

**THE PALERMO PROTOCOL  
& CANADA: THE  
EVOLUTION AND HUMAN  
RIGHTS IMPACTS OF ANTI-  
TRAFFICKING LAWS IN  
CANADA (2002-2015)**

**Key Findings**

15 October 2015

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In collaboration with SWAN Vancouver Society

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## Executive Summary

*The Palermo Protocol & Canada Ten Years On: The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada* [hereinafter the *Palermo Project*] is an academic and community partnership critically evaluating the stated intentions and actual effects of national anti-human trafficking laws,<sup>1</sup> in the more than ten years since Canada ratified the international treaty. With the generous support of the Law Foundation of British Columbia, two socio-legal researchers (Millar and O’Doherty) and several student research assistants at the University of the Fraser Valley (UFV) collaborated with SWAN Vancouver Society to undertake a comprehensive study of Canada’s use of anti-trafficking legislation. Our primary goals were to assess the empirical evidence about human trafficking in Canada with a view to advancing migrant workers’ access to justice.

The study comprised three primary components: 1) legal analysis of the legislative framework and jurisprudence relating to human trafficking in Canada; 2) qualitative analysis of criminal justice system (CJS) personnel’s perspectives on the enforcement and use of anti-trafficking legal measures; and 3) qualitative analysis of SWAN society personnel’s perspectives on the enforcement of anti-trafficking legal measures. The first component of the study involved obtaining and analyzing empirical data such as case law, legislation, government publications and other secondary resource document analysis (research studies), as well as media reports related to anti-trafficking legal measures. In the second component, criminal justice personnel (including Crown counsel, policy advisors, police, and others) were invited to take part in interviews to fulfil the collection of data on criminal justice personnel perspectives. The third component employed focus groups to discuss the experiences of those who work directly with im/migrant sex workers to ascertain the effectiveness of the legal measures and the needs of their membership.

This collaboration sought to contribute to the empirical research on human trafficking in Canada

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<sup>1</sup> For the purposes of this report, we use the terms ‘trafficking in persons’ and ‘human trafficking’ interchangeably. We also use the term ‘trafficked person’ and/or ‘complainant’ where possible as opposed to trafficking ‘victim’ given that several of the cases we examined did not result in convictions and that many trafficked and exploited persons do not necessarily consider themselves to be victims.

while facilitating the transmission of SWAN's experiential knowledge to academic and legal audiences. In this report, we have outlined our key findings relating to each of the three components of the project. Together, these data expose the inadequate evidence underlying some anti-trafficking discourse that focus on a singular trafficking narrative and challenge the utility of some enforcement and awareness campaigns, as well as ideologically-driven law reform. These data demonstrate the complexity of the legal scope of anti-trafficking measures in Canada as well as the highly politicized nature of the discourse. These data also demonstrate that the lived experiences of im/migrant sex workers through the lens of one outreach organization do not correlate with the current political construction of human trafficking in Canada. Our empirical data do not support the conflation of sex work and human trafficking; in effect, such conflation creates barriers to im/migrant sex workers' access to justice in Canada and is an obstacle to Canada more effectively preventing and responding to the full range of exploitative labour and services anticipated by the UN *Trafficking Protocol*.

Access to justice for im/migrants—with particular emphasis on those in precarious work situations—requires a multi-faceted approach involving several stakeholders.<sup>2</sup> Legislative responses to irregular migration status need to be attentive to the underlying structural conditions and contextual factors that facilitate exploitation and promote workplace vulnerability. In our responses, we ought not to lose sight of the fact that the im/migrants themselves, their needs and their wishes, need to take priority in policy responses.<sup>3</sup> In view of our key findings, one of our primary recommendations is to ensure increased avenues of non-judgmental communication between representatives of formal institutions—members of parliament, Department of Justice members, police, health care providers, CBSA and others—with vulnerable groups to better understand the individuals and meet their needs. We also highly recommend working towards transparent, accountable, and empirically-based production of knowledge about human trafficking

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<sup>2</sup> See the Dhaka principles for migration with dignity (<http://www.dhaka-principles.org/>). See also Dandurand, Y. and Chin, V. (2014). *Uncovering labour trafficking in Canada: Regulators, investigators, and prosecutors*. Prepared for Law Enforcement and Policing Branch, Public Safety Canada. Vancouver: International Centre for Criminal Law Reform.

<sup>3</sup> In this regard, we note the pressing need for primary research directly with migrant workers and trafficked/exploited persons.

in Canada. From a socio-legal perspective, accurate statistics, evidence-based and non-ideological knowledge are instrumental to creating effective policy to address social issues.<sup>4</sup> From the perspective of those affected by the policies of unintentionally harmful protectionism or criminalization, accurate representations and understanding of the multiple identities and complex needs of those with lived migration experiences is the only way to create truly responsive services to meet those needs.<sup>5</sup>

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<sup>4</sup> See, especially, Weitzer, R. (2011), Sex trafficking and the sex industry: The need for evidence-based theory and legislation. *The Journal of Criminal Law & Criminology*, 101(4), 1337-1369. See also De Shalit, A., Heynen, R, and van der Muelen, E. (2014). Human trafficking and media myths: Federal funding, communication strategies, and Canadian anti-trafficking programs. *Canadian Journal of Communication*, 39, 385–412.

<sup>5</sup> See Global Alliance against Traffic in Women (GAATW). (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Thailand: GAATW. See also Shah, S. (2011) *Trafficking and the Conflation with Sex Work: Implications for HIV Control and Prevention*. Working Paper for the Third Meeting of the technical Advisory Group of the Global Commission on HIV and the Law, 7-9 July 2011. Available at: <http://hivlawcommission.org/index.php/report-working-papers?task=document.viewdoc&id=100>

## Project Context & Goals

There are many claims about the nature and extent of trafficking in persons globally<sup>6</sup> and in Canada. The claims about human trafficking in Canada tend to emphasize a dominant, and mainly single, narrative about women and girls being forced into commercial sex work<sup>7</sup> that is centered around four main themes: (1) trafficking of women and girls for the purpose of sexual exploitation (also referred herein as ‘sex trafficking’) is a serious and growing problem, (2) sex trafficking is linked to transnational organized crime and domestic criminal gangs; (3) internationally, women and girls from Asia and Eastern Europe are at risk of being trafficked across Canada’s borders for the purpose of sexual exploitation; and (4) domestically, Indigenous women and girls are at particular risk of being trafficked for the purpose of sexual exploitation.<sup>8</sup> In this regard, the most recent annual United States (US) Department of State *Trafficking in Persons Report* describes the preceding year situation in Canada as follows:

Canada is a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor. Canadian girls, boys, and women are exploited in sex trafficking across the country; women and girls from Aboriginal communities and girls in the child welfare system are especially vulnerable. Foreign women, primarily from Asia and Eastern Europe, are subjected to sex trafficking in Canada. Law enforcement officials report some local street gangs and transnational criminal organizations are involved in sex trafficking. Labor trafficking victims

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<sup>6</sup> For a critical analysis of the global estimates of trafficking in persons, see, especially, Weitzer, R. (2011). Sex trafficking and the sex industry: The need for evidence-based theory and legislation. *The Journal of Criminal Law & Criminology*, 101(4), 1337-1369.

<sup>7</sup> For a more in depth analysis of this dominant narrative, see, e.g., Ferguson, J.A. (2012). *International human trafficking in Canada: Why so few prosecutions?* Doctoral Dissertation, Faculty of Law, University of British Columbia, Vancouver, British Columbia, at pages 1-4. See also Kaye, J. & Hastie, B. (2015). The Canadian Criminal Code offence of trafficking in persons: Challenges from the field and within the law. *Social Inclusion*, 3(1), 88-102; Snajdr, E. (2013). Beneath the master narrative: Human trafficking, myths of sexual slavery and ethnographic realities. *Dialectical Anthropology*, 37(2), 229-256.

<sup>8</sup> See, e.g., Canada, Standing Committee on the Status of Women. (2007). *Turning outrage into action to address trafficking for the purpose of sexual exploitation in Canada*. Ottawa: Standing Committee on the Status of Women, p. 1; Barnett, L. (2008). *Trafficking in persons* (Revised 18 July 2008). Ottawa: Law and Government Division, Parliamentary Information and Research Service, Library of Parliament Canada, pp. 4-5; Perrin, B. (2010). *Invisible chains: Canada's underground network of human trafficking*. Toronto: Viking Canada; Royal Canadian Mounted Police. (2010). *Human trafficking in Canada*. Ottawa: Royal Canadian Mounted Police, pp. 10-26; Public Safety Canada. (2012). *National action plan to combat human trafficking*. Ottawa: Public Safety Canada, p. 6; United States Department of State (2001-2015). *Trafficking in persons reports, 2001-2015*, Country narratives: Canada. United States of America. Available at: <http://www.state.gov/j/tip/rls/tiprpt/>.

include foreign workers from Eastern Europe, Asia, Latin America, and Africa who enter Canada legally, but are subsequently subjected to forced labor in a variety of sectors, including agriculture, construction, food processing plants, restaurants, the hospitality sector, or as domestic servants, including in diplomatic households. Canada is a source country for tourists who travel abroad to engage in sex acts with children. Canadian trafficking victims have been exploited in the United States.<sup>9</sup>

In relation to Canadian estimates, in 2003, the RCMP published an intelligence estimate stating that each year 800 persons were trafficked into Canada, 600 of whom were women or girls forced to work in prostitution, and that an additional 1200 women and girls were annually trafficked through Canada to the United States to work in the sex trade.<sup>10</sup> In 2010, the RCMP retracted this estimate, indicating they could not accurately assess the scope of trafficking in persons.<sup>11</sup> Nevertheless, the original 2003 estimate continues to be widely cited in public policy debates about the need for increasingly expansive and punitive anti-trafficking laws, and by the academic and NGO literature on human trafficking. In reality, it is not possible to estimate the scope of a social issue that is largely hidden, or underground.<sup>12</sup> However, this methodological barrier appears to be largely ignored in relation to human trafficking, which as we note below has been internationally described as a ‘rigor free zone’. Indeed, the related government, non-government, and academic sources often make claims about a typical profile of trafficked persons in Canada, especially in relation to women and girls who are sexually ‘trafficked.’<sup>13</sup> From a socio-legal perspective, many

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<sup>9</sup> United States, Department of State. (2015). *Trafficking in persons report*. United States of America, July 2015. Available at: <http://www.state.gov/documents/organization/245365.pdf>, at page 114.

<sup>10</sup> Ferguson, J.A. (2012). *International human trafficking in Canada: Why so few prosecutions?* Doctoral Dissertation, Faculty of Law, University of British Columbia, Vancouver, British Columbia, at pages 1, 63-64, 187-188.

<sup>11</sup> *Ibid*, at pages 63-64.

<sup>12</sup> See generally Weitzer, R. (2011). Sex trafficking and the sex industry: The need for evidence-based theory and legislation. *The Journal of Criminal Law and Criminology*, 101(4), 1337-1369.

<sup>13</sup> For example, see Barrett, N. (2013). *An assessment of sex trafficking*. Toronto: Canadian Women’s Foundation, Task Force on Trafficking of Women and Girls in Canada, at pages 13-20, acknowledging that we do not know the nature and scope of trafficking in persons and discussing the reasons why estimates are so difficult, yet providing an ‘unofficial profile’ of sexually trafficked women and girls based on her interviews with frontline service providers.

of these profiles are troubling in view of the absence of conceptually rigorous definitions and/or empirically sound baseline data.<sup>14</sup>

In addition to these claims, media reports about trafficking in Canada tend to be sensationalistic,<sup>15</sup> decontextualized<sup>16</sup> and at times misleading<sup>17</sup> or inaccurate.<sup>18</sup> Media reports also typically provide limited follow-up to ascertain the actual outcome of human trafficking charges or to report on the status of the trafficked persons.<sup>19</sup> For example, in April 2015, it was reported that ‘as many as 500 Asian women were smuggled into the country as part of a Canada-wide prostitution ring’.<sup>20</sup> Yet, efforts by SWAN Vancouver to find out about the status and wellbeing of the ‘500 Asian women’ were unsuccessful. For a second example, consider the claims that were publicized prior to the

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<sup>14</sup> Arguably, the Human Trafficking National Coordination Centre (HTNCC) has sought to establish some baseline data in their analysis of human trafficking police investigations between 2005 and 2009. But the data in their 2010 report are drawn from intelligence sources that are not subject to independent verification or analysis. As well, the HTNCC/RCMP definition of trafficking typically includes situations involving trafficking specific offences (contrary to section 118 of IRPA and sections 279.01-04 of the Criminal Code) and related non-trafficking offences. As noted in our methods section, we sought to obtain the names of cases and/or case file numbers for this 2010 report, but our request was declined. For an overview of the HTNCC/RCMP methods, see Royal Canadian Mounted Police. (2010). *Human trafficking in Canada*. Ottawa, ON: Royal Canadian Mounted Police, at page 5. Other studies that provide profiles of ‘trafficked persons’ appear to use subjective and/or fluid definitions of human trafficking that are often not conceptually distinct from commercial sex work (prostitution) irrespective of whether force or children were involved.

<sup>15</sup> For example, *R v. Moazami*, 2014 BCSC 1727, in BC has been portrayed as a “teen” human trafficking case, which is intriguing since the case involved a 36 count indictment in relation to 11 complainants. Although a majority of the complainants in this case were minors, most of the charges involved procuring, living off the avails, sexual interference, sexual assault, and sexual exploitation. Only two of the 36 counts were for trafficking in persons and only one of those charges resulted in a conviction for an adult complaint. The other trafficking charge, involving a minor complainant, resulted in an acquittal.

<sup>16</sup> As one example, while there are many media reports on the accused in the *Domotor-Kolompar* case, it is difficult to locate media reports about who the 19 trafficked persons were or their status in relation to whether they remain in Canada or were deported back to Hungary as their country of origin.

<sup>17</sup> See, for example, Moore, H. and Levasseur, J. (2014, 25 March). *Human traffickers going unpunished in Canada, experts say*. CBC News, available at: <http://www.cbc.ca/news/canada/manitoba/human-traffickers-going-unpunished-in-canada-experts-say-1.2584944> who provide a Canadian map of trafficking charges by province / territory using the rather unusual categories of 0-1 charges, which leaves the inaccurate impression there have been police-reported charges in all provinces and territories.

<sup>18</sup> For instance, press reports on the *Domotor-Kolompar* case reported that Domotor Senior was sentenced to 9 years imprisonment, which is contrary to the primary court documentation for this case indicating a 7-year sentence.

<sup>19</sup> As documented by our case analysis research below.

<sup>20</sup> *The Canadian Press*. (1 April 2015). ‘RCMP arrest six for Canada-wide human-smuggling, prostitution ring’. Montreal: Canadian Press (1 April 2015). Available at: <http://www.theglobeandmail.com/news/national/rcmp-arrest-six-for-canada-wide-human-smuggling-prostitution-ring/article23755659/>.

Olympics in Vancouver in 2010. In the year preceding the Olympics, several individuals and organizations claimed that upwards of 80,000 women and children would be trafficked into Canada as a consequence of hosting the international sports competition.<sup>21</sup> These claims were made, and publicized, in spite of a lack of evidence to support any estimate or even the existence of an upsurge in human trafficking relating to large sporting events.<sup>22</sup> Now, five years after the Olympics, our findings demonstrate that official police reported statistics align with critical scholar's suspicions and NGO's experiences: there were no formal charges related to human trafficking as a result of hosting the Olympics. Unfortunately, there are few mechanisms to hold individuals and the media accountable for their inaccurate statements and/or representations. In this regard, the Mumtaz Ladha law suits against the RCMP for alleged damage to her reputation (including allegations the RCMP sensationalized the laying of charges in her case), and against the BC Civil Forfeiture office to recover her financial losses may set an interesting precedent moving forward, depending on the case outcomes.<sup>23</sup>

Media representations simultaneously maintain that human trafficking is a growing and pervasive problem; yet they report that there have been few human trafficking convictions in Canada. These same reports then offer simplistic explanations as to why this may be so: that either trafficked persons are unwilling to come forward or that law enforcement authorities need to do more to identify trafficked persons. Largely absent from these claims are discussions of the complex and intersecting economic, legal, safety and other reasons why 'trafficked persons' do not come forward and/or addressing the many institutional factors that result in a refusal to prosecute, such as a failure to meet charge approval standards due to concern about the reliability of evidence or

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<sup>21</sup> For example, see <http://www.vancouverobserver.com/politics/commentary/2010/02/02/human-trafficking-alive-and-well-2010-olympics>; and <http://www.salvationarmy.ca/britishcolumbia/2009/07/31/salvation-army-to-help-deter-olympics-sex-traffickers/>

<sup>22</sup> See Bowen, R. & Shannon, E. (2009). *Human Trafficking, sex work safety and the 2010 Games: Assessments and recommendations*. Report commissioned by the Sex Industry Work Safety Action Group. Available at: <http://vancouver.ca/police/assets/pdf/reports-policies/report-human-trafficking-2010-games.pdf>

<sup>23</sup> Ladha was charged with and acquitted of four immigration offences at trial in relation to alleged labour trafficking, including: organizing entry into Canada by fraud or deception contrary to section 118 of *IRPA*, employing a foreign national without authorization contrary to section 124(1)(c) of *IRPA*, and two counts of misrepresenting facts on a temporary resident visa contrary to section 127(a) of *IRPA*. Information on the law suits she has filed are available at: <http://www.cbc.ca/news/canada/british-columbia/mumtaz-ladha-suing-rcmp-after-acquittal-of-human-trafficking-charges-1.2967661>.

other factors that lead to a determination that a case would not be successfully prosecuted. There are many other factors related to historical oppression that explain why certain communities—and criminalized or otherwise marginalized communities in particular—do not rely on police or the criminal justice system to address victimization. In brief, unidimensional media-generated images lead one to believe that the sex trafficking of women and girls is a prolific and growing problem in Canada and exists solely in relation to commercial sex work,<sup>24</sup> that traffickers are getting away without being punished, and that our laws are ineffective. At the same time, there is little to no discussion or assessment of the actual impacts of anti-trafficking campaigns and law enforcement measures on the ‘victims.’<sup>25</sup>

The reality is that, like most other countries,<sup>26</sup> we know relatively little about the actual scope and nature of human trafficking in Canada.<sup>27</sup> Indeed, much of the empirical research consists of small-scale qualitative studies based on convenience samples that are regionally or community specific.<sup>28</sup>

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<sup>24</sup> Two provincial human rights tribunal cases suggest that sexual exploitation exists in labour exploitation contexts other than strictly commercial sex work, which seems *not* to be a focus of anti-trafficking campaigns and/or law enforcement efforts in Canada. See especially Dandurand, Y. and Chin, V. (2014). *Uncovering labour trafficking in Canada: Regulators, investigators, and prosecutors*. Prepared for Law Enforcement and Policing Branch, Public Safety Canada. Vancouver: International Centre for Criminal Law Reform, at page 36 who speak to the overlap between trafficking for the purposes of labour and sexual exploitation.

<sup>25</sup> Concern over unintended (and negative) impacts of criminalization on sex workers generally formed the basis of the Supreme Court of Canada’s decision in *Bedford* [2013] SCC 72 to strike down three prostitution-related offences. For more detailed discussion of the effects of criminalization on sex workers, see O’Doherty, T. (2011) Criminalization and off-street sex work in Canada. *Canadian Journal of Criminology and Criminal Justice*, 53(2), 217-245; van der Meulen, E., Yee, J. & Durisin, E. (2010). Violence against Indigenous sex workers: Combatting the effects of criminalization and colonialism in Canada. *Research for Sex Workers*, 12, 35-36.

