (Milward, 2016, p. 47). Informants to Bennett’s 2016 study regarding Indigenous youth who are vulnerable to sexual exploitation indicate that all too often this consultation process have been missing.

The participants in this research – who are each respected leaders in their communities and professions – told us that the government still exerts rigid control over the care and protection of children to the unfortunate exclusion of the families and communities who want to be a bigger part of the solution. They also told us that the structure and policies of Manitoba’s child welfare system too often ignore the critical importance of culture as a pathway to healing trauma and protecting children (Bennett, 2016, p. 79).

Rupert Ross (2008) indicates that the tendency of governments to proceed in decision-making affecting Indigenous people without adequate consultation, or to seize control of services provided to Indigenous populations even where consultation with community leaders has occurred is reflective of colonial attitudes, and needs to change.

One of the most powerful causes of cultural dislocation, in my view, is simple to express: a pervasive conviction of cultural superiority by the non-Aboriginal world. I see it expressed at every stage in our history together, manifesting itself in almost every dimension of our relations, right down to the determination of government agencies to control the content of healing programs proposed by Aboriginal peoples (p. 157)

There is also a consensus in the literature that the consultation process must include the youth who are or have been affected by sexual exploitation (Bennett, 2016; Kingsley & Mark, 2000; Milward, 2016). “The most important suggestion that can make girls safe is to listen to the voices of youth” Bennett, 2016, p. 76).

One of the recommendations made by the Children’s Advocate in Bennett’s report is for the establishment of a Grandmothers’ Council to provide ongoing advice and guidance to government.

RECOMMENDATION FOUR: The Children’s Advocate recommends the Government of Manitoba establish a Grandmother’s Council, or *Ganawenamig*, that acknowledges the traditional role of women in caring for family systems and which can engage the wisdom of indigenous Elders in providing cultural safety and traditional parenting advice and guidance to government on the development and delivery of public services that impact children, youth, and families. The Council should be developed through meaningful consultation with indigenous individuals who are recognized within the indigenous community as leaders. These consultations should identify and invite appropriate indigenous women to serve their communities through advising government in all areas of the public service that impact Manitoba’s children (Bennett, 2016, p. 81).

The SEYCC supports this recommendation, and urges government to also develop a process for hearing the voices of youth.

Given all of the information presented above, it is disheartening that the number of locked facilities for youth in Manitoba has increased, while resources which fit with best practice such as Hands of Mother Earth, Little Sisters, TERF and N’Dinawe are under-utilized.

In keeping with the commitment to reconciliation regarding the effects of colonialism and the residential school system, we strongly recommend that Indigenous organizations be supported and recognized in their efforts to provide safe and nurturing environments to these vulnerable children.

This paper was researched and written by Catherine Hudek, MSW, on behalf of SEYCC.

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