<sup>26</sup> See generally Laczko, F. and Gozdzik, E. (2005). *Data and research on human trafficking: A global survey*. Geneva: International Organization for Migration.

<sup>27</sup> For a discussion of some of the challenges associated with empirically measuring trafficking in persons and proposed solutions for Canada, see especially Ogrodnik, L. (2010). *Towards the development of a national data collection framework to measure trafficking in persons*. (Cat. No. 85-561-M). Ottawa: Canadian Centre for Justice Statistics.

<sup>28</sup> Selected examples of these studies include: Sethi, A. (2007). Domestic sex trafficking of Aboriginal girls in Canada: Issues and implications. *First Peoples Child & Family Review*, 3(3), 57-71; Sikka, A. (2009). *Trafficking of Aboriginal women and girls in Canada*. Institute on Governance (IOG) and the Office of the Federal Interlocutor for Métis and Non-Status Indians (OFI). Retrieved from [http://iog.ca/wp-content/uploads/2012/12/May-2009\\_trafficking\\_of\\_aboriginal\\_women-1.pdf](http://iog.ca/wp-content/uploads/2012/12/May-2009_trafficking_of_aboriginal_women-1.pdf); Kaye, J., Winterdyke, J., and Quarterman, L. (2014). Beyond criminal justice: A case study of responding to human trafficking in Canada. *Canadian Journal of Criminology and Criminal Justice*, 56(1), 23-48. See also various qualitative studies supported by the Canadian Women’s Foundation on ‘Ending Sex Trafficking’, available at: <http://canadianwomen.org/reports/trafficking>.

Some of these studies suffer from definitional ambiguities and methodological deficiencies.<sup>29</sup> In addition, there is a lack of independent research given that much of the Canadian research is government-sponsored.<sup>30</sup> Even though there are proximal indicators of human trafficking in the form of police-reported crime statistics and official government agency reports on trafficking investigations and prosecutions, these statistics are a better reflection of criminal justice priorities than criminal behaviour and some of these sources themselves lack definitional rigor and transparency. For instance, as we discuss in our case findings section below, Canadian government agency reports on trafficking prosecutions include violations of the specific trafficking in persons laws *and* violations of ‘related offences’ that are subjectively defined by the reporting agency. The trafficking-related category includes a wide range of criminal offences such as assault, sexual assault, drug-related offences, and weapons-related offences, in addition to immigration offences such as document fraud (misrepresentation). Taken together, these varying, and mainly unsubstantiated or largely anecdotal, claims support a dominant anti-trafficking discourse about women and girls being forced into commercial sex work that appear to be morally and ideologically—rather than empirically—driven. Nevertheless, these claims exert considerable influence on government policy and funding agendas in relation to curtailing commercial sex work and migration.<sup>31</sup>

In an effort to center this discourse on those most impacted by both vulnerability to trafficking and vulnerability to anti-trafficking legal actions, this project focused on the experiences of one group

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<sup>29</sup> See, for example, Gabriele, F., Sapoznik, K., Serojtidinov, A., and Williams, E. (2014). *The incidence of human trafficking in Ontario: Ontario coalition research initiative*. Ontario: Alliance against Modern Slavery; Wohlbold, E. and LeMay, K. (2014). *Local safety audit report: Towards the prevention of trafficking in persons and related exploitation in the Ottawa area*. PACT Ottawa.

<sup>30</sup> Data on file with the authors. This same observation is made by Roots, K. (2011). *Human trafficking in Canada: “Crisis” or confusion? An examination of Canada’s trafficking legislation and the development of a “social crisis”*. MA Thesis, Department of Sociology (Specialization in Women’s Studies), Lakehead University, Thunder Bay, Ontario, at page 7.

<sup>31</sup> See generally *Anti-Trafficking Review*. (2014). Following the money: Spending on anti-trafficking, *No. 3* (2014) available: <http://www.antitraffickingreview.org/index.php/atjournal/issue/archive> and especially Clancey, A., Khushrushahi, N. and Ham, J. (2014). Do evidence-based approaches alienate Canadian anti-trafficking funders? *Anti-Trafficking Review*, 3, 87-108. See also Weitzer, R. (2005). The growing moral panic over prostitution and sex trafficking. *The Criminologist*, 30(5), 1-5; De Shalit, A., Heynen, R., and van der Muelen, E. (2014). Human trafficking and media myths: Federal funding, communication strategies, and Canadian anti-trafficking programs. *Canadian Journal of Communication*, 39, 385–412.

of persons who are thought to be particularly vulnerable to human trafficking: im/migrant women who work in off-street commercial sex.<sup>32</sup> As has been widely documented, a growing number of people are on the move internationally, including migrant women, which has prompted international concern about regular and, especially, irregular migration. While there are debates about whether the number and proportion of international migrant women are increasing, the nature of women's migration has changed with a far greater proportion of women migrating independently as primary economic providers/heads of households rather than as dependents.<sup>33</sup> Although the women who migrate and their reasons for migration are extremely diverse and complex, it is well recognized that many women who voluntarily migrate in search of work, especially those who are semi or unskilled, work in informal or precarious work sectors where there are few labour or human rights protections.<sup>34</sup>

The *UN Convention on Transnational Crime*, and its *Trafficking and Smuggling Protocols* were negotiated in the context of these wider debates about reducing irregular migration.<sup>35</sup> As a UNODC sponsored crime control instrument that affords only secondary importance and relatively few human rights protections to trafficked persons, there was concern from the outset that the *Trafficking Protocol* would lead to increased criminalization and border controls under the guise of 'protecting' women from migrating. In this regard, there is an emerging body of research about the negative human rights impacts of global anti-trafficking efforts, including a 2007 report by the Global Alliance Against Trafficking in Women (GAATW) documenting, among other concerns,

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<sup>32</sup> The authors wish to note that there are several other groups who are considered to be vulnerable to human trafficking, including Indigenous persons. We hope to work collaboratively with Indigenous communities in the near future to further explore their unique needs and to contribute to policy change that includes Indigenous experiences and perspectives.

<sup>33</sup> See, e.g., United Nations International Research and Training Institute for the Advancement of Women (INSTRAW). *Feminization of migration 2007: Gender, remittances and development*, Working Paper 1. Available at: [http://www.renate-europe.net/wp-content/uploads/2014/01/Feminization\\_of\\_Migration-INSTRAW2007.pdf](http://www.renate-europe.net/wp-content/uploads/2014/01/Feminization_of_Migration-INSTRAW2007.pdf); United Nations Development Fund for Women (UNIFEM). (2006). *Empowering women migrant workers in Asia*, available at: [http://www.unicef.org/socialpolicy/files/Empowering\\_WomenMigrantWorkersBrief.pdf](http://www.unicef.org/socialpolicy/files/Empowering_WomenMigrantWorkersBrief.pdf).

<sup>34</sup> For more information concerning "hyper-precarity" in relation to migration, see Lewis, H. & Waite, L. (2015). Asylum, immigration restrictions and exploitation: Hyper-precarity as a lens for understanding and tackling forced labour. *Anti-Trafficking Review*, 5, 49-67.

<sup>35</sup> See, e.g., Boister, N. and Currie, R.J. (eds.), *Routledge handbook of transnational criminal law*. New York: Routledge, who clearly locate human trafficking and smuggling as *migration and exploitation crimes*.

limitations on women's—and especially young women's—freedom of movement for the eight countries studied.<sup>36</sup> For women in particular, migration is intimately linked to global economic opportunities; macro-level systemic issues such as war, capitalism and resource extraction, colonial exploitation and global warming each contribute to global inequity.<sup>37</sup> As a result, some populations become transient and individuals must make difficult choices—or take advantage of risky opportunities—to migrate domestically or internationally. Our neo-liberal global economic system requires an unskilled and exploitable labour force. Some individuals will accept exploitative labour because of a lack of options—both in terms of economic options, but also in terms of training and education. Some im/migrants will work in commercial sex, as a part-time supplement to low wages or as a full-time position. In Canada though, various prostitution-related activities are criminalized and conflated with human trafficking.<sup>38</sup> This conflation has resulted in the growing reliance of criminal law—along with an emphasis on border security—to individualize responses rather than address underlying systemic causes of labour exploitation.<sup>39</sup> As a result, im/migrant sex workers are afforded few, if any, labour and human rights protections. Therefore, anti-trafficking discourse and resulting law enforcement efforts *directly affect* im/migrant sex workers in Canada.

In conducting our research, our primary interests were to support the agency and many identities of im/migrant women, to promote their safe migration, and to increase their access to justice before, during and after the migration process. We operate from a belief that to be effective, policy interventions must have an evidentiary basis. As a result, we sought to contribute to establishing a

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<sup>36</sup> Global Alliance against Traffic in Women (GAATW). (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Bangkok: GAATW.

<sup>37</sup> See, e.g., Jolly, S. and Reeves, H. (2005). *Gender and migration overview report*. BRIDGE, Institute of Development Studies, University of Sussex, Brighton; Piper, N. (2005). *Gender and migration*. A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration. Asia Research Institute, National University of Singapore; UN Women. (2011). *Gender, migration and development – Emerging trends and issues in East and South-East Asia*. Bangkok: UN Women East and Southeast Asia Regional Office.

<sup>38</sup> See for example Bill C-36 *The Protection of Communities and Exploited Persons Act* R.S.C. 2014 c. C-46. [herein, the *PCEPA*].

<sup>39</sup> See generally Piper, N., Segrave, M. & Moore, R.N. (2015) Editorial: What's in a name? Distinguishing forced labour, trafficking and slavery. *Anti-Trafficking Review*, 5, 1-9.

more accurate empirical record about human trafficking in Canada that can be used to develop evidence-based theory and policy.

In this study, we assess how Canadian laws have been developed and are being enforced post-*Palermo* and we examine the human rights effects of these laws on the very individuals they are supposed to assist and protect. We have purposefully adopted a strict legal definition of human trafficking and recognize that our focus on immigration and criminal prosecutions likely reflects a small subset of persons who are actually trafficked. Throughout this report, we distinguish between voluntary and forced involvement in commercial sex and wish to stress that we view the trafficking of persons into situations of forced labour, including sex work, as defined by the *Trafficking Protocol*, as well as child sexual exploitation in all forms, to be extremely serious offences that warrant appropriately severe immigration and criminal responses.<sup>40</sup> Our report shares some of our key findings and is the first of several publications we are developing.

## Purpose of the Project

With this context in mind, our first underlying purpose was to examine the empirical data on human trafficking in Canada to ascertain the degree of evidentiary support for various claims that are made. The second underlying purpose of the project addressed knowledge production and dissemination directly. Based on our grassroots work, we are well-aware of the deep level of knowledge that exists among organizations who work with stigmatized and marginalized communities. As academics, we also know there is often a lack of connection between what we empirically “know” and what is known at an experiential level.<sup>41</sup> This is equally true in terms of

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<sup>40</sup> For a discussion of the important conceptual distinctions between sex work, acts of human trafficking, and obtaining sex through coercion and/or exploitation, including the complexity of confounding factors such as social determinants and structural violence, illegal drug use, variations between indoor and outdoor sex work, access to marketing tools, and survival sex work, see, especially, the Canadian Public Health Association. (2014). *Position paper. Sex work in Canada: The public health perspective*. Ottawa: Canadian Public Health Association, at pages 3-4.

<sup>41</sup> For in depth discussion of ethical knowledge production and action-based research, see Bowen, R. & O’Doherty, T. (2014). Participant-driven action research (PDAR) with sex workers in Vancouver. In C. Showden & S. Majic (eds). *Negotiating Sex Work: Unintended consequences of policy and activism* (pp. 53-74) Minneapolis: University of Minnesota Press.

criminal justice personnel; those who enforce, apply, and create laws are often privy to different knowledge than those who do not have these enforcement experiences. Therefore, we wanted to gather data using collaborative principles of action-based research to contribute to knowledge uptake and knowledge dissemination. It is our collective opinion that access to justice for marginalized groups can best be furthered by working alongside marginalized groups and creating opportunities for those groups to voice their needs and experiences. SWAN's expertise could integrally affect policy and procedures related to anti-human trafficking, as demonstrated by their advocacy tool material located in [Appendix A](#). Thus, this project aimed to facilitate the knowledge uptake of SWAN's expertise to academic and legal audiences in Canada, to expose existing challenges facing law enforcement agencies and officials, and to offer recommendations for improvement.

Finally, our third purpose underlying this project was to address some of the myths and misinformation about human trafficking that we had become aware of in our other research and activist experiences. While we wanted to dispel harmful stereotypes and call for greater accountability for erroneous and unsubstantiated claims, we also wanted to empirically verify the claims ourselves. This subject area suffers from a general lack of transparency in data collection and evidence, and has been described internationally as a 'rigor free zone.'<sup>42</sup> Thus we wanted to provide some clarity on the state of legal anti-trafficking efforts in Canada while simultaneously bringing greater awareness to some of the unintended consequences of anti-trafficking measures on im/migrant sex workers in Canada.

## Specific Objectives

In brief, our specific research objectives were to:

- Assess and contribute to the empirical record on trafficking in persons in Canada;
- Provide a mechanism for CJS personnel to reflect on national anti-trafficking efforts;

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<sup>42</sup> See generally Gallagher, A. (2010). *The international law of human trafficking*. Cambridge, New York: Cambridge University Press.

- Provide a mechanism for SWAN’s expertise about the impacts of enforcement and discourse on SWAN membership to be disseminated;
- Support the creation of SWAN’s Advocacy Tool (see [Appendix A](#));
- Contribute to evidence-based and human rights-focused public education and awareness campaigns;
- Contribute to law reform and increased access to justice for marginalized groups—in this case, im/migrant sex workers.

In this report, we bring together these often distinct knowledge sources in an attempt to provide a more holistic assessment of the state of legal anti-trafficking measures in Canada. We believe that each component sheds light on specific issues concerning law enforcement and implementation and that taken as a whole, these data can be used to offer evidence-based recommendations to better address human trafficking in Canada, especially in relation to ensuring a rights-based approach to the assistance and protection of trafficked persons and access to justice for migrant women and sex workers. Here, we provide an assessment of the state of anti-trafficking efforts in Canada and determine whether the laws are perceived to meet the needs of vulnerable im/migrant sex workers in Canada.

## Methods

To accomplish our task of assessing the state of anti-trafficking efforts in Canada, we developed a collaborative research plan with SWAN whereby we created three distinct sub-sets of study. In the first, we employed legal research methods to identify, access, and then analyze all cases prosecuted since the enactment of the relevant immigration and criminal laws. The first component featured the collection of primary documents (case files, judgements, legislation) and the use of secondary sources (including government and academic publications, and press reports) to triangulate data. In the second component of the study, we interviewed various individuals responsible for the creation or implementation and enforcement of anti-trafficking laws. Third, we organized a series of focus groups with SWAN to provide SWAN members and staff an opportunity to reflect on their experiences to determine the extent to which the criminal justice system is capturing the realities of migrant sex workers, the deficiencies in knowledge that may exist, and whether or not anti-trafficking laws are meeting the needs of vulnerable migrant sex workers in Canada.<sup>43</sup>

## Legal Analysis

Our immigration and criminal case focus<sup>44</sup> is the Canadian prosecution of ‘trafficking in persons’ offences involving one or more accused contrary to s.118 of the *Immigration and Refugee Protection Act* (‘IRPA’) and ss. 279.01 to 279.05 of the *Criminal Code*. Our timeframe of analysis for examining these prosecutions are cases resulting in a verdict, although not necessarily a

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<sup>43</sup> We received ethical approval from UFV’s Research Ethics Board January 31, 2014; [Appendix B](#) provides copies of the consent forms for the focus groups and interviews. [Appendix C](#) contains the interview and focus group schedules.

<sup>44</sup> Other than a few selected cases, we exclude systematic analysis of federal refugee claims based on grounds of persecution relating to human trafficking; provincial labour standards cases; extradition cases in relation to human trafficking; federal and provincial human rights cases citing various forms of discrimination in relation to labour exploitation; civil suits; and proceeds of crime cases. On the importance of examining immigration and refugee determination cases in relation to trafficking in persons, see, especially, Bruckert, C., & Parent, C. (2004). *Organized crime and human trafficking: Tracing perceptions and discourses*. Ottawa, ON: Research and Evaluation Branch, Community, Contract and Aboriginal Policing Services Directorate, Royal Canadian Mounted Police, 17-23.

sentence, between 28 June 2002 when *IRPA* came into effect and 31 December 2014.<sup>45</sup> We obtained the names of cases by searching CanLII and QuickLaw, as well as selected provincial judgments databases (BC, Alberta, Ontario, Quebec only), between July 2013 and August 2015 using the search terms ‘human trafficking’ and ‘trafficking in persons’. We also searched publicly available human trafficking case law databases such as that provided by the United Nations Office on Drugs and Crime (UNODC), and the available academic and grey literature and media reports on human trafficking. We corresponded with the Department of Justice Canada, the Human Trafficking National Coordination Centre, the Ministry of the Attorney General and various courts in Ontario, and the Ministry of Justice for Quebec and personal Quebec criminal court contacts in an effort to obtain primary court documentation.<sup>46</sup>

We were able to validate with a reasonable degree of certainty 33 immigration and criminal cases that were federally or provincially prosecuted between June 2002 and December 2014 resulting in either a conviction and/or an acquittal,<sup>47</sup> for a trafficking offence contrary to s.118 of *IRPA* or ss.279.01, 279.011, 279.02, and 279.03 of the *Criminal Code* (See [Appendix D](#)). We were able to obtain full or partial primary court records in the form of informations and endorsements of informations and transcripts of judgments or reasons for sentence for 27 of the 33 cases. For the six remaining cases, we triangulated the cases by looking at multiple government, academic and/or NGO sources and/or by conferring with other academics, Crown and defence counsel with access to the primary court records to be relatively confident of the information presented.

In relation to our project aim to empirically assess how human trafficking laws are being enforced in Canada, we deliberately chose to analyze both case convictions *and* acquittals. We did this in an effort to better understand why some prosecutions are ‘successful’ in the sense of securing a

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<sup>45</sup> The 31 December 2014 cut-off date was chosen simply so that we could collect as comprehensive information as possible on cases before the expiration of our project on 30 September 2015. We are continuing to track 2015 cases, although these cases are not included as part of our analysis in this report.

<sup>46</sup> Copies of these various communications are on file with the authors.

<sup>47</sup> We included outright acquittals, stay of proceedings, withdrawn charges, mistrials and new trials ordered in the “acquittals” category. The acquittals cases may be full or partial acquittals, where an acquittal was secured on the trafficking offence, but convictions were obtained for other offences. The ‘acquittals’ category includes the verdicts for two cases where appellate rulings have set aside trial verdicts and ordered new trials and the outcome of these new trials are as yet unknown.

conviction while others are not. In relation to the trafficking-related offences, because trafficking-related offences are subjectively and variously defined depending on the agency reporting these data, they are omitted from our analysis.

We submitted three Access to Information requests to the RCMP Access to Information and Privacy Branch in an effort to obtain the case names or case file numbers for Government of Canada (RCMP, HTNCC and Department of Justice) published statistics citing ‘trafficking-related’ offences so that we could track primary court documentation for these cases. All three requests were declined on the basis that the data we were requesting had been provided to the RCMP in confidence by a municipal or regional government.<sup>48</sup>

We wish to acknowledge that there are several limitations associated with our case documentation and analysis, including our relatively narrow legal focus on immigration and criminal offence case prosecutions that are not representative of all trafficking cases that occur or all trafficking cases that are investigated by the police.<sup>49</sup> First, the number of cases we were able to validate likely under-represents the number of trafficking convictions and acquittals, especially in cases involving multiple co-accused with separate trials. We have, to the best of our ability, acknowledged these additional convictions in relation to the primary case we have on file. Second, we have partial rather than comprehensive court records for each of the 33 cases. We have supplemented our primary documentation with government, NGO, academic and media reports about these same cases. Third, we were not always able to assess the reasons why charges were stayed or withdrawn by Crown, nor plea or sentence bargaining, as this would have required interviews with the respective Crown and/or defence counsel. We also were not able to track the cases longitudinally

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<sup>48</sup> Correspondence on file with the authors.

<sup>49</sup> There are varying approaches – including whether the police or Crown approve charges -- and standards for federal and provincial prosecutions to proceed across Canada. For example, BC is one of only two provinces where provincial Crown must approve charges. In BC, the decision to prosecute test is whether there is a *substantial likelihood* of conviction and the prosecution is deemed to be in the public interest. The Public Prosecution Service of Canada (Federal Crown) decision to prosecute test is similar, but arguably a lower threshold: whether there is a *reasonable prospect* of conviction based on the available evidence at trial and whether the prosecution serves the public interest. However, other provinces and territories have standards that differ from these (e.g. *reasonable likelihood*) and as our interviews suggest the decision to prosecute is to some extent personality-driven.

from the point of police charges being laid through to prosecution as this would have required access to police charging information for a specific case. We fully recognize that this longitudinal analysis is still needed to more fully ascertain challenges in the process of investigating and prosecuting trafficking cases. Fourth, there are a number of data gaps in the court records, especially an absence of consistent and detailed demographic information on the accused and the complainants. While we provide some summary descriptive statistics about the extra-legal attributes of the accused and complainants, these attributes must be considered as partial and reflective only of the prosecuted cases we examined. We also do not have comprehensive sentencing information as a small number of the convicted offenders had not been sentenced at the time of writing or sentencing information was not publicly available. Finally, these findings are our key preliminary findings in the form of brief summary descriptive statistics about the 33 cases. We will provide more in depth, especially socio-legal analyses, of the cases in subsequent publications.

## Interviews with CJS Personnel

We conducted seven interviews with eight individuals working in anti-trafficking-related capacities—including participants in law enforcement, policy development, and law—between October 2014 and February 2015. In addition to seeking contacts for interview purposes, we participated in stakeholder meetings and conferences and engaged in numerous informal relationships with academics and others working in this field of inquiry. To recruit participants, we used our personal networks and provided information about the project via word-of-mouth, list-serves and other personal outreach. Twelve potential interviewees declined to participate; these overwhelming included law enforcement and members of the Canada Border Services Agency, who were required to obtain permission to speak with us. While we attempted to work with research and legal divisions on an institutional level, we were unsuccessful in recruiting individuals where such institutional approval was required as a condition of participation. In spite of not being able to secure interviews with all individuals we contacted, we were able to interview individuals with varying experiences related to anti-trafficking efforts in Canada and are confident that their perspectives offer a unique perspective on the challenges facing criminal justice personnel in enforcing or implementing Canada's laws.

As a collaborative study, we worked with SWAN to create the interview schedule. We then tested the interview schedule with key informants prior to our first interview. The interview schedule was a starting point guide; participants were provided the opportunity to skip questions that they deemed to be irrelevant, or that they could not answer. We took notes during the interviews and provided each participant with a copy of the notes prior to analyzing the data. The interview transcripts were then uploaded into a computer-assisted qualitative data analysis program (NVIVO), coded, and analyzed. In this final report, we outline the key findings emerging from the interviews.

Participants were all offered unconditional confidentiality. We took care to ensure no names were recorded in relation to the transcripts and all transcripts were maintained in accordance with our Ethics Certificate. However, the number of individuals with expertise in this area is small; therefore, in this report, we have been deliberately vague when referring to occupations and locations of the participants in order to protect their confidential participation.

### Focus Groups with SWAN staff, Board and volunteers

We conducted a total of three focus groups in collaboration with SWAN. To prepare, our research assistant conducted an annotated bibliography related to facilitating focus groups in non-profit environments. We then co-developed a semi-structured general guide, outlining specific questions we would like to pose to the groups. Like the interview process, we offered participants confidentiality, including requiring participants to maintain the confidentiality of others in the group, sought permission for audio recording, and provided participants with advance copies of all consent forms and the focus group guide. We invited all current and former outreach workers to take part in one focus group and all current and former Board members to take part in the second focus group. We combined the groups for the third focus group; however, due to scheduling, the participants in the third group were predominantly outreach team members. Board members who were unable to attend submitted further information and comments in written form.

SWAN arranged the logistics of the sessions, communicating directly with outreach members and board members, providing food and drinks, and handling the honoraria for participants. We audio-recorded the sessions, then transcribed the sessions and circulated the transcripts for review. Given

that we had planned a follow-up focus group, this process worked very well as we could expand upon ideas and information presented in the earlier focus group. Having a follow-up focus group also allowed participants an opportunity to reflect on the content of the first group and to come back, several weeks later, to address similar and more in depth content. The transcripts were then coded and analyzed. The key findings section highlights the dominant themes that emerged from the focus groups. The focus group data was also used by SWAN to develop their advocacy tool, portions of which can be found in [Appendix A](#).

## Overview of Key Findings

The following section highlights key findings from each of the three main components of this study. First, we outline the legislative framework, starting with the international law, the *Palermo Protocol*, which precipitated the domestic legal framework guiding Canadian anti-trafficking efforts. Second, we discuss the enforcement of the laws in Canada and provide preliminary information about the Canadian case law since the inception of the law to December, 31, 2014. Third, we report on the perspectives of those who have been tasked with implementing and enforcing the Canadian anti-trafficking laws. Finally, we outline SWAN members' perspectives on the human rights impacts of the laws and their enforcement.

### The Legislative Framework: Relevant International and Domestic Laws

#### *The UN Trafficking Protocol*

The UN General Assembly adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (hereinafter the '*Trafficking Protocol*') on 15 November 2000, with the agreement entering into force on 25 December 2003. The *Trafficking Protocol* was an optional protocol supplementing the *United Nations Convention against Transnational Organized Crime*, a new international instrument intended to enhance international cooperation to prevent and combat transnational crime committed by organized criminal groups.<sup>50</sup>

As a legally binding instrument providing the first internationally agreed definition, or at least the first clear international legal definition of trafficking in persons,<sup>51</sup> the *Trafficking Protocol* was negotiated over the course of a roughly two year period between January 1999 and October 2000. During these negotiations, the *Trafficking Protocol* was the subject of significant contestation

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<sup>50</sup> United Nations General Assembly resolution 55/25, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, A/RES/55/25 (8 January 2001) [Article 1], available from <http://www.un-documents.net/uncatoc.htm>.

<sup>51</sup> See Global Alliance against Traffic in Women (GAATW). (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Bangkok: GAATW, at page 3.

between two divergent blocs of feminist NGO alliances seeking to influence the government representatives negotiating the *Protocol*. On the one hand, a Human Rights Caucus advanced a human rights and labour rights perspective of ‘sex as legitimate work,’ seeking to address the conditions of forced labour or abusive working conditions in all industries. In contrast, the Coalition against Trafficking in Women (CATW) and its partners represented a victim perspective that sees ‘sex work as trafficking’ and a violation of women’s human rights and sought to abolish and punish sex work by ending demand-based sexual services.<sup>52</sup> In view of their wholly opposed perspectives on sex work, the two NGO coalitions had contrasting views on defining trafficking, particularly in relation to the concept of agency and the issue of consent to engage in sex work.<sup>53</sup> The *Trafficking Protocol* and its compromise definition of trafficking in persons are very much a reflection of these intense divisions. As our findings from this project clearly demonstrate, these definitional differences are unresolved and a profound lack of agreement on what trafficking in persons is—especially around issues of consent and agency—continues to be played out at the domestic level in Canada.

Like its parent agreement, the *Trafficking Protocol* is primarily a law enforcement, and, arguably, an immigration control<sup>54</sup> instrument that affords limited human rights protections for trafficked persons.<sup>55</sup> Its overarching purpose is to prevent and combat trafficking, especially women and children, followed by protecting and assisting trafficked persons, and promoting State parties cooperation in the furtherance of these aims (article 2). Broadly speaking, the aims of the protocol

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<sup>52</sup> See, especially, Ditmore, M. and Wijers, M. (2003). The negotiations on the *UN Protocol* on trafficking in persons. *NEMESIS*, No. 4, 79-88. See also Doezema, J. (2004). Now you see her, now you don’t: Sex workers at the *UN Trafficking Protocol* negotiations. *Social & Legal Studies*, 14(1), 61–89. For a more nuanced discussion of varying feminist positions on sex work and during the negotiations, see also Simm, G. (2004). Negotiating the *United Nations Trafficking Protocol*: Feminist debates. *Australian Yearbook of International Law*, 23, 135-160.

<sup>53</sup> Ditmore, M. and Wijers, M. (2003). The negotiations on the *UN Protocol* on trafficking in persons. *NEMESIS*, No. 4, 79-88, at pages 81-83.

<sup>54</sup> See, for example, Morcom, C. & Schloenhardt, A. (2011), *All about sex: The evolution of trafficking in persons in international law*, The University of Queensland Australia, Human Trafficking Working Group, Research Paper, at page 4. Available at: <http://www.law.uq.edu.au/documents/humantraffic/international-law/Evolution-of-Int-Law-relating-to-Trafficking-in-Persons.pdf> .

<sup>55</sup> See, e.g., the human rights debate between Anne Gallagher and James Hathaway. Hathaway, J.C. (2008). The human rights quagmire of ‘human trafficking’. *Virginia Journal of International Law*, 49(1), 1-59; Gallagher, A.T. (2009). Human rights and human trafficking: Quagmire or firm ground? A response to James Hathaway. *Virginia Journal of International Law*, 49(4), 789-848.

concern State parties' obligations for the criminal prohibition and prosecution of trafficking in persons and applicable inchoate offences (article 5 on criminalization), protection/assistance to trafficked persons (article 6 assistance to and protection of trafficked persons, article 7 status of trafficked persons in receiving states, and article 8 on the repatriation of trafficked persons), and the prevention of trafficking (article 9 on prevention of trafficking, article 10 on information exchange and training, article 11 border measures, article 12 security and control of documents, and article 13 on the legitimacy and validity of documents). The language of each of these provisions varies in terms of the relative permissiveness of the obligation. In this regard, the *Trafficking Protocol* has been severely criticized for the loose phrasing of its protection/assistance to trafficked persons provisions that essentially render some of these provisions as non-binding on State parties.

Although a primary focus of the *Trafficking Protocol* is the prevention, investigation and prosecution of trafficking in persons offences that are transnational and involve organized criminal groups (article 4), it is equally true that the treaty negotiators intended that States parties be able to criminalize domestic trafficking in persons offences and offences not involving organized criminal groups at the national level.<sup>56</sup> Notably, the *Protocol* defines trafficking as consisting of three integral elements or distinct phases in the trafficking process:

1. A set of actions ('recruitment, transportation, transfer, harbouring or receipt of persons') in relation to recruiting or moving a person,
2. The improper or illicit means by which those actions are carried out and/or how the consent of the person being trafficked is obtained ('by threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person'),

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<sup>56</sup> United Nations General Assembly resolution 55/25, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, A/RES/55/25 (8 January 2001) [Article 34(2)], available at: <http://www.un-documents.net/uncatoc.htm>; United Nations Office on Drugs and Crime. (2004). *Legislative guides for the implementation of the United Nations Convention against transnational organized crime and the Protocols thereto*. New York: United Nations, at pages 275-286 and especially 275-276. Available at: [https://www.unodc.org/pdf/crime/legislative\\_guides/Legislative%20guides\\_Full%20version.pdf](https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf)

3. An exploitative purpose concerning exploiting the labour or services or organs of the persons who are being recruited or moved ('for the purpose of exploitation, minimally including exploiting the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs') (article 3).<sup>57</sup>

Concerning consent, for adult trafficked persons all three elements must be present, whereas for persons under eighteen years of age the coercive means need not be present for an act of trafficking to occur.<sup>58</sup>

In view of its predominant law enforcement focus, international human rights groups and inter-governmental bodies developed separate non-binding human rights guidelines to better protect the rights of trafficked persons.<sup>59</sup> In essence, these human rights standards emphasize that anti-trafficking measures—consisting of law enforcement measures to detect, prosecute and punish traffickers, preventive measures to reduce the incidence of trafficking in persons, and protective measures and assistance to trafficked persons—should not adversely affect the human rights and dignity of trafficked persons.<sup>60</sup> Further, it is important to emphasize that the *Trafficking Protocol* stands in addition to an array of other binding and non-binding international human rights and labour rights instruments that prohibit trafficking, slavery, slavery-like practices, servitude, and

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<sup>57</sup> Adapted from Global Alliance against Traffic in Women (GAATW). (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Bangkok: GAATW, at pages 3-5. See also Morcom, C. & Schloenhardt, A. (2011). *All about sex: The evolution of trafficking in persons in international law*. The University of Queensland Australia, Human Trafficking Working Group, Research Paper, at page 4. Available: <http://www.law.uq.edu.au/documents/humantraffic/international-law/Evolution-of-Int-Law-relating-to-Trafficking-in-Persons.pdf>. See more generally Obokata, T. (2015). Slavery/human trafficking, in Boister, N and Currie, R.J. (eds.), *Routledge Handbook of Transnational Criminal Law*. New York: Routledge, 171-186.

<sup>58</sup> Global Alliance against Traffic in Women (GAATW). (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Bangkok: GAATW, at page 4.

<sup>59</sup> For example, the Global Alliance against Traffic in Women, Foundation against Trafficking in Women, International Human Rights Law Group. (1999). *Human rights standards for the treatment of trafficked persons*, available at [http://www.hrlawgroup.org/resources/content/IHRLGtrafficking\\_standards.pdf](http://www.hrlawgroup.org/resources/content/IHRLGtrafficking_standards.pdf) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) (2002). *Recommended principles and guidelines on human rights and human trafficking*, 20 May 2002, E/2002/68/Add.1, available at: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

<sup>60</sup> Global Alliance against Traffic in Women (GAATW). (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Bangkok: GAATW, at pages 1, 5.

forced labour or services, and that aim to protect the rights of migrant workers.<sup>61</sup> As of June 2015, the *Trafficking Protocol* is a widely ratified international agreement with 117 signatories and 167 parties.<sup>62</sup>

The few assessments of the *Trafficking Protocol* in the now fifteen years since its adoption are divided on its impacts and effectiveness.<sup>63</sup> Positive reflections note, among other achievements, the importance of the *Protocol* as a landmark or agenda setting agreement, the significance of its internationally agreed definition of trafficking, and that the *Protocol* affords some emphasis in protecting the human rights of trafficked persons.<sup>64</sup> Middle-ground and more skeptical assessments identify a number of weaknesses, including an extremely low conviction rate for human traffickers globally despite wide ratification of the agreement,<sup>65</sup> as well as collateral damage in the form of negative human rights impacts for vulnerable populations including irregular migrants, refugees and asylum seekers (in the form of protectionist laws and policies preventing migration, increased border control and security measures including in the refugee determination process and the use of biometrics, anti-immigration enforcement including detention and deportations) and sex workers (such as increased surveillance, raids, ‘aggressive humanitarianism’ and the ‘pervasive criminalization of prostitution migration’).<sup>66</sup> Others have also noted ‘exploitation creep’ in the

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<sup>61</sup> Canada is a party to most of these other agreements and our anti-trafficking efforts are monitored by the applicable monitoring mechanisms in relation to some of these other binding treaty commitments, such as those under the *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)* and the *Convention on the Rights of the Child (CRC)*.

<sup>62</sup> United Nations Treaty Collection: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en) [accessed on 5 August 2015].

<sup>63</sup> See generally *Anti-Trafficking Review*, No. 4 (2015). Fifteen Years of the UN Trafficking Protocol. Available: <http://www.antitraffickingreview.org/index.php/atrjournal> . See also Heinrich (2010). Ten years after the *Palermo Protocol*: Where are protections for human trafficking? *Human Rights Brief*, 18(1), 1-5.

<sup>64</sup> See especially Bhabha, J. (2015). Looking back, looking forward: The *UN Trafficking Protocol* at fifteen. *Anti-Trafficking Review*, No. 4, 3-12; Gallagher, A.T. (2015). Two cheers for the *Trafficking Protocol*. *Anti-Trafficking Review*, No. 4, 14-32; Ezeilo, J.N. (2015). Achievements of the *Trafficking Protocol*: Perspectives from the former UN Special Rapporteur on Trafficking in Persons. *Anti-Trafficking Review*, No. 4, 144-149.

<sup>65</sup> See, especially, Kangaspunta, K. (2015). ‘Was trafficking in persons really criminalized?’ *Anti-Trafficking Review*, No. 4, 80-97.

<sup>66</sup> See especially Wijers, M. (2015). Purity, victimhood and agency: Fifteen years of the *UN Trafficking Protocol*, *Anti-Trafficking Review*, No. 4, 56-79; Global Alliance against Traffic in Women (GAATW) (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Bangkok: GAATW.

legal parameters of trafficking definitions<sup>67</sup> rendering all trafficking as exploitation and all exploitation as slavery and an unwarranted expansion of domestic human trafficking laws that are mainly being used to police domestic prostitution offences as opposed to the more “serious forms of sexual exploitation that the *Trafficking Protocol* was intended to challenge.”<sup>68</sup> Our study findings below largely align with these middle-ground and more skeptical assessments of the human rights effects of the *Trafficking Protocol* for migrant women and sex workers and their access to justice in the now 13 years since Canada ratified the agreement.

### *Canada and the Trafficking Protocol*

Canada actively participated in the negotiations of the *Trafficking Protocol* and was among the first 80 countries to sign the agreement in December 2000, subsequently ratifying the *Protocol* in May 2002. The Canadian Government<sup>69</sup> has given effect to its *Trafficking Protocol* obligations primarily by: enacting new national immigration and criminal laws that prohibit trafficking in persons and inchoate offences; by introducing additional border control measures to prevent temporary foreign workers, foreign students and visitors from migrating to Canada to work in the commercial sex sector; by introducing a new criminal law directed at reducing the demand for sexual services; by affording temporary residence permits to internationally trafficked persons; and by means of various public awareness/information campaigns and law enforcement training initiatives.

Canada first met its obligations to prohibit, prosecute and punish trafficking by introducing an immigration ‘trafficking in persons’ offence as part of its new *IRPA* in 2001, which entered into force in June 2002. Section 118 is specific to international ‘cross-border’ trafficking and makes it an indictable offence for a person to ‘knowingly organize’ one or more persons entry into Canada

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<sup>67</sup> Chuang, 2014, Exploitation creep and the unmaking of human trafficking law. *American Society of International Law*, 108(4), 609-649.

<sup>68</sup> Gallagher, A.T. (2015). Two cheers for the Trafficking Protocol. *Anti-Trafficking Review*, No. 4, 14-32, at page 31. See also Roots, K. (2013). Trafficking or pimping? An analysis of Canada’s human trafficking legislation and its implications. *Canadian Journal of Law and Society*, 28(1), 21-41.

<sup>69</sup> While noting the complexities of our divided federal-provincial jurisdiction in relation to matters of immigration, criminal and labour law, our main focus in this report is federal immigration and criminal anti-trafficking measures, while including provincial / territorial enforcement of criminal laws.

by means of abduction, fraud, deception or use or threat of force or coercion. ‘Organize’ is defined as recruiting or transporting and, after entry into Canada, receiving or harbouring such persons. The offence is subject to a maximum penalty of a \$1,000,000 fine and/or life imprisonment (s.120). Although the offence does not have to be committed by an organized criminal group, aggravating factors include:

- that the offence was committed to benefit or at the direction or in association with a criminal organization, as well as factors pertaining to serious personal injury (bodily harm, death, endangerment of the life or safety of any person in the commission of the offence);
- a profit motivation (if the offence was for profit irrespective of whether a profit was realized),
- consideration of whether a person was subjected to humiliating or degrading treatment (whether in relation to work or health conditions or sexual exploitation resulting from commission of the offence) (s.121).

The *IRPA* offence, which is federally prosecuted and requires consent of the Attorney General to proceed, stands in addition to a separate smuggling offence (s.117 organizing entry into Canada),<sup>70</sup> buying and selling travel documents offences (ss.122 and 123), and general offences such as misrepresentation or counseling misrepresentation (ss.124-128) that have also been used to prosecute alleged human traffickers.

Notably, as Figure 1 in [Appendix E](#) illustrates, s.118 departs in significant ways from the *Trafficking Protocol* definition. The *IRPA* offence anticipated action of organizing does not include ‘transferring’ and the anticipated means excludes ‘abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits’ to control another person. In

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<sup>70</sup> The conceptual distinction between trafficking in persons and smuggling is viewed by some observers as an artificial, bifurcated and gendered distinction between victim/agent since the two processes often overlap in practice and fail to acknowledge that consent, coercion and exploitation exist on a continuum. Additional research on how these conceptual distinctions played out during the negotiations of the *Trafficking in Persons* and *Smuggling Protocols* would be beneficial, as would research at the national level concerning how these distinctions are made in practice in relation to the investigation and prosecution of trafficking versus smuggling cases, especially taking into account extra-legal nationality/class/race/gender factors as dimensions of law enforcement decision-making such as the recent distinction of 500 Asian women who were ‘smuggled’ rather than trafficked to engage in commercial sex work in the Toronto and Montreal areas.

addition, there is no required offence element to prove any intended exploitation since the *IRPA* offence omits ‘for the purposes of exploitation, minimally including the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’, other than to list aggravating factors that include humiliating or degrading treatment.<sup>71</sup>

In 2005, ostensibly under pressure from international and domestic NGOs,<sup>72</sup> Canada introduced an indictable criminal trafficking in persons offence and the subsidiary offences of material benefit and withholding documents:

1. trafficking in persons (s.279.01) subject to a maximum penalty of 14 years or life imprisonment depending on the absence or presence of certain aggravating factors;
2. material benefit from trafficking in persons (s.279.02) subject to a maximum penalty of 10 years imprisonment; and
3. withholding or destroying documents in relation to trafficking in persons (s.279.03) subject to a maximum penalty of five years imprisonment.

The new criminal trafficking in persons offences included a number of coordinating provisions and/or ancillary orders for the courts to consider, importantly encompassing the protection of vulnerable witnesses (including the ability of a judge to close a courtroom to the public when a witness under age 18 years is testifying or allowing a minor witness to testify outside of the courtroom or behind a screen out of view of the accused) and victim privacy measures (such as a mandatory ban on publication for sexual offences under s.486.4), as contemplated by article 6(1) of the *Trafficking Protocol*, and an expanded ability for the courts at sentencing to order victim restitution for bodily *or* psychological harm (s.738(1)(b)).<sup>73</sup> In addition, when a person is charged

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<sup>71</sup> For a more in depth discussion of section 118, see, especially, Hastie, B. (2012). Doing Canada’s dirty work: A critical analysis of law and policy to address labour exploitation trafficking. In Quayson, A. and Arhin, A. (eds.), *Labour migration, human trafficking and multinational corporations: The commodification of illicit flows*. New York, NY: Routledge, 121-137, at page 134. See also Jannard, L. & Crépeau, F. (2010). The battle against migrant trafficking in Canada: Is the target organized crime or irregular immigration? *Our Diverse Cities*, 7, 118-122.

<sup>72</sup> Ferguson, J.A. (2012). *International human trafficking in Canada: Why so few prosecutions?* Doctoral Dissertation, Faculty of Law, University of British Columbia, Vancouver, British Columbia.

<sup>73</sup> Barnett, L. (2006). *Bill C-49: An Act to amend the Criminal Code (trafficking in persons)*. Ottawa: Law and Government Division, Parliamentary Information and Research Service, Library of Parliament Canada at pages 9-11. Available at:

under the s.279.01-.03 provisions, they are required to be remanded into custody and can only be released by order of a judge or justice (s.503).<sup>74</sup> As well, the s.279.01-.03 offences are designated or listed offences for wiretaps (s.183), dangerous offender applications (s.752), DNA analysis (s.487.04), weapons prohibition orders (ss.109-110), and the sex offender registry (490.011(1)).<sup>75</sup>

As illustrated by Figure 1 in [Appendix E](#), like Canada's immigration offence, as originally introduced, the s.279.01 definition departs in important ways from the *Trafficking Protocol* definition.<sup>76</sup> First, as anticipated by those negotiating the *Protocol*, s.279.01 is not limited to transnational cross-border trafficking or trafficking by an organized criminal group. Second, the main *actus reus* element of the offence is defined more broadly (adding the words: holds, conceals, exercises control, direction or influence over the movements of a person), which are not part of the *Trafficking Protocol* definition. This phrasing arguably contributes to the conflation of trafficking in persons with commercial sex work and subtly shifts the essence of human trafficking from recruiting or moving a person as seems to have been intended by the *Protocol* definition to more narrowly controlling a person and their movements.<sup>77</sup> Third, the 279.01 offence omits the *means* by which a trafficked persons is recruited or moved, arguably an integral component of the *actus reus* of trafficking in persons, although the s.279.04 fear for safety standard can be seen as indirectly importing a far narrower means requirement.<sup>78</sup> Rather remarkably, there is no explicit

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[http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills\\_ls.asp?ls=C49&Parl=38&Ses=1](http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=C49&Parl=38&Ses=1). See also The Criminal Lawyer Reference (2015). *Trafficking in Persons (Offence)* [Overview; Ancillary Sentencing Orders]. Available at: [http://wikicrimlaw.ca/wiki/Trafficking\\_in\\_Persons\\_\(Offence\)#Ancillary\\_Sentencing\\_Orders](http://wikicrimlaw.ca/wiki/Trafficking_in_Persons_(Offence)#Ancillary_Sentencing_Orders)

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> See, especially, Kaye, J. & Hastie, B. (2015). The Canadian Criminal Code offence of trafficking in persons: Challenges from the field and within the law. *Social Inclusion*, 3(1), 88-102.

<sup>77</sup> The s.279.04 phrasing of 'exercises control or influence over the movements of a person' is adapted from s.212(1)(h) of the *Criminal Code* in relation to exercising control over a prostitute ("for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally"). See, e.g., The Criminal Lawyer Reference (2015). *Trafficking in Persons Offences* [Interpretation of the Offence]. Available at: [http://wikicrimlaw.ca/wiki/Trafficking\\_in\\_Persons\\_\(Offence\)#Ancillary\\_Sentencing\\_Orders](http://wikicrimlaw.ca/wiki/Trafficking_in_Persons_(Offence)#Ancillary_Sentencing_Orders)

<sup>78</sup> See, especially, Kaye, J. & Hastie, B. (2015). The Canadian Criminal Code offence of trafficking in persons: Challenges from the field and within the law. *Social Inclusion*, 3(1), 88-102, at pages 94-95. On the *actus reus*

requirement to prove that the offence involved the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability or giving or receiving payments or benefits to control another person, which many experts view as an integral element of what makes trafficking illegal. Fourth, s.279.01 is more loosely framed in relation to the element of exploitation (for the purpose of exploiting them or ‘facilitating their exploitation’ without specifying the forms the exploitation might take other than ‘providing labour or a service’ as part of the s.279.04 exploitation definition) which are not part of the *Trafficking Protocol* definition. Fifth, s.279.04 provides a unique standalone definition of exploitation by means of a ‘fear for safety’ test:<sup>79</sup>

“a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.”

In addition to these departures, the *Criminal Code* definition of exploitation has been criticized as being overly broad in allowing not only physical forms of exploitation, but also non-physical, such as psychological, emotional, or mental influence and manipulation.<sup>80</sup>

The *Criminal Code* offences, prosecuted by provincial/territorial prosecutors, took effect in November 2005 and can be used to prosecute domestic trafficking and international cross-border

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and *mens rea* elements of trafficking in persons, see Obokata, T. (2015). Slavery/human trafficking. In Boister, N and Currie, R.J. (eds.) *Routledge Handbook of Transnational Criminal Law*. New York: Routledge. pp. 171-186.

<sup>79</sup> The fear for safety test is drawn from the definition of criminal harassment under s.264(2) of the *Criminal Code*. See, e.g., The Criminal Lawyer Reference (2015). *Trafficking in Persons Offences* [Interpretation of the Offence]. Available at: [http://wikicrimlaw.ca/wiki/Trafficking\\_in\\_Persons\\_\(Offence\)#Ancillary\\_Sentencing\\_Orders](http://wikicrimlaw.ca/wiki/Trafficking_in_Persons_(Offence)#Ancillary_Sentencing_Orders). There is an ongoing jurisprudential debate whether the fear for safety test is a subjective, an objective, or a subjective-objective test as discussed in relation to our case findings below. Some Canadian legal experts such as Kaye, J. & Hastie, B. (2015). The Canadian *Criminal Code* offence of trafficking in persons: Challenges from the field and within the law. *Social Inclusion*, 3(1), 88-102, at pages 94-95 argue that, whether intended or not, in practice s.279.04 is far more constricting than the *Protocol*.

<sup>80</sup> Roots, K. (2013). Trafficking or pimping? An analysis of Canada’s human trafficking legislation and its implications. *Canadian Journal of Law and Society*, 28(1), 21-41. However, this more expansive interpretation arguably is critical for trafficking in persons cases where coercion/exploitation is often not overtly physical. We will be assessing the extent to which the judiciary is currently considering these other non-physical forms of coercion/exploitation in subsequent publications when we provide a more in depth socio-legal analysis of the 33 cases.

trafficking cases.<sup>81</sup> Still, as our study findings below illustrate, there have been relatively few—less than 20—international and/or domestic trafficking prosecutions resulting in a conviction, including only *five* cases involving convictions for materially benefitting from trafficking contrary to section 279.02, *two* cases involving convictions for trafficking a person under 18 years of age contrary to section 279.011, and *only one* case involving convictions for withholding or destroying documents contrary to s.279.03.

In spite of so few convictions, since being introduced in 2005, the trafficking offences have been amended four times in 2010, 2012, 2014, and 2015 respectively, although the 2015 amendments are not yet in force (See [Appendix F](#) for a chart detailing these legislative changes). These amendments have been introduced primarily by means of Private Members' Bills and, while some of these changes arguably were needed, others appear to be based on scant empirical evidence, especially an expansion in the number of offences from three to six and changes to the applicable minimum and maximum punishments. In particular, there are increased punishments, including the introduction of mandatory minimum penalties for four of now six offences and higher maximum punishments for all three offences involving minors, as well as a provision (s.279.05 not yet in force) requiring consecutive sentences. Additional amendments include:

1. The introduction of extra-territorial jurisdiction;
2. The addition of factors to s.279.04 in the form of an interpretive or evidentiary aid for the courts to consider in determining whether a person is exploited (whether the accused used or threatened force or coercion, used deception, abused a position of trust or power of authority);
3. The introduction of a presumption of exploitation for s.279.01 and 279.011 offences (not yet in force, but which seems to conflate trafficking in persons with commercial sexual exploitation); and

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<sup>81</sup> See Ferguson, J.A. (2012). *International human trafficking in Canada: Why so few prosecutions?* Doctoral Dissertation, Faculty of Law, University of British Columbia, Vancouver, British Columbia who argues that the *Criminal Code* provisions were intended for prosecuting domestic trafficking, although he concedes there is nothing in the offences that limits them to domestic trafficking offences. Moreover, the 2012 amendments to extend extraterritorial jurisdiction to trafficking in persons suggest the *Criminal Code* provisions are not intended to be limited to prosecuting domestic trafficking and have been used to 'successfully' prosecute cross-border labour trafficking.

4. The addition of trafficking in persons offences to the list of offences to which the proceeds of crime/asset recovery apply.

In addition to Canada's criminalization obligations under article 5 of the *Trafficking Protocol* where Canada seems to have devoted much of its anti-trafficking efforts, Canada has met several of its other international obligations in relation to prevention and protection/assistance.<sup>82</sup> In the area of preventing trafficking, and consistent with its article 11 obligations, specifically article 11, para 5 on border measures and the revocation of visas, the federal government has introduced various immigration controls since 2001, including those eliminating exotic dancer visas and preventing temporary foreign workers, visitors and students from migrating to Canada to work in the commercial sex industry.<sup>83</sup> It has also introduced biometric measures in relation to temporary residents, which arguably aligns with its article 12 obligations on the security and control of documents. Amidst considerable controversy, Canada has adopted measures to end the demand for sexual services by means of the *Protection of Communities and Exploited Persons Act* (hereinafter '*PCEPA*').<sup>84</sup> Consistent with its article 9(2) obligations, Canada has mounted various anti-trafficking public awareness/information campaigns, especially in relation to targeting youth and Indigenous populations who are perceived by some to be at particular risk for being domestically trafficked. The federal government has engaged in a range of training initiatives for

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<sup>82</sup> In assessing Canada's efforts at protecting and assisting trafficked persons and preventing trafficking, we are indebted to our student Ruben Timmerman who prepared a background paper for us on these issues and we draw on elements of his paper in this section. Timmerman, R. (2014). *The Palermo Protocol & Canada ten years on: The evolution and human rights impacts of anti-trafficking laws in Canada. Critical analysis of gaps & issues in Canadian anti-trafficking efforts*. Unpublished research paper prepared for CRIM 411: Directed Studies, School of Criminology and Criminal Justice. Abbotsford, BC: University of the Fraser Valley. Paper on file with the authors. For a more detailed discussion and government perspective of these federal anti-trafficking initiatives in relation to prosecution, protection/assistance, and prevention, see especially Public Safety Canada. (2013). *National action plan to combat human trafficking: 2012-2013 Annual report on progress*. (Cat. No. PS11-1/2013E-PDF). Ottawa, ON: Public Safety Canada; Public Safety Canada. (2015). *National action plan to combat human trafficking: 2013-2014 Annual report on progress*. (Cat. No.: PS11-1/2014E-PDF). Ottawa, ON: Public Safety Canada.

<sup>83</sup> Ministerial instructions were issued in July 2012 to permit the refusal of processing work permits from within or outside of Canada for foreign nationals seeking to work for an employer in a sector "where there are reasonable grounds to suspect a risk of sexual exploitation". In 2013, IRPA regulations were amended to prohibit all foreign nationals, whether visitors, students or workers, from working in sex related businesses. Available: <http://www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp>

<sup>84</sup> *Protection of Communities and Exploited Persons Act*, R.S.C. 2014 c. C-46.

law enforcement personnel, immigration officials and other authorities involved in enforcing our trafficking laws and for frontline agencies who purport to support victims of trafficking, which accords with article 10 of the *Trafficking Protocol*.

Canada's efforts to address the underlying socio-economic issues of poverty, inequality, and underdevelopment that are consistently identified as being the root causes of irregular migration and trafficking appear to have been quite minimal.<sup>85</sup> This is in contrast with article 9(1) and (4) obligations to establish comprehensive social and other measures to prevent human trafficking and "strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity."

The *Trafficking Protocol's* article 2(b) requires States to protect and assist trafficking victims with full respect for their human rights. Canada's major protection/assistance initiative has been in the form of Temporary Residence Permits (TRPs) for internationally trafficked persons, which aligns with its article 7 (status of victims of trafficking in receiving States) obligations; however, the Canadian Council of Refugees<sup>86</sup> and others<sup>87</sup> have criticized the program as having limited effect in practice. Other supports are provided by provincial government offices, such as the BC Ministry of Justice Office to Combat Trafficking in Persons (OCTIP),<sup>88</sup> and the non-profit sector, such as the Alberta Action Coalition on Human Trafficking (ACT).<sup>89</sup> As our study findings indicate, a significant concern remains the protection/assistance of internationally trafficked persons in Canada who are not granted temporary residency and who are subject to detention and/or deportation orders. These gaps remain notwithstanding article 8(2) obligations on due regard to

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<sup>85</sup> See especially GAATW. (2014). Global funding information sheet. *Ani-Trafficking Review*, No. 3, available: [http://www.gaatw.org/publications/ATR\\_funding\\_factsheet.07.29.2014.pdf](http://www.gaatw.org/publications/ATR_funding_factsheet.07.29.2014.pdf) on Canadian Overseas Development Assistance (ODA), which indicates that most Canadian ODA contributions abroad support anti-crime capacity building.

<sup>86</sup> Canadian Council for Refugees. (2013). *Temporary resident permits: Limits to protection for trafficked persons*. Montreal: Canadian Council for Refugees. Available: <http://ccrweb.ca/en/trafficking/temporary-resident-permit-report>.

<sup>87</sup> See, e.g., Hastie, B. and Yule, A. (2014). Milestone or missed opportunity? A critical analysis of the impact of *Domotor* on the future of human trafficking cases in Canada. *Appeal*, 19, 83–93, 92.

<sup>88</sup> Additional information available at: <http://www.pssg.gov.bc.ca/octip/>

<sup>89</sup> Additional information available at: <http://www.actalberta.org/>

safety and encouraging the voluntariness of return, as well as article 9(b) obligations to protect such persons from re-victimization. As well, our study findings suggest limited evidence to date—other than through individual human rights complaints or civil suits—that trafficked persons are being compensated for the damage suffered as envisioned by article 6(6) of the *Trafficking Protocol*.<sup>90</sup> Indeed, there seems to be little incentive for internationally trafficked persons, especially those with irregular status, to come forward to cooperate with law enforcement or authorities.<sup>91</sup>

All of these federal initiatives stand in addition to various provincial laws such as Manitoba's *Child Sexual Exploitation and Human Trafficking Act* and policies, including provincial action plans to combat human trafficking, as well as applicable municipal bylaws regulating business licenses, zoning and land use that have been analyzed by others and that are beyond the scope of our analysis.<sup>92</sup>

## Key Findings on the Jurisprudence

### Offences and Proceedings

As illustrated by our Table of Cases ([Appendix D](#)), we were able to locate 33 trafficking in persons prosecutions for the time period beginning June 2002 and ending December 2014. Table One (below) details the verdict distribution for the cases.

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<sup>90</sup> There is a federal victim's fund that provides funding to the provinces and territories; it does not provide direct assistance to individual victims. For a critique of compensation efforts, see Barrett, N.A. and Shaw, M.J. (2013). *Laws to combat human trafficking: An overview of international, national, provincial and municipal laws and their enforcement*. Toronto: Canadian Women's Foundation, Task Force on Trafficking of Women and Girls in Canada.

<sup>91</sup> Especially given May 2015 media reports of indoor migrant sex workers facing deportation for bylaw infractions.

<sup>92</sup> See Barrett, N.A. and Shaw, M.J. (2013). *Laws to combat human trafficking: An overview of international, national, provincial and municipal laws and their enforcement*. Toronto: Canadian Women's Foundation, Task Force on Trafficking of Women and Girls in Canada.

Table 1: Type of Verdict

	Guilty Plea	Verdict by Judge	Verdict by Jury	Total
Convictions	8	5	2	15
Other Legal Outcome	1	11	4	16
Mixed Verdict	1 <sup>93</sup>	1 <sup>94</sup>	----	2
Total	10	17	6	33

The roughly equal number of trafficking convictions and other legal outcomes<sup>95</sup> is intriguing because of the comparatively high proportion of combined acquittals/stays/withdrawals/verdicts set aside in comparison with the outcomes for adults charged with *Criminal Code* offences more generally.<sup>96</sup> In particular, the 18 cases resulting in a legal outcome other than a conviction—14 of which involved a full or partial acquittal—on the trafficking-specific charges seems much higher than the average 3% of adult *Criminal Code* cases resulting in acquittals, although the latter likely refers to complete acquittals.<sup>97</sup>

Based on where the court proceedings took place, the 33 prosecutions were geographically concentrated in the provinces of Ontario, Quebec, British Columbia, and Alberta (Table Two below). Additional research and analysis of the reasons for these regional variations would be

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<sup>93</sup> Two co-accused. One accused pleaded guilty and the other was found not guilty by a judge. In lieu of the acquittal of his co-accused, the offender who pleaded guilty has applied to have his charges struck and a trial held.

<sup>94</sup> One accused convicted of a s. 279.01 charge and acquitted of a 279.011 charge.

<sup>95</sup> In relation to the 18 ‘other legal outcome’ cases, full acquittals on all charges were secured for three cases (*Johnson; Ladha; McCall*). Partial acquittals were obtained in nine cases where the accused were acquitted of trafficking specific charges, but convicted on other immigration and/or criminal charges (*Ng; Downey; Tynes; Lynch; Burton; McPherson; Mataev; Salmon (Gregory); and GKS*). A defence application for a stay of proceedings based on police fabrication of evidence contrary to section 7 of the Charter was granted and upheld on appeal in the Courtney Salmon case. The charges were withdrawn in the *Beckford and Stone* case for unspecified reasons. The verdict was set aside and a new trial was ordered on appeal in both the *AA(2)* case and in the *Orr* case. In this latter case, Orr’s co-accused wife, Huen, was also acquitted of trafficking at trial. As already noted, there were two mixed verdict cases where both a conviction and an acquittal were obtained on the trafficking specific charges.

<sup>96</sup> According to Dauvergne, M. (2012). *Adult criminal court statistics in Canada, 2010/2011*. Ottawa: Statistics Canada, Canadian Centre for Criminal Justice Statistics. Available: <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11646-eng.pdf> between 2010 and 2012, two-thirds of adult criminal cases were concluded by means of a guilty verdict, just under one-third (32%) of cases were stayed, withdrawn, dismissed or discharged at preliminary inquiry, 3% were acquitted, and 1% were disposed by other means. This means that the combined acquittals and stays should be about 35%.

<sup>97</sup> *Ibid.*

beneficial, especially given sub-regional concentrations of charges within the provinces of Ontario (for example, the Peel region) and Quebec (for example, the District of Montreal). Of note, British Columbia is the only province where s.118 *IRPA* offences have so far been prosecuted, resulting in acquittals/verdict set aside for all three cases on the trafficking-specific charges.

Table 2: Geographic Distribution of Legal Proceedings

	Convictions	Other Legal Outcome	Mixed Verdict	Total
Ontario	11	11	-----	22
Quebec	4	2	-----	6
BC	-----	3	1	4
Alberta	-----	-----	1	1
Total	15	16	2	33

While our findings are specific to prosecutions and not police charges, the geographic concentration of prosecutions in four provinces differs from Statistics Canada police-reported crime data (2006-2014) indicating that trafficking-specific charges have been laid in eight of 13 provinces and territories (Table Three below). While our findings (84.84%) align with a disproportionate concentration of police-reported charges being laid in the two provinces of Ontario and Quebec representing 85.29 % of all persons being charged by the police, the police-reported crime data suggest a greater number of charges being laid in Alberta than BC which contrasts with our findings of more cases being prosecuted in BC than Alberta.

Table 3: Statistics Canada, Police-Reported Crime, Trafficking in Persons Charges against Persons, 2006-2014

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Canada	1	7	1	23	11	36	50	72	173	374
Newfoundland Labrador	0	0	0	0	0	0	0	0	0	0
PEI	0	0	0	0	0	0	0	0	0	0
Nova Scotia	0	0	0	1	0	0	0	1	2	4
New Brunswick	0	1	0	0	0	0	0	0	0	1
Quebec	0	0	1	2	2	8	5	14	12	44
Ontario	0	6	0	15	9	22	38	38	147	275
Manitoba	0	0	0	0	0	0	0	3	3	6
Saskatchewan	0	0	0	0	0	0	0	0	0	0
Alberta	0	0	0	5	0	1	0	12	6	24
BC	1	0	0	0	0	5	7	2	3	18
Yukon	0	0	0	0	0	0	0	0	0	0
NWT	0	0	0	0	0	0	0	0	0	0
Nunavut <sup>98</sup>	0	0	0	0	0	0	0	2	0	2

The temporal distribution of legal proceedings for our 33 cases (Table 4 below), reflecting the year in which a verdict was obtained, suggests a gradual increase in the number of cases being prosecuted over an eight year period, increasing from one case in 2007 to seven cases in 2014, with a small spike in the number of verdicts in 2013 (9 cases) and 2014 (7 cases). This spike in cases may be a result of the legal interregnum between the Ontario Court of Appeal 2011 and Supreme Court of Canada 2013 decisions in *R v. Bedford* striking down parts of our *Criminal Code* offences criminalizing prostitution-related offences and the Government's subsequent enactment of the *PCEPA*, which took effect in December 2014. It may equally be a result of greater law enforcement training and awareness about these offences and/or political or public pressure to enforce trafficking laws since the *Criminal Code* provisions were first enacted in 2005.<sup>99</sup> The

<sup>98</sup> We located one Nunavut case, *R. v. LA*, 2013 NUCJ 31, but have excluded it from our case analysis as the case involved a judicial interim release judgment and we were unable to locate additional verdict information.

<sup>99</sup> For annual federal government progress reviews on the intensity of these training and awareness efforts, see Public Safety Canada. (2012). *National action plan to combat human trafficking*. Ottawa, ON: Public Safety

length of time elapsing between police charges and the prosecution of cases would benefit from additional assessment, but for several of our cases involved two or more years. As has been noted elsewhere, criminal cases are becoming more complex and are taking longer to prosecute than historically has been the case.<sup>100</sup>

Table 4: Temporal Distribution of Cases

	Convictions	Other Legal Outcome	Mixed Verdict	Total
2007	0	1	----	1
2008	3	0	----	3
2009	2	1	----	3
2010	1	1	----	2
2011	1	2	----	3
2012	4	1	----	5
2013	1	8	----	9
2014	3	2	2	7
Total	15	16	2	33

In comparing the annual temporal distribution of our case outcomes with other empirical sources that provide longitudinal data on trafficking charges and convictions, including Statistics Canada police-reported crime data and the annual United States Department of State Trafficking in Persons reports,<sup>101</sup> the 17 trafficking-specific convictions (including the two mixed verdict convictions) fall considerably short of the data presented by these other sources. Table Five below details the discrepancies between our study findings and several governmental sources.

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Canada; Public Safety Canada. (2013). *National action plan to combat human trafficking: 2012-2013 Annual report on progress*. (Cat. No. PS11-1/2013E-PDF). Ottawa: Public Safety Canada.

<sup>100</sup> See e.g., Humphreys, A. (3 May 2013). ‘The system is sick’: Canada’s courts are choking on an increase in evidence. *The National Post* (3 May 2013), available: <http://news.nationalpost.com/news/canada/canadas-courts-are-choking-on-an-increase-in-evidence>.

<sup>101</sup> Data for these USA State Department reports are provided *inter alia* by the Government of Canada, including by the federal Department of Justice.

Table 5: Comparison of our Data by Year with Police-Reported Charges & US Department of State Annual TIP Reports on Convictions

	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total Cases
Police-Reported Charges <sup>102</sup>	1	7	1	23	11	36	50	72	173	374
US TIP Report Trafficking-specific Convictions <sup>103</sup>	-----	---	5	1	2	3	2	10	8	31
US TIP Report Trafficking-related Convictions	-----	3	---	3	7	6	25	15	14	73
National Action Plan to Combat Trafficking (as of 31 March 2014) Trafficking-specific Convictions <sup>104</sup>	Data are not disaggregated by year									71
HTNCC Website (as of January 2015) Trafficking-specific Convictions <sup>105</sup>	Data are not disaggregated by year									85
Department of Justice Handbook (2004 to December 2014) Trafficking-specific Convictions <sup>106</sup>	Data are not disaggregated by year									33
Palermo Project Trafficking-specific Convictions	-----	---	3	2	1	1	4	1	5	17 <sup>107</sup>

In relation to the type of trafficking offence charges that have resulted in convictions and other legal outcomes, the first immigration s.118 charges were laid in 2005 in the *Ng* case resulting in an acquittal in 2007 on the trafficking-specific charges. The first immigration s.118 conviction was obtained in *Orr* in 2013, but this verdict was set aside on appeal and a new trial was ordered in 2014. The first *Criminal Code* s. 279.01 conviction was obtained in *Nakpangi* in May 2008. The

<sup>102</sup> The data on police-reported trafficking in persons charges were obtained from CANSIM, Table 252-0051, Incident-based crime statistics by detailed violations, <http://www5.statcan.gc.ca/cansim/a26> [accessed on 19 August 2015].

<sup>103</sup> United States Department of State (2001-2015). Country Narratives: Canada. *Trafficking in persons reports, 2001-2015*, United States of America, available at: <http://www.state.gov/j/tip/rls/tiprpt/>. For the trafficking in persons reports, we have taken the current year report (e.g., 2015) as reporting for the preceding year (2014).

<sup>104</sup> Public Safety Canada. (2015). *National action plan to combat human trafficking: 2013-2014 annual report on progress*. (Cat. No.: PS11-1/2014E-PDF). Ottawa, ON: Public Safety Canada at page 3 indicating that 71 trafficking specific cases involving trafficking specific and related charges have resulted in convictions since 2005 representing 165 victims and 85 accused.

<sup>105</sup> Available: <http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm> indicating that 85 human trafficking specific cases have resulted in convictions involving against 151 persons.

<sup>106</sup> Department of Justice Canada. (2015). *A handbook for criminal justice practitioners on trafficking in persons*. Ottawa: Department of Justice Canada, at page 11 indicating that 33 cases have resulted in human trafficking specific convictions against 51 accused.

<sup>107</sup> Includes the convictions for the two mixed verdict cases.

first and only labour trafficking conviction was secured in 2012 in *Domotor* under s. 279.01(1) of the *Criminal Code*.

According to the cases we have been able to verify, there have been three s.118(1) immigration offence case prosecutions to date, including one for alleged cross-border sex trafficking (*Ng*) and two for alleged cross-border labour trafficking (*Ladha; Orr & Huen*). All three of these prosecutions (*Ng; Ladha; Orr & Huen*) were pursued in BC and none of them resulted in convictions, given that the *Orr* verdict was overturned on appeal pending a new trial.

The acquittals for the s.118 offences are interesting since there are fewer offence elements (knowingly organizing entry into Canada of one or more persons based on abduction, fraud, deception or force) than contemplated by the *Trafficking Protocol* in relation to not having to prove entry was for the purpose of exploitation. We will provide a more in depth analysis of why s.118 charges are only being pursued in BC and the varying reasons for these ‘acquittals’ in subsequent publications.

Five (15.6%) of the conviction cases have involved convictions for more than one type of trafficking offence (in persons; material benefit; withholding documents) and five of the conviction cases have involved more than one charge (counts) for the same type of offence. The infrequency of s.279.011, s.279.02 and especially s.279.03 charges and convictions is intriguing in view of the various, especially the *PCEPA*, legislative amendments to these provisions, effectively expanding the *Criminal Code* provisions to six trafficking in persons and ancillary offences and increasing the applicable mandatory minimum and maximum penalties.

Concerning the type of trafficking, our cases suggest that only four of 33 cases (*Ng; Domotor; Ladha; Orr*) involved alleged international cross-border trafficking where foreign trafficked persons were brought into Canada, with the remaining 29 cases involving domestic trafficking.<sup>108</sup> As described above, one of the four international trafficking cases involved allegations of sex trafficking (*Ng*), while the other three cases involved labour trafficking allegations. A majority of

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<sup>108</sup> Although sometimes involving non-citizen accused or victims, for example, American complainants residing in Canada possibly with irregular status, at the time of the offence.

the cases we looked at (24 of the 33 cases) appear to have involved allegations of domestic sex trafficking based on cross-charges under ss.210-212 of the *Criminal Code* before the December 2014 amendments came into effect, especially in relation to procuring, living off the avails, and bawdy house charges (Table Six below). Concerning our project focus on im/migrant women and sex work, it is noteworthy that we have been unable to find any trafficking-specific prosecutions resulting in convictions for alleged migrant sex trafficking.<sup>109</sup>

Table 6: Type of Trafficking

	Sex work related (ss. 210-212) charges	Other (Sexual Assault & Assault & Kidnapping) charges	Labour Trafficking	Total
Convictions	11	3	1	15
Other Legal Outcome	11	3	2	16
Mixed	2	-----	-----	2
Total	24	6	3	33

## The Accused

Based on the limited demographic information we have available, the 33 cases represent a total of 60 ‘accused’ persons involved in the trafficking cases, although not all of the co-accused were necessarily charged with or convicted of trafficking offences. Of those 60 persons, based on the case information available to us, only 27 were convicted of trafficking-specific offences, which is a considerably lower number than suggested by official government sources such as Public Safety Canada (85 accused convicted of trafficking-specific offences, though defined to include both specific and related); the HTNCC/RCMP (151 individuals convicted of trafficking-specific and related offences as of January 2015); and the Department of Justice (51 accused convicted of trafficking-specific and related offences as of December 2014).

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<sup>109</sup> We wish to note that the absence of formal charges is not indicative of an absence of incidents. Instead, these findings may simply point to the inability of the formal justice system to adequately respond to the victimization of groups who are marginalized and criminalized in Canada. For more related discussion, see van der Meulen, E., Yee, J. & Durisin, E. (2010). Violence against Indigenous sex workers: Combating the effects of criminalisation and colonialism in Canada. *Research for Sex Workers*, 12, 35-36.

Most (21) of the cases we examined involved solo accused, while seven cases involved two co-accused, and five cases involved three or more accused, again noting that these co-accused may not have been charged with and/or convicted of trafficking offences. Nonetheless, the number of co-accused is important in relation to discerning patterns of potential organized crime involvement since legally an organized criminal group in Canada must be a continuous entity comprised of three or more persons engaged in serious offences that are economically motivated.<sup>110</sup> Despite various claims about organized criminal involvement in trafficking in persons in Canada,<sup>111</sup> only one of the 33 cases (*Domotor*) involved cross-charges and convictions in relation to organized crime contrary to s.467.1(1) of the *Criminal Code*.<sup>112</sup>

We do not have comprehensive data on the age of all of the accused persons for the cases we examined. Based on the information we do have, only two of the cases involved minor accused. The age range of the accused at the time of the offence varied from 15 years (Oliver-Machado) to 55 years of age (Ladha).<sup>113</sup> A number of accused in the sex-work trafficking cases were either minors (AA and Oliver-Machado) or young adults who were proximate in age to the persons allegedly being trafficked and some of the accused were involved in romantic relationships with the complainants.<sup>114</sup>

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<sup>110</sup> Section 467.1(1) *Criminal Code* (R.S.C., 1985, c. C-46).

<sup>111</sup> See for example Royal Canadian Mounted Police. (2010). *Human trafficking in Canada*. Ottawa, ON: Royal Canadian Mounted Police. Retrieved from [http://publications.gc.ca/collections/collection\\_2011/grc-rcmp/PS64-78-2010-eng.pdf](http://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-78-2010-eng.pdf); Barrett, N., & Shaw, M. (2011). *Towards human trafficking prevention: A discussion document*. Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy; Department of Justice Canada. (2015). *A handbook for criminal justice practitioners on trafficking in persons*. Ottawa: Department of Justice Canada. But, see also Bruckert, C., & Parent, C. (2004). *Organized crime and human trafficking: Tracing perceptions and discourses*. Ottawa, ON: Research and Evaluation Branch, Community, Contract and Aboriginal Policing Services Directorate, Royal Canadian Mounted Police for a more critically reflective discussion.

<sup>112</sup> Evidence of organized criminal involvement may also be construed as an aggravating factor. Department of Justice Canada. (2015). Fact Sheet #5. Trafficking in Persons – Sentencing. Available: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/hcjpotp-gtpupjp/fs-fi/fs5-fi5.html>.

<sup>113</sup> Another accused, Domotor Sr., was age 69 at the time of the offence, but was still at large when the *Domotor-Kolompar* prosecutions took place.

<sup>114</sup> The young age of the accused may be a mitigating factor in sentencing, especially if a first offender, while being in an intimate relationship with a victim may be viewed as an aggravating factor. Department of Justice Canada. (2015). *Fact Sheet #5. Trafficking in Persons – Sentencing*. Ottawa; Department of Justice Canada. Available: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/hcjpotp-gtpupjp/fs-fi/fs5-fi5.html> .

Concerning the gender of the accused, 25 cases involved male only accused representing 37 males; two cases involved female only accused representing four females; and five cases involved mixed gender accused representing 6 males and 5 females. Proportionately, the cases we examined involved 50 male and ten female accused. While the number of male and female accused (including both adults and youths) in our cases vary considerably from the number of male and females charged by the police with trafficking offences (50 versus 314 males and ten versus 60 females), the proportions are relatively consistent with the government published data.

We have limited demographic information on the nationality and race/ethnicity of the accused. Based on the information we have, only three of the 33 cases appear to have involved non-citizens and the issue of the accused's deportation from Canada. These three cases included: the *Domotor* case involving 18 Hungarian accused, 15 of whom were deported on completion of their sentence. Of the three persons not deported, one died, one is a Canadian citizen, and one is still at large and anticipated to be living in Hungary; the *Mataev* case involving a Russian/Chechen accused who Russia refused to recognize; and AA(1) who was from Barbados and being held on an immigration hold facing deportation. In terms of race/ethnicity, we found no overt references to Indigenous accused in the cases we examined. We do, however, note what appear to be highly racialized images of some accused human traffickers in the media, including the accused for several of our cases.<sup>115</sup>

Several of the accused had extensive criminal histories, which we will explore in subsequent publications on the presence of aggravating and mitigating factors.<sup>116</sup>

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<sup>115</sup> As one example, see, e.g., Gillis, W. (27 May 2014). Human trafficking conviction a first for Toronto. *The Toronto Star* (27 May 2014), available: [http://www.thestar.com/news/gta/2014/05/27/human\\_trafficking\\_conviction\\_a\\_first\\_for\\_toronto.html](http://www.thestar.com/news/gta/2014/05/27/human_trafficking_conviction_a_first_for_toronto.html) portraying Tyrone Burton's photo.

<sup>116</sup> The Department of Justice Canada lists aggravating factors for *Criminal Code* trafficking in persons offences as likely to include evidence of abusing a person under the age of 18 years, abuse of a position of trust or authority, and committing an offence at the direction/for the benefit of/in association with a criminal group. Additional aggravating factors likely include: preying upon vulnerable victims; the level of offence planning and deliberation; previous convictions or involvement with the justice system; duration of the crime; whether there was a profit motivation; the use of violence and/or weapons; whether the offender was in an intimate relationship with the victim; the use of alcohol or drugs; and victim exposure to serious injury or illness. Mitigating factors are listed as: first time offender, presence of remorse, whether the accused was a trafficking in persons victim,

## The Complainants

A majority (21) of the 33 cases involved a single complainant, while 12 cases involved more than one complainant, ranging from two to 19 persons. In total, the cases represent 78 complainants, although it is important to stress that trafficking in persons charges were not applied to all of these complainants. For example, in the *Moazami* case, there were two trafficking charges (a s.279.01(1) charge where a conviction was obtained and a 279.011 charge that resulted in an acquittal) in relation to two of 11 complainants in the case. Thus, a more accurate read of the number of complainants in these cases is 69 persons. Our findings on the number of complainants (69) falls considerably short of the 165 victims identified by Public Safety Canada (2015) in relation to their definition of trafficking-specific cases.

We do not have information on the age of the complainants for all cases, making it difficult to calculate an ‘average age,’ and noting that there may be significant age variations for the complainants of labour trafficking (older) versus sex trafficking cases (younger). Based on the information available, the youngest trafficked person in relation to the cases we examined was 13 years of age at the time of the offence (*Oliver-Machado* case) and the oldest complainant was 40 years of age at the time of the offence (*Orr* case). A slight majority (17) of the 33 cases involved only adult complainants, eleven of the cases involved only minor complainants; and four (12.5%) of the cases involved both adult and minor complainants. One case (*Domotor*) did not specify the age of the complainants, although they are believed to be adults.

With the exception of the 19 male complainants in the *Domotor* case, all remaining 51 complainants were female. The sex/gender and age distribution of the complainants in our cases is relatively consistent with the gender distribution of potential trafficked persons identified by Citizenship and Immigration Canada: 31 males (29.5%), 68 (64.7%) females, and 6 minors.<sup>117</sup>

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and the young age of the offender. Department of Justice Canada. (2015). *Fact sheet #5. Trafficking in persons – sentencing*. Ottawa: Department of Justice Canada. Available: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/hcjpotp-gtpupjp/fs-fi/fs5-fi5.html> .

<sup>117</sup> Personal communication with Citizenship and Immigration Canada. Data on file with the authors.

As is the case with the accused in the trafficking cases we examined, there is limited demographic information other than the age and gender of the complainants. In terms of the complainants' nationality and claims about Asian women being trafficked into Canada, the four cross-border trafficking cases involved foreign victims from Hungary (*Domotor*); Tanzania (*Ladha*); the Philippines (*Orr & Huen*); and China (*Ng*). At least one other case (*Mataev*) involved a US foreign national complainant who was living in Canada with irregular status at the time of the offence.

Despite widespread claims about Indigenous women and girls being at particular risk of being trafficked in Canada,<sup>118</sup> which is a major concern given the number of missing and murdered Indigenous women in Canada, we found no overt references to Indigenous women or girls in the cases we examined. As emphasized above, scant demographic information is provided about the complainants other than their gender and age. Nevertheless, a number of the court cases address the issue of victim vulnerability and presumably Indigeneity would be raised in the context of Crown submissions given that victim vulnerability may be construed as an aggravating factor in relation to sentencing.<sup>119</sup> The fact that we did not find overt references to Indigenous women or girls as complainants in these prosecuted cases warrants additional investigation—especially in view of what appear to be highly racialized images in the dominant trafficking discourse that tend

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<sup>118</sup> The claim about the trafficking of Indigenous women and girls in Canada has been made consistently in the annual *US Trafficking in Persons* reports, but only from 2008 forward, with previous year reports focusing mainly on the cross-border trafficking of foreign women. The RCMP also makes this claim in its reports on trafficking in persons. There are a number of qualitative studies about trafficking of Indigenous women and girls, including Sethi, A. (2007). Domestic sex trafficking of aboriginal girls in Canada: Issues and implications. *First Peoples Child & Family Review*, 3(3), 57-71; Sikka, A. (2009). *Trafficking of Aboriginal women and girls in Canada*. Institute on Governance (IOG) and the Office of the Federal Interlocutor for Métis and Non-Status Indians (OFI). Retrieved from [http://iog.ca/wp-content/uploads/2012/12/May-2009\\_trafficking\\_of\\_aboriginal\\_women-1.pdf](http://iog.ca/wp-content/uploads/2012/12/May-2009_trafficking_of_aboriginal_women-1.pdf); Red Willow Consulting Inc., Boyer, Y. and Kampouris, P. (2014). *Trafficking of Aboriginal women and girls*. Ottawa: Public Safety Canada, Research and Analysis Division, Community Safety and Countering Crime Branch. Available: [http://publications.gc.ca/collections/collection\\_2015/sp-ps/PS18-8-2014-eng.pdf](http://publications.gc.ca/collections/collection_2015/sp-ps/PS18-8-2014-eng.pdf); Native Women's Association of Canada. (2014). Sexual exploitation and trafficking of Aboriginal women and girls. Literature review and key informant interviews. Toronto: Canadian Women's Foundation: Task Force on Trafficking of Women and Girls in Canada. But see Hunt, S. (2010). Colonial roots, contemporary risk factors: A cautionary exploration of the domestic trafficking of Aboriginal women and girls in British Columbia, Canada. *Alliance News*, (33), 27-31 and Hunt, S. (2013). Decolonizing sex work: Developing an intersectional Indigenous approach. In van der Meulen, E., Durisin, E. and Love, V. (eds.) *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, Vancouver: UBC Press, 82-91, for a more critically reflective analysis, including a discussion of our knowledge gaps.

<sup>119</sup> Department of Justice Canada. (2015). *Fact sheet #5. Trafficking in persons – sentencing*. Ottawa: Department of Justice Canada. Available at: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/hcjpotp-gtpupjp/fs-fi/fs-5-fi5.html> .

to depict trafficked persons as white and human traffickers as black—and is likely related to many institutional factors associated with investigation and prosecution. Indigenous persons justifiably lack faith in the Canadian Justice System to effectively respond to their victimization in view of a lengthy history of colonization and ongoing oppression. As well, some observers contend that trafficking in persons cases involving Indigenous complainants are under-investigated or are not prosecuted as trafficking in persons cases.<sup>120</sup> Low reporting rates combine with these other systemic and institutional challenges regarding testimony in court and witness cooperation, among other issues that may affect the investigation and/or prosecution of cases. These data do not address the many serious issues regarding violence against Indigenous persons in Canada, especially in relation to missing and murdered Indigenous women and girls; we hope to work collaboratively with Indigenous academics and communities to further explore these issues in future.

The 33 cases raise a number of complex legal and extra-legal issues in relation to the complainants of human trafficking cases that we will explore in more depth in subsequent publications, including how the trafficking allegations come to the attention of the police; complainant vulnerability and a range of other aggravating factors; the judicial analysis of harm to the complainants; allegations of intimidation and the protection of complainants and witnesses in some cases; victim cooperation with the authorities; the credibility of complainants and witnesses; and the judicial analysis of exploitation, especially in cases where there is an absence of physical coercion and/or when a complainant has previously worked in the sex industry on a consensual basis. We are also cognizant that some of the complainants and/or their family members faced deportation in the cross-border cases and that one trafficked foreign national in the *Domotor* case, Janos Acs, committed suicide.<sup>121</sup> As well, it appears that some potential complainants of labour exploitation are seeking redress by means other than through the criminal courts.<sup>122</sup>

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<sup>120</sup> Barrett, N. (2013). *An assessment of sex trafficking*. Toronto: Canadian Women's Foundation Task Force on Trafficking of Women and Girls in Canada, at pages 14-15.

<sup>121</sup> See O'Reilly, N. (23 July 2014). Suicide on a Hamilton train track ends an 'already sad story'. *The Hamilton Spectator* (23 July 2014), available: [http://www.thestar.com/news/gta/2014/07/23/suicide\\_on\\_a\\_train\\_track\\_ends\\_an\\_already\\_sad\\_story.html](http://www.thestar.com/news/gta/2014/07/23/suicide_on_a_train_track_ends_an_already_sad_story.html)

<sup>122</sup> See, e.g., *PN v. FR and another*, 2015 BCHRT 4 (CanLII), <<http://canlii.ca/t/gfxwv>> retrieved on 2015-08-29; *O.P.T. v. Presteve Foods Ltd.*, 2015 HRTO 675 (CanLII), <<http://canlii.ca/t/gj60b>> retrieved on 2015-09-03. In

## Sentencing

We do not have comprehensive sentencing data for all of the cases we examined as some of the convicted persons had not yet been sentenced at the time of writing or the sentencing information was not readily available via published sources. We have sentencing information for 14 of the 17 cases that resulted in convictions. Contrary to claims that human traffickers are not being punished in Canada,<sup>123</sup> for these 14 cases, the global sentences ranged from 24 months less one day to 105 months in custody. For these same cases, the net sentences in relation to credit for time served ranged from one day and 36 months of probation to 66 months in custody. Notably, the one case involving a minor offender, Oliver-Machado, who was considered the ‘ring-leader’ in relation to trafficking a number of minor persons, was sentenced as an adult and received a global sentence of 78 months (6.5 years) imprisonment.

Because each of the cases involves convictions for varying numbers and types of trafficking and other offences, it is difficult to make broad generalizations about the severity of the sentences imposed, although the 14 cases arguably provide a stronger evidentiary basis moving forward for assessing trafficking in persons sentencing principles and ranges than has previously been the case. However, it is interesting to note that ancillary orders (DNA, sex offender registry, weapons prohibitions) appear to have been applied in only a handful of cases, that only one case seems to reference a victim-fine surcharge being imposed,<sup>124</sup> and that only one case (*Domotor*) seems to have resulted in a restitution order despite the 2005 *Bill C-49* amendments that were intended to expand the ability of the courts to order restitution in relation to trafficked persons who were subject to bodily *or* psychological harm. We will explore the sentencing decisions in more depth

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the recently collapsed 2015 Rasool case, involving alleged labour trafficking, the complainant has launched a civil suit against Rasool for unpaid wages and punitive damages. Carmichael, H. (28 January 2015). Human trafficking case in Sudbury falls apart. *Sudbury Star* (28 January 2015), available: <http://www.thesudburystar.com/2015/01/28/human-trafficking-case-in-sudbury-falls-apart> .

<sup>123</sup> Moore, H. and Levasseur, J. (25 March 2014). Human traffickers going unpunished in Canada, expert says. *CBC News*, available: <http://www.cbc.ca/news/canada/manitoba/human-traffickers-going-unpunished-in-canada-experts-say-1.2584944>

<sup>124</sup> The informations for some of the cases we examined in fact indicate that the victim fine surcharge is being waived at the time of sentencing.

in subsequent publications, especially in relation to the presence or absence of aggravating and mitigating factors.

### Appeals and Constitutional Challenges

To date, of the 33 cases, seven have involved appeals on various grounds, including two important appellate rulings on the elements of the offence by the Ontario Court of Appeal (OCA) in *AA(2)* and the Quebec Court of Appeal (QCCA) in *Urizar*.<sup>125</sup> Concerning the three appellate cases for Ontario, in *R v. AA(1)*,<sup>126</sup> the accused unsuccessfully appealed his 2012 convictions on the basis of the trial judge's instructions to the jury regarding credibility and reliability of the complainant. In the Courtney Salmon case,<sup>127</sup> the OCA dismissed the Crown's appeal against the judicial ruling to stay 17 charges, including trafficking charges, based on the trial judge's finding of abuse of process due to police fabrication of evidence, violating the accused's s.7 rights. The OCA was "not persuaded that the trial judge made palpable and overriding errors in reaching his findings of fact and credibility."<sup>128</sup> In *AA(2)*,<sup>129</sup> which is an important appellate judgment that directly addresses the definition of exploitation (indicating that the proper test is a subjective-objective test) and the elements of trafficking a person under 18 years of age, the Crown successfully appealed acquittals on trafficking a person under 18, receiving a material benefit from trafficking a person under 18, and living on the avails of prostitution. This appeal is an important ruling on the judicial interpretation of exploitation in relation to 279.011(1), 279.02 and 279.04(a), including the definition of exploitation and the legal elements of trafficking a person under 18 (conduct, prohibited group, purpose). It is also one of two cases in which the appellate court has set aside the trial verdict and ordered a new trial, with both of these new trials (*AA*; *Orr*) yet to take place.

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<sup>125</sup> Section 117 of *IRPA*, concerning human smuggling was the subject of a constitutional challenge in *R. v. Appulonappa* 2014 BCCA 163 on issues of overbreadth and vagueness and is currently under appeal to the Supreme Court of Canada. Until the Supreme Court of Canada has issued its ruling, it is possible that the BCCA appeal declaring s.117 to be constitutionally sound will impact future constitutional challenges to s.118 of *IRPA*.

<sup>126</sup> 2013 ONCA 466.

<sup>127</sup> 2013 ONCA 203.

<sup>128</sup> *Ibid*, at page 2.

<sup>129</sup> 2015 ONCA 558.

There have been two appellate judgments for Quebec. In *R v. Urizar*,<sup>130</sup> Urizar advanced five grounds of appeal, including (1) alleging a miscarriage of justice due to a lack of credibility and reliability of the complainant's testimony, (2) objecting to the use of complainant testimony outside the court room (a screen was used to shield the complainant during her testimony), (3) arguing that the trafficking offence requires forced transportation and that the offence is meant to apply to migrants being transported or concealed for exploitation, (4) contesting the charge of extortion citing an absence of evidence to support the allegation the complainant was coerced to dance nude by threats or violence, and (5) seeking a conditional stay for uttering threats as redundant in relation to the charges of robbery, trafficking and extortion and a stay of proceedings for the charge of possession of a weapon for a dangerous purpose. On the issue of testimony outside of the courtroom, the QCCA found no error of fact or law and the judgment is an important ruling on this issue, including its consideration of the legislative origins of the Bill C-49 provisions in relation to witness protection. Of particular note, the QCCA examined ss.279.01, 279.02 and 279.04, including the legislative origins of these provisions, and concluded that "no movement of victims is required."<sup>131</sup> The court determined that the central element of the 279.01-279.04 provisions is the concept of exploitation, including what the court describes as the fear for safety objective test requirement. The QCCA upheld the convictions on all trafficking charges, but granted stays for the redundant charges of threatening, possession of a weapon and extortion.

In *Hosseini v. R*,<sup>132</sup> the defendant sought an extension of time to appeal his conviction for five charges, including trafficking, prostitution-related charges of procuring, controlling or influencing prostitution, and living on the avails, and assault causing bodily harm, in addition to seeking an extension of time to appeal his sentence of five years less ten months credit for time served in pre-trial detention. In dismissing the request for an extension of both appeal periods, the QCCA affirmed its application of the *Urizar* ruling there was evidence of exploitation, refuting the defence argument of an absence of evidence the complainant was repeatedly forced or coerced to engage in prostitution-related activities. The court also addressed the issue of corroborating

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<sup>130</sup> 2013 QCCA 46.

<sup>131</sup> *Ibid* at page 17.

<sup>132</sup> 2014 QCCA 1187.

evidence in the form of a transcript of smart phone messages between the accused and the complainant, which the complainant had voluntarily submitted, in relation to intercepted third party communications.

In BC, the Crown appealed the two s.118 immigration acquittals in *R. v. Ng*.<sup>133</sup> The defendant cross-appealed the 15 month sentence imposed by the provincial court for the five remaining offences for which he was convicted (including immigration s.117 and s.126 offences, and criminal offences of procuring (2 counts), and keeping a common bawdy house. The BCCA upheld the lower court decision, but increased Ng's global sentence to 27 months in relation to the procuring and bawdy house offences.

In *R v. Orr*,<sup>134</sup> the defendant appealed his convictions on the grounds that (1) the trial judge erred in admitting expert opinion evidence from an expert who was qualified as an expert in victimology and in relation to the use of a hypothetical scenario that closely resembled the complainants' allegations, (2) the trial judge erred in instructing the jury on the relation between two counts of the indictment, (3) the jury's verdict was unreasonable because it was founded on unreliable evidence and was inconsistent with the acquittal of the co-accused of all charges, and (4) the exclusion of *voir dire* evidence at trial of a statement by the complainant to police effected a miscarriage of justice.<sup>135</sup> In allowing the defence appeal and setting aside the trial verdict and ordering a new trial, the BCCA found that the expert opinion evidence in response to the Crown's hypothetical scenario should not have been admitted into evidence and "critically affected the outcome of the trial."<sup>136</sup>

The Orr appeal is an important ruling on the admissibility of expert opinion evidence, and the proper qualification of experts; it is one of only two rulings challenging the use of expert opinion evidence in human trafficking trials. In an earlier Ontario case, the admission of expert opinion

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<sup>133</sup> 2008 BCCA 535.

<sup>134</sup> 2015 BCCA 88.

<sup>135</sup> *Ibid* at page 4.

<sup>136</sup> *Ibid* at page 4.

evidence was challenged: *R v. McPherson*<sup>137</sup> described expert evidence on human trafficking as being unnecessary and prejudicial. In part, this determination resulted from the expert's lack of formal training in criminology, psychology or sociology and "minimal if any contact with women directly involved in the sex trade."<sup>138</sup> The expert's rejection also related to the fact that he was a career advocate, openly advocating "a more aggressive approach to the prosecution and sentencing of those who live off the avails of prostitution," whose observations were likely to be one-sided.<sup>139</sup>

In addition to these appellate judgments, there have been two, albeit unsuccessful, constitutional challenges to the trafficking in persons offences, notably in cases acquitting or staying the charges against the accused for the trafficking-specific charges. In *R v. Ng*, defence counsel unsuccessfully challenged the constitutionality of s.118 of *IRPA* as being vague and overbroad in relation to the terms 'fraud and deception' as a means of committing the offence and contrary to s.7 of the *Charter*. In addition to considering the legislative objective of the offence, the court distinguished trafficking from smuggling in relation to two critical elements of the offence: (1) the presence of force, coercion, fraud or deception as part of the process of organizing entry into Canada and (2) "a continuing relationship with the person organizing entry after entry into Canada."<sup>140</sup> In *R v. Stone and Beckford*,<sup>141</sup> Stone unsuccessfully challenged the constitutionality of s.279.011 as violating the principles of fundamental justice contrary to s.7 of the *Charter* arguing that the legislation was overly broad and vague in relation to the range of conduct prohibited by the offence, a diminished *mens rea* requirement in the wording of s.279.01 and 279.011, and an imprecise and uncertain definition of exploitation. The ruling provides useful guidance on the legislative history of the *Bill C-49 Criminal Code* provisions and the 2010 (279.011) and 2012 (279.04) amendments to the provisions, concluding that the 279.04 amendments were intended to ensure that the judicial interpretation of exploitation is not unduly narrow and includes physical and psychological and emotional coercion. In rejecting the defence arguments about the

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<sup>137</sup> 2011 ONSC 7717.

<sup>138</sup> *Ibid* at para 32.

<sup>139</sup> *Ibid* at para 9.

<sup>140</sup> 2006 BCPC 0111 at para 8.

<sup>141</sup> 2013 ONSC 653.

imprecision of the *Criminal Code* provisions, the ruling also provides important judicial guidance on the elements of s.279.01 and 279.011 in relation to the *actus reus* requirement and the mental element requirements (accepting the offence disconnect from ‘means’ and ‘knowingly’), the purpose component (including facilitating exploitation), and the fear for safety standard of the offence.

As we will explore in subsequent publications, although there have been relatively few trials (only 22), the 33 cases provide important insights into how the judiciary is interpreting the elements of the offence, including movement, exploitation and the fear for safety requirement, coercion and consent; victim cooperation, including willingness to come forward, and issues relating to witness intimidation and protection; the reliability and credibility of witnesses; corroborating evidence; and, the range of sentences and applicable sentencing principles. In this regard, we discovered a high level of consistency across two of our primary data sources insofar as these issues were all raised by interviewees, as the next section demonstrates.

### Perceptions of the Law: CJS personnel

The interview participants provided a range of perspectives based on varied experiences related to anti-trafficking legal efforts in Canada. The general purpose of the interviews was to assess the challenges and successes of anti-trafficking laws, with a particular focus on recommendations for improvement and identification of specific areas of pressing need for attention. Essentially, we asked the eight individuals to conduct an informal evaluation of the laws in Canada, including their creation, implementation and enforcement. Four key themes emerged from the data: 1) the politicization of human trafficking in Canada, and its impact on access to, and production of, empirical evidence about human trafficking in Canada, 2) conceptual and definitional challenges underlying the development and enforcement of anti-trafficking laws in Canada, 3) factors affecting investigations and prosecutions, and 4) recommendations for improved enforcement and policy consideration. Regardless of the diversity of the interview participants, the data demonstrate agreement in several areas, most notably the recommendations.

## Politicization and Knowledge Production in Canada

The interview participants generally expressed frustration and spoke with careful attention to the way that they presented their assessments of anti-trafficking efforts in Canada. Most participants made remarks to the effect that they were concerned that their statements would be taken out of context or that they were unsure of how much to disclose or contribute without concern that their participation would in some way negatively impact their working relationships. All participants expressed that this topic is heavily politicized, quite complex, and difficult to navigate due to the small number of cases and small number of key stakeholders who have played central roles in the development, implementation and enforcement of the laws. Indeed, the politicization of anti-trafficking laws seems to have been a key factor that led to several individuals in enforcement-type roles to decline to participate in our interviews.

Three participants suggested that Canada's anti-trafficking laws reflect ideological theory rather than evidence. These individuals variously explained that we did not have many cases nor victims coming forward to initiate the legal efforts. Instead, the laws appeared to be politically-motivated (to bring Canada's laws in line with international requirements, as discussed in the foregoing legislative framework section, and as a response to political pressure from key stakeholders).<sup>142</sup> Participants suggested that in this case, the prevalence and need for pressing attention devoted to combatting human trafficking in Canada was a political theory that received institutional approval and was subsequently assigned to Crown counsel and police departments to enforce—or create. Due to an absence of cases, participants suggested that they have witnessed a steady expansion of the activities that fall under the general scope of “human trafficking” as a way of justifying the resources spent. Interviewees remarked that there has yet to be any empirically verifiable data that demonstrates the scope and existence of human trafficking in Canada. Participants were quick to point out that this did not mean that there was no human trafficking occurring; rather it was a statement reflecting the evidentiary basis for the legal efforts. One participant suggested,

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<sup>142</sup> See Ferguson, J.A. (2012). *International human trafficking in Canada: Why so few prosecutions?* Doctoral Dissertation, Faculty of Law, University of British Columbia, Vancouver, British Columbia.

**“If you have 200-300 investigators working on this issue across Canada over a period of multiple years, you would think we would have come up with a few more cases by now, if it is as big of a problem as presented.”(#6)**

Interviewees explained some of the institutional challenges that relate to politicization, too. Different agencies and departments within the federal government have differing mandates, systems of communication, rules of disclosure, and levels of access to information. For example, Canadian Border Services Agencies pay increased attention to preventing people from entering or remaining in Canada if they do not have proper documentation. They do not have the same protective role as police have in relation to victims of human trafficking; rather, CBSA may be required to focus on the removal of individuals without legal status. Thus, the two agencies may function in diametrically opposed manners. Where police wish victims of trafficking or those in exploitative working conditions to come forward to lodge complaints against their exploiters, those same individuals may not have entered Canada legally; thus, the legal status of those victimized by exploitative situations affects their willingness to disclose victimization.<sup>143</sup>

Lay persons likely expect that there is a high degree of intergovernmental communication and cooperation; however, the interviewees suggested the opposite. One interview participant explained to us that people tend to think that all police agencies have the same computerized information management systems and that sharing of information is common. However, he suggested that the reverse was true: technology (and specifically, differences in technological systems, ways of coding data) limits information sharing. In addition, there are practical constraints of overburdened and under-funded justice-related departments. Budgetary issues severely restrict capacity to communicate and capacity to coordinate enforcement and implementation, even in situations where mandates align. Departments continually have to defend their budgets and use of budgetary allowances. For every legal measure approved by politicians, there are resulting implementation duties; yet, there are rarely increased budgets to accompany those requested changes. As a result, implementation can be slow, if it occurs, and by

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<sup>143</sup> This finding is affirmed by our case data on the differences in the number of Citizenship and Immigration Canada suspected trafficked persons cases where temporary residence permits (105 persons) have been issued versus the number of immigration and criminal prosecution cases we were able to verify (32 cases involving 75 complainants but not all of whom related to trafficking charges).

implementing one measure (for example, an anti-terrorism policy or program), another existing measure may need to be de-prioritized. Hence, the political landscape influences departmental priorities, too.

Politicization results from significant events and key stakeholders alike. Participants noted how priorities shift regionally, largely due to major events such as the Winter 2010 Olympics in Vancouver, which brought considerable attention to the issue of trafficking. The Missing Women's Inquiry, the arrest and prosecution of Robert Pickton, and the *Bedford* case all played central roles in highlighting certain issues on regional levels. In Vancouver, the murders of so many street-based female sex workers resulted in strong levels of activism to foster protection-based relationships with police rather than enforcement-based policing.<sup>144</sup> In Ontario, where the first *Bedford* decision gave a strong indication that the criminal laws related to prostitution were unconstitutional, participants agreed that enforcement appears to have turned to trafficking laws in place of prostitution laws. Police-reported crime statistics confirm this pattern: there was a rise in police charges related to human trafficking beginning in 2012, alongside a reduction in prostitution-related charges.<sup>145</sup>

Several interviewees pointed to specific key stakeholders (politicians, academics, individuals, and NGO's) who have influenced policy and awareness campaigns regarding human trafficking in Canada. Likewise, interviewees suggested that where there are increased levels of enforcement of human trafficking, there are also specific people (police members, Crown counsel, and other criminal justice personnel) who "single-handedly" push the prioritization of human trafficking. Three interview participants expressed frustration at the "**infusion of politics**" into law

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<sup>144</sup> For more information on the evolution of the relationship see Johnson, G. (2015) Governing Sex Work: an agonistic policy community and its relational dynamics. *Critical Policy Studies*, 1-19, DOI 10.1080/19460171.2014.968602. See also the Vancouver Police Department Sex Work Enforcement Guidelines, available at: <http://vancouver.ca/police/assets/pdf/reports-policies/sex-enforcement-guidelines.pdf>

<sup>145</sup> Police reported crime statistics for the number of persons charged with trafficking in persons offences indicate there were 36 charges in 2011, increasing to 50 charges in 2012, 72 charges in 2013, and 173 charges in 2014. For the same time period, the number of persons charged with prostitution-related offences declined from 1,583 in 2011, to 1,254 in 2012, 1,202 in 2013, and 314 persons in 2014, when the new laws came into effect. Data obtained from CANSIM, Table 252-0051, Incident-based crime statistics by detailed violations, <http://www5.statcan.gc.ca/cansim/a26> [accessed on 19 August 2015].

enforcement, law development, and associated awareness campaigns. They suggested that the construction of human trafficking as a pressing issue, warranting such legal attention, lacked empirical evidence. Moreover, they suggested that knowledge related to human trafficking in Canada suffers from concerns about reliability and transparency. Interviewees expressed frustration with the NGO's and politicians who advocate for their particular and ideological perspectives on the issues without verifiable data, by over-generalizing research findings, and by employing less than rigorous methods to collect data. One participant suggested that government research, along with primary data, has a tendency to either remain unpublished or vanish altogether.<sup>146</sup> Two participants suggested that funding allocation is equally politicized: funding for research and program delivery appears to be distributed along political or ideological lines. Another interviewee suggested that one reason we have not seen significant research on the topic is due to a lack of political willingness to empirically assess the actual prevalence or scope of human trafficking. He stated, **“If you already know something, why research it?”** (#2)

The politicization of human trafficking combined with limited public access to governmental information raises a serious concern about the empirical validity of Canadian data on human trafficking. When we described the challenges we were facing in attempting to access data (described in detail in above methods section), interviewees expressed either surprise that the data were not already publically available or they expressed that they were not surprised at all given the general lack of transparency in governmental information or the institutional factors that create barriers between departments. Insider interviewees provided us with some tips for future FOI/ATI requests, but they also suggested that the access to information branches are overwhelmed and underfunded. One interviewee confirmed the subjective and idiosyncratic nature of the determination of the “trafficking-related” category, which forms the basis of HTNCC and other government agency statistics on human trafficking.

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<sup>146</sup> For confirmation of this phenomena, see Kingston, A. (2015) Vanishing Canada: Why we're all losers in Ottawa's war on data. *Macleans* (Sept. 18. 2015). Available at: <http://www.macleans.ca/news/canada/vanishing-canada-why-were-all-losers-in-ottawas-war-on-data/>

Access to information about human trafficking contrasts with media reports of investigations and charges. Two interviewees noted that while there is heavy media coverage when a charge is laid or an investigation uncovers alleged human trafficking activities or victims, there is no corresponding coverage when subsequently the charges are dropped.<sup>147</sup> The lack of connection between the number of charges laid and the number of convictions secured is glaring and warrants considerable future research. Interviewees suggested that the media representations of charges lead the public to perceive that human trafficking occurs regularly; however, neither empirical evidence, nor the interviewees' personal experiences, confirmed that perception. Instead, our empirical evidence demonstrates that for a variety of reasons, human trafficking convictions are rare.

### Conceptual and Definitional Challenges

One of the consequences of the rarity of human trafficking cases proceeding to trial<sup>148</sup> is that Crown counsel feel inadequately prepared to prosecute the charges and they feel that the judiciary is unfamiliar with the context of human trafficking and the legal elements of the offence. Four interviewees discussed the challenges they faced in preparing their cases for trial; they explained that there were difficulties in establishing witness credibility, proving the absence of consent, and persuading judges about the level of subjective fear for safety required in the human trafficking provision. One problem that interviewees pointed out was that the offence itself was still relatively new and that because there were so few cases, very few people across Canada had any experience with human trafficking prosecutions. Additionally, there are few resources to guide practitioners in their enforcement and prosecutions of anti-trafficking laws; one interviewee indicated resorting to a google search to obtain more information about human trafficking in preparing for an upcoming trial. Several others named academics who had written useful guides or training offered

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<sup>147</sup> This observation is supported by our case analysis where we came across multiple cases being reported by the media (and NGOs) as human trafficking cases, where either trafficking charges were never laid or were subsequently withdrawn during the police investigation and/or prosecution of the case, but where there was no subsequent retraction by the reporting source of the human trafficking allegation.

<sup>148</sup> Indeed, nine of the 17 cases in which convictions were secured were due to guilty pleas with no trial at all.

by specific departments. Others described contacting fellow investigators or Crown who had related experience to seek their advice.

The combination of the rareness in cases proceeding to trial and the relative youth of the offence also means there is very little appellate jurisprudence on the topic to guide lower courts.<sup>149</sup> Interviewees expressed frustration at their attempts to persuade judges and juries about key elements of the offences. The same issues that lead to sexual assault acquittals (witness credibility, reasonable doubt concerning consent) are exacerbated in the context of human trafficking because of popular notions of what human trafficking entails compared with legal evidentiary burdens. Here, Crown counsel, generally more sympathetic to victims, argued for more flexible and expansive determinations of consent, exploitation and subjective fear; however, they suggested that they faced rigid and restrictive narrow legal applications of the law in court. In contrast, defence counsel suggested that Crown counsel and policy-makers are attempting to expand Canadian law concerning each element unjustifiably.

One of the topics we raised in our interviews was whether there was a discernible difference between human trafficking and the exploitation faced by some commercial sex workers. All of our interviewees agreed that there were key differences between the two and that conflating the two was problematic.<sup>150</sup> One interviewee suggested that, “**Human trafficking is not an incident, it is a pattern of behaviour.**” (#1)<sup>151</sup> Four interviewees indicated that key differences related to fear and degree of control; they asserted that there was no doubt that some people voluntarily engage in commercial sex. However, when people are forced, through any means, such that they fear the consequences of refusing to participate, or where the person is controlled by a third party to the extent that they are no longer consenting, this is no longer a situation of consensual sexual activity. They suggested that this is the point at which the law ought to step in, whether in the context of

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<sup>149</sup> We discovered only seven appeals in relation to the cases we found. Two other cases were contested on constitutional grounds and two cases have challenged expert opinion evidence.

<sup>150</sup> For more discussion of the negative consequences of terminological confusion, see Piper, N., Segrave, M. & Moore, R.N. (2015) Editorial: What’s in a Name? Distinguishing forced labour, trafficking and slavery. *Anti-Trafficking Review*, 5, 1-9. Available at: [www.antitraffickingreview.org](http://www.antitraffickingreview.org)

<sup>151</sup> Which is consistent with the *Trafficking Protocol* definition that envisions trafficking as a process.

“pimping” or human trafficking. There was general agreement that these situations are complex and that there are gradations—a continuum—of exploitation and control.

The awareness campaigns focused on sensational depictions of human trafficking—including the use of extreme violence, the international kidnapping dimension, and sexual assault—are not representative of the cases that our interviewees experienced.

**“In labour exploitation, there is often a whole other kind of exploitation that is much less overt but incredibly powerful. All exploiters have to do is threaten that if the victims don’t comply, they will call government and say the victim is here illegally. How does this meet definition of fear for safety?” (#8)**

The Canadian cases are far more complex, often involving varying levels of consent to exploitative working conditions, and rarely the extreme version of physical exploitation depicted in Hollywood movies and awareness campaigns. The interviewees expressed that they felt frustrated in their attempts at explaining the complex realities of those victimized by exploitative relationships. This was most evident in trial: the legal burden of proof in criminal cases—beyond a reasonable doubt—is not met easily. If defence counsel can successfully establish doubt concerning consent, or doubt as to whether an alleged victim truly feared for her/his safety, the accused is entitled to an acquittal. In this way, overly simplistic depictions of human trafficking as clear, unquestionable violations of human dignity may be contributing to an inability to secure convictions at trial.

### Other Factors Affecting Investigations and Prosecutions

Witness credibility was identified as a key challenge to successful prosecution in seven of the eight interviews.<sup>152</sup> The participants explained that given that the cases were not the extreme versions of human trafficking commonly found in awareness campaigns, victim consent to either commercial sex or exploitative working conditions—at any point in the course of events that led to the charges—typically resulted in an acquittal or stay of proceedings. Many of the situations described by the interviewees involved such activities as freedom of movement, access to finances, a lack of physical violence, even vacation time and the ability to go shopping and buy high-end

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<sup>152</sup> Witness credibility was a key factor in several of the cases we examined, including the appeals. We will explore this issue in more depth in subsequent publications.

goods. It is difficult to establish that the alleged victim feared for her/his safety in the face of such evidence. Victim cooperation can further complicate matters; if the victim does not see her/himself as a victim, or if s/he does not wish to testify, or a third party persuades or threatens a victim/witness not to provide evidence, the Crown will rarely meet its burden of proof.<sup>153</sup>

Interview participants compared the complexities of human trafficking cases to cases involving sexual assault, criminal harassment, or the defence of necessity or self-defence. Witness credibility challenges aside, the interviewees explained that judges were interpreting human trafficking as requiring that the victim subjectively feared for his/her physical safety. Where defence was able to establish that there was a safe avenue of escape at some point, and the alleged victim chose not to pursue that escape route, judges interpret the alleged victim's level of fear to be minimal if present at all. Three interviewees advocated that courts employ a modified objective test instead of the subjective determination: they suggested that we ought to be asking whether a reasonable person, in the circumstances of the victim, would have feared for her or his safety. Interviewees also suggested that the lack of support services available to victims, and their precarious working situations and/or immigration status, further compromised their abilities to testify reliably. Where an interpreter is required, Crown expressed further frustration at being able to elicit straightforward and non-elusive answers from witnesses. One interviewee expressed that interpreters negatively affect witness credibility in all cases, but in human trafficking cases in particular, they could be severely detrimental to successful prosecutions. The situation is even more complex in the

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<sup>153</sup> The importance of victim cooperation is demonstrated through the case law. As is clear from the cases we analyze and as documented by other analyses, there frequently are multiple and overlapping economic, safety, and legal disincentives for 'victims' to come forward especially for foreign trafficked persons who may face immigration charges and/or deportation, or whose refugee claims may be compromised. In this regard, a major criticism of the Temporary Residence Permit program in Canada is that in practice such permits have been tied to foreign victim cooperation with the authorities. It may be equally complex for domestic child/youth or adult victims to come forward if they face criminal charges or other negative state sanctions or interventions. Further, where individuals are marginalized, treated as criminal, or have faced historical oppression by the justice system—such as is the case with many Indigenous persons in Canada—the barriers to reporting victimization and participating in subsequent legal proceedings multiply. As well, 'victimhood' is a matter of self-definition and trafficked persons do not necessarily view themselves as 'victims', but often see themselves as persons in exceptionally difficult circumstances. See, especially, Dandurand, Y. & Chin, V. (2014). *Uncovering labour trafficking in Canada: Regulators, investigators, and prosecutors*. Prepared for Law Enforcement and Policing Branch, Public Safety Canada. Vancouver: International Centre for Criminal Law Reform, who outline many of these complexities in relation to their assessment of labour trafficking in Canada.

situation of cross-border trafficking, where Crown and other investigators gather evidence via telephone and other electronic communication (Interviewee #3 and #4).

One other factor identified by our interviewees as a challenge in court related to the use of expert witnesses. Some interviewees advocated for the need for experts to present evidence in court concerning common factors that are associated with human trafficking situations, common behaviour to expect from victims, or the reasonableness of contrasting statements. However, the interviewees suggested that judges were reluctant to use such expert evidence; instead they suggested that judges considered such issues to be matters for the trier of fact to determine, somewhat similar to how mental disorders are determined on a legal basis. The interviewees explained that judges were wary of prejudicing the jury against either accused persons by using graphic examples or witnesses where witness conduct may not fall within the parameters of the expert testimony. Only one individual qualified as an expert and this individual was qualified as an expert in victimology, not human trafficking. His qualification is currently one of the grounds of appeal in an upcoming case.

We raised the issue of the discrepancy between charges laid and trials with our interviewees as well. The participants indicated that there were many factors that could explain why so many charges are laid in certain areas, few charges in others, and why so few cases ultimately went to trial. They agreed that one complicating factor related to whether the region featured Crown charge approval or police-based charge approval. In areas with Crown charge approval, there are noticeably fewer cases.<sup>154</sup> However, this could also relate to the charge approval standard: in most of the country, the standard is whether there is a ‘reasonable’ likelihood of conviction. In BC, the standard is whether there is a ‘substantial’ likelihood of conviction. Political will and key stakeholders play central roles here. Regions which prioritize human trafficking report more investigations, more charges, and more convictions than regions without such a prioritization.

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<sup>154</sup> The anomaly in this pattern is that BC is the only province where federal charges under *IRPA* have been prosecuted.

## Recommendations

The interviewees recommended both macro-level and micro-level reforms to a variety of practices related to combatting human trafficking in Canada. On a macro level, the data emerging from the interviews demonstrates the challenges of enforcing laws related to trafficking for the purpose of labour exploitation within a system of criminalization and a dominant discourse that is overwhelmingly focused on trafficking in relation to sexual exploitation. Several interviewees noted that positive action, such as extending labour rights to precarious status workers and proactively using other systems of law (such as by-law enforcement) could function more efficiently to prevent labour exploitation rather than a system of criminalization. However, this would first involve expanding understandings of human trafficking to include other forms of labour beyond commercial sex. Four interviewees suggested that the unilateral focus on commercial sex has made it difficult to enforce laws against other forms of labour exploitation. The interviewees further asserted that this focus was unwarranted; other forms of labour exploitation may be more common than sexual exploitation, yet the other forms of labour exploitation are essentially ignored in Canada.

The interviewees recommended that we employ a system of incentives for employers to abide by employment laws, along with increased budgetary allotment for proactive investigation of labour exploitation. Recognizing that budgetary considerations play a significant role in the prioritization—or deprioritization—of enforcement actions, the interviewees called for greater transparency in prioritization. Moreover, one interviewee suggested that the reality is we, as a society, may not care enough about labour trafficking to realistically invest in combatting human trafficking. Interviewee #1 suggested that one of the reasons the campaigns to increase awareness about human trafficking began focusing on exploitation “in our backyards,” was because the public is more sympathetic to the plight of white women [or girls] than it is of the exploitation of non-white women and girls. Interviewee #4 further suggested that he was not sure if Canadians were really that concerned about labour exploitation in the more minor forms. He suggested that,

**“Society hinges on a certain level of exploitation of certain groups. Canadians may not be prepared to invest in substantial reform of an inherently exploitative system.” (#4)**

Budgetary constraints play out daily on a micro-level, as well. For example, interviewees suggested that the lack of budgetary funds affected the system's ability to adequately support victims through trials and investigations. Crown prosecutors explained that there are significant impacts on witnesses testifying in court, beyond the emotional challenge. Two interviewees pointed out that to be present in court, witnesses must receive time off work. While employers are required by law to provide that time, witnesses cannot necessarily afford to take unpaid time off, nor will the witnesses necessarily be able to escape other negative consequences from taking time off. Given that these individuals typically work in part-time or precarious work, if they are difficult to schedule or unreliable, their employers will simply stop giving them shifts. Court proceedings do not always run as scheduled; proceedings may be delayed, witnesses may be recalled, or their testimonies may be extended to a second day without adequate notice. Witnesses may also require child care, transportation, or other supports that can be difficult to access unless the witness is well-informed. Where witnesses face immigration consequences due to illegal entry into Canada, overstaying VISA's, work beyond their VISA permits or other issues, there is little to no incentive for the allegedly exploited labourer to take part in a trial. Therefore, interviewees recommended that victim-centered supports, including the removal of barriers related to immigration status and even providing immunity from deportation would greatly assist future investigations and prosecutions. Here, once again, interviewees came back to the question of whether Canadians were more opposed to illegal immigration or the exploitation of vulnerable groups.

Interviewees suggested that factors related to cultural understandings of acceptable labour conditions underlie both macro-level and micro-level challenges to enforcing anti-trafficking laws. On a macro-level, in societies with high levels of poverty, significant disparity between groups of citizens, and systems of social organization that depend on class-specific designations and social status hierarchies, working conditions for those in the lower socio-economic class can be considerably different from the typical working conditions in Canada. This can function to make it difficult for Canadians to understand why someone would consent to work in conditions that in Canada, would be considered exploitative or even illegal. Two interviewees explained that some people come to Canada with different expectations of their employees/employers; practices that were acceptable in one country may not be acceptable in another. This can add a vitally important layer of complexity in discussing consent and the subjective intention to exploit in a criminal trial.

Each of the interviewees referred to a need for increased training, for several groups in the criminal justice system. Four of the interviewees were critical of the existing material; they were concerned about the sources of data, the ideological orientation that may be present and the empirical validity of the statistics published. Four other interviewees suggested that judges needed specific training on the issue, as well as guidance from appellate levels of court regarding core legal elements of the offences and thresholds for evidence, including the use of expert witnesses. Interviewees suggested police were already receiving training, but that the training material concerned only sex trafficking. The Department of Justice published a manual for prosecutors in 2014 which will greatly assist Crown counsel across Canada.

In sum, the interviewees exposed the complexity and the breadth of challenges facing criminal justice personnel in their efforts to combat human trafficking in Canada. The interviewees all expressed frustration at the institutional barriers that they saw as hampering their work. Most interviewees also pointed to much larger, systemic challenges such as how to define exploitation, or consent in the context of labour, and in the particular context of commercial sex. They highlighted pragmatic barriers, such as funding, victim cooperation, and evidentiary issues, but they also addressed larger issues related to safe migration and the vulnerability of impoverished groups internationally. Four of the interviewees were critical of the criminal justice approach on a general level and the targeted enforcement against the commercial sex industry on a specific level. Interviewee #4 reminded us that, **“the criminal law is a blunt tool to effect social change.”** Criminalization carries with it serious consequences for all associated groups, including some victim groups, or some groups perceived to be victims, as is evidenced by the following discussion from our focus groups.

## Perceptions on the Law: Focus Group Participants<sup>155</sup>

SWAN staff, board members and volunteers participated in the *Palermo Project* to assist in educating the public, policy and lawmakers about the women they support and the issues they experience in society. They also sought to address the misrepresentation of im/migrant sex workers as either victims of human trafficking or criminals participating in commercial sex. There was overwhelming agreement that the majority of SWAN's clients are mothers who are working to support their families and/or to build a better life. They are described as 30 to 50 years of age and are mainly im/migrants from Asia who live legally in Canada as either permanent residents, naturalized citizens or on temporary visas.

SWAN members spent little time discussing human trafficking incidents and legislation because the members had little knowledge concerning the scope of the law. They had not come across any victims of trafficking in their outreach work. While members acknowledged that trafficking happens, SWAN members rejected the notion that all of their clientele were 'victims' and instead suggest that the women they support are resilient, resourceful and hard-working. Criminalization of the sex industry and punitive approaches to regulation based on the dominant trafficking discourse were identified as major contributors to harms inflicted directly and indirectly on the women SWAN supports through stigma, the creation of laws and policies, law enforcement and raids, and limited funding opportunities for sex work support organizations like SWAN. The focus group participants devoted significant time to discussing how the politicization of anti-trafficking efforts has created barriers to harm reduction-focused policies and NGO's such as SWAN.

"I think the women are the opposite of who the trafficking victim is represented to be and who migrant and immigrant sex workers are represented to be, ie., passive, subservient, uneducated, backwards, unable to speak for themselves... They're go getters, despite all the barriers that they have in the Canadian labor market; they still find a way to provide for their families."

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<sup>155</sup> Kim Mackenzie is the primary author of this section.

“They can’t participate in the formal economy, they can’t go to school, they don’t have the financial resources, and there are certain places where food banks won’t take them without documentation. At what point is this person going to say, okay I need to feed my kids. [...] So women make choices. [...] Maybe somebody would do something else if they wanted to. A lot of people wouldn’t because this is how they exercise their agency. They’re able to feed their kids. They’re able to go to work. They’re proud of who they are and yet they’re completely ignored from discourse or they’re just marginalized as people who don’t really have options.”

Participants suggest that women’s reasons for coming to Canada and working in sex work vary. Many im/migrants were professionals in their countries of origin and face significant barriers in the Canadian labour market. They are unable to obtain work in their field in Canada because of language barriers and/or their lack of Canadian work experience and credentials. For this reason, they search for other viable options to make ends meet, and sex work is one of those options.

The focus group participants expressed uncertainty over the definition of “human trafficking.” They were unable to decisively construct a definition because most participants agreed that the definition is dependent on circumstances. The participants suggested that subjective and political framing results in misuse, overuse, and inaccurate use of the term. Indeed, participants suggested that rather than a change in conduct over the past ten years, there has actually been a change in language: what used to be called “sexual exploitation” is now simply, “trafficking.” SWAN members explained that their concern about the conflation of all forms of commercial sex as exploitation—including consensual sexual exchanges—was inadequate differentiation among individual circumstances.

“I think if you use one definition to encapsulate everyone’s experiences you end up responding in only one way. So the ability to respond effectively to each case, while every experience is unique, is completely misguided.”

Participants unanimously agreed that sex work and human trafficking are not the same thing; there is a range of experiences in commercial sex where differing degrees of agency are exercised. Participants said that denying this diversity ignores the root systemic causes that result in women choosing sex work. Participants suggested that society's moralistic views of sex – what is good or

“...when the public or the media hear the words, “Asian sex worker” or, “Asian prostitutes” or “Asian massage parlors” it's very uncritically linked to trafficking, exploitation, and victimization. Very quickly they're just connected and it's like they just couldn't fathom the idea of an Asian woman choosing to do sex work.”

bad sex, how women can or cannot express their sexuality, and what women are or are not allowed to do with their bodies— influence conceptions of agency. In addition to perceptions of ‘proper’ female sexuality, participants suggested that racism plays a role in the conflation of sex work and human trafficking, especially within the context of Asian migrant sex workers.

SWAN members identified one of the major harms of anti-human trafficking discourse to be the resulting stigma of labeling im/migrant sex workers as either helpless victims with no agency or criminals who deserve increased police enforcement and/or violence. This stigma affects service provision, too: assumptions

made by service providers prevent women from accessing services where they have been judged or where they received intrusive and inappropriate questions in the past. Access to non-judgmental health care was identified as the greatest need by SWAN members; however, this stigma carries over to the development and enforcement of laws and policies.

The *PCEPA* had recently been introduced when we conducted the focus groups. Participants explained that fear was already pervasive in conversations with SWAN clientele about the passing of the new law. This impacted SWAN's ability to do outreach because some women and managers of massage parlours were so afraid to take condoms for fear that they would be used as evidence of sex work. Participants also spoke about managers' intentions to sell their massage parlours and the movement of women working in parlours to condos and apartments. The dominant trafficking discourse not only contributes to laws and policies, but also to the enforcement of these laws and policies, particularly through the practice of raids that most often are carried out by police, but also by immigration and bylaw officers. Law enforcement approaches in certain municipalities appear to be based on erroneous and racially-based assumptions about im/migrant sex workers.

SWAN members stress that the overwhelming majority of women working in massage parlours are working legally. In fact, most are Canadian citizens. However, raids that include immigration authorities still occur, and fines for bylaw infractions regularly result. While to the general public, police enforcement of by-law infractions might not seem like a major issue, the women perceive the situation differently. The participants highlighted several harmful impacts of raids, including the displacement of workers from licensed establishments to unlicensed apartments, which women have expressed to SWAN members to be less safe working environments. As one SWAN member pointed out, Vancouver has a history of displacing sex workers to the most dangerous fringes of the city, a policy which enables predators like Robert Pickton to carry out violence against sex workers.

After experiencing a raid, women and managers become even more fearful of police and government officials. Because of this fear of police, if violence or exploitation occurs, the women are reluctant to report the incidents to police. SWAN members suggest that this perpetuates

“I think that what comes out of these raids is, like maybe they check the licenses, they give a few tickets and fines for not adhering to the bylaws, but its more than that for the women. It’s not just like the ticket; you’re so scared. Where is this information going to go? Is my spouse going to find out? Do I have to work in an apartment now because I want to avoid these police? So they don’t realize that is more than just checking their license and giving a fine. There are long term psychological and other impacts as well.”

violence because perpetrators know the women will not report to police. Furthermore, participants unanimously agreed that if SWAN ever came across a case of human trafficking, it would be difficult to contact the police because of the women’s lack of trust in—and fear of—police.

After police raids, some massage parlours have been reluctant to receive SWAN’s services for fear that SWAN tipped the police off. Sex workers and massage parlours are uncomfortable taking condoms for fear that they could be used as evidence that sexual services are offered at their establishment. Unnecessary police enforcement prevents women from reporting and seeking help

from the police when they encounter any sort of violence or victimization. Participants advise police that raids function to contradict the police intentions to provide protective services.

“There’s a language, culture issues, and isolation. They may not be able to speak up as much and ask for help if they are encountering exploitation. At the same time, there is this concern that if they do come out and say, we choose to do this, it is our choice, we want to be doing sex work, then there’s the backlash of, well you chose it and you deserve whatever is coming to you and you deserve the harassment, you deserve the treatment by the public and agencies. So they’re kind of stuck between a rock and a hard place.”

One overarching piece of advice from SWAN members is that police officers need to be conscious of the power that comes with their uniform, their size, and the institution that they represent. They also need to be aware of their intentions and how their actions are going to affect sex workers. While most often, law enforcement intentions are good, they are often unaware of how their actions impact the women. While they might think they are providing protective services for the workers by parking their police cars outside an establishment, the women are more likely to perceive that as surveillance. Participants suggested that police should ask sex workers if there is anything that the police can do for the workers, rather than make demands of the workers. SWAN members agreed that police and other CJS personnel need improved training and resources that differentiate sex work and human trafficking to better understand their role in protecting in/migrant sex workers from a health and safety perspective.

The single greatest recommendation for policy makers from SWAN members is to allow for a critical perspective on human trafficking and to include a variety of stakeholders in conversations about human trafficking and sex work policy. Policy development and implementation need to be more transparent and community partners like SWAN ought to be invited to policy conversations. In allowing for a more balanced dialogue, policy makers and authorities can be educated on the differences between consensual adult sex work and human trafficking, and on the harms of discourse that presents them as equal and interchangeable. Participants emphasize the ethical responsibility of policy makers to draw on evidence-based research and avoid letting morality and

ideology cloud policy development. This overwhelmingly includes listening to those populations that are actually affected by the policies and legislation.

Participants discussed how the needs of im/migrant sex workers are often not addressed because of service providers' and policy makers' lack of knowledge and understanding about the population. The needs of the women they support are much different than street-based sex workers that are most often the focus of sex work policies. Addictions, mental health and housing are not common needs within their population; their greatest need perceived by SWAN members is access to non-judgmental health care and social services. The root factors that play a role in a woman's migration and decision to work in sex work need further examination. SWAN members reiterated the many barriers immigrants experience and their lack of opportunities in the Canadian labor market and suggest that this could be a start in addressing why some women work in sex work. Participants propose that as long as options for employment are limited, sex work will happen regardless of attempts to stop it.

“If they're concerned about trafficking and concerned about the exploitation of international students, then enact laws that help fight exploitation, not laws that take away their choices and make it more dangerous for them. It's separate.”

## Consolidating the Data

We embarked on this research project for several reasons relating to increasing access to justice for im/migrant sex workers by employing collaborative and inclusive methods to target three different data sources on the same topic. We chose this method with the belief that the different sources would each bring unique sets of knowledge to ultimately provide a more comprehensive view of the total scope of human trafficking and the effects of related legal actions taken to combat human trafficking in Canada. We chose to include front line workers—both CJS personnel and members of SWAN’s outreach team and board—because we believe that these groups have extensive applied knowledge that is not always brought forward in policy discussions. Our primary goals were to contribute to knowledge uptake of marginalized groups and to foster increased communication between sectors working on similar issues, with the fundamental purpose of improving access to justice for im/migrant sex workers.

In developing this research project, we expected to find significant discrepancies between our sources of data. In particular, we expected nearly opposing perspectives between the CJS personnel and those working with im/migrant sex workers. Instead, we found several lines of significant agreement between groups perspectives. The CJS personnel expressed similar frustrations to the NGO members; some of their specific sources of frustration differed, but together, they speak to some of the inherent limitations that exist in Canadian anti-trafficking legal efforts as well as provide us with several points of consensus from which change can occur. Commonalities between the groups included dissatisfaction with the lack of transparency and difficulty in accessing verifiable evidence about the scope and nature of human trafficking and law enforcement actions concerning human trafficking. This issue ought not to be under-stated; a lack of access to public data raises serious concern about the empirical validity of sources and can create misrepresentations of data when the full record, or scope, of a problem is deliberately obscured. Further, access to data is hampered by institutional challenges navigating complex communication systems involving several departments, with different mandates, different communication technologies, different ways of reporting information, and inadequate funding to fully staff important units such as the HTNCC. The NGO members expressed frustration about the criminal justice, immigration, and health care systems and linked the systematic barriers to ideologically

informed policy, and to individual resistance by individual CJS personnel. However, the data from our interviews demonstrates that there are considerable systemic challenges such that root causes for some of the difficulties experienced by NGO's in accessing data lie with the system, and system inadequacies—for example budgetary constraints or evidence issues—rather than individuals and individual politics. Nevertheless, politics come into play when individuals then use systemic challenges as excuses to refuse to provide access rather than work together with NGO members to overcome these barriers.

Politicization remained a consistent theme, affecting multiple areas—such as funding, prioritization of law enforcement actions, policy drafting and implementation, among others—across both the CJS interviews and the NGO focus groups. Criminal justice policy in general has become increasingly politicized in Canada<sup>156</sup> and human trafficking is an inherently political topic, with a longstanding tradition of widely diverging views on fundamental issues such as agency, consent and the definition of exploitation. Our data evidence the challenges that CJS personnel face in attempting to apply laws in this politicized context.<sup>157</sup> Due to a lack of agreement of the specific line at which exploitation occurs, meeting evidentiary thresholds in court is quite difficult. Some parties argue for more expansionist definitions, while others argue that such expansionism is not necessarily in the interests of targeted groups when the criminal justice system is the primary mechanism of intervention. The information provided by NGO groups like SWAN is crucial to full consideration of the effects of legal actions before, during and after their implementation. This is where fundamental policy directions need to be clear. If Canada chooses to prioritize border security over safe migration, it will remain difficult—if not impossible—to prevent labour exploitation and human trafficking. Hence, our initial concern regarding the politicization of human trafficking policy and related enforcement actions becomes amplified as the data align.

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<sup>156</sup> For further discussion of the general politicization of criminal justice policy in Canada, see Ismaili, K., Spratt, J., & Varma, K. (2012). *Canadian Criminal Justice Policy: Contemporary Perspectives*. Ontario: Oxford University Press.

<sup>157</sup> For more information about the challenges that emerge from politicizing human trafficking specifically, see Chuang, J. (2015). The Challenges and Perils of Reframing Trafficking as “Modern-Day Slavery.” *Anti-Trafficking Review*, 5, 146–149. Available at: [www.antitraffickingreview.org](http://www.antitraffickingreview.org)

Further, the politicization gains increased importance as the real effects of “crimmigration”<sup>158</sup> increasingly result in serious danger and even death for desperate migrants, as evidenced by the state of the refugee crises in Europe.<sup>159</sup>

Macro-level issues concerning policy directions ought to be influenced by reliable evidence. If we do not know the full scope of a social issue, or if our lens is narrowly focused on only one part of a phenomenon, we cannot have confidence in our responses to that phenomena. We need to understand the full parameters of a problem to effect change. The evidence emerging from reviewing the primary case data aligns with our—and several other critical scholars’ who raise counter-narratives—suspicions concerning the lack of an empirical basis for governmental assertions about the scope of human trafficking in Canada. Our case data demonstrate significant departures from published governmental statistics on human trafficking in Canada. This could be a result of inadequate access, poor reporting mechanisms, and the same budgetary and personnel issues discussed above.<sup>160</sup> It also likely stems from a lack of definitional precision in how government agencies are defining trafficking in persons offences. However, our concern that the publications misrepresent the empirical data on human trafficking in Canada has only increased as a result of this study.

The deliberate conflation or linking of trafficking with sex work is evident when the legislative amendments are viewed alongside human trafficking law enforcement investigation arrangements and government reports on human trafficking in Canada. This is made clear by amendments to trafficking offences as part of the *PCEPA*, which criminalizes the purchase of sexual services, by

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<sup>158</sup> The term, “crimmigration,” coined by Juliet Stumpf, refers to the intersections of criminal and immigration law and the increased interdependence on criminal law as a tool to address issues related to immigration law. See also growing international criticism about crimmigration policies <http://www.theguardian.com/environment/true-north/2015/sep/04/harpers-canada-has-more-than-one-refugee-death-on-its-hands>.

<sup>159</sup> See Hastie, B. (2013). To protect and control: Anti-trafficking and the duality of disciplining mobility. In M. Geiger & A. Pecoud (eds) *Disciplining the Transnational Mobility of People*. (pp. 126-144). New York: Palgrave MacMillan, concerning the tensions that exists when trying to meet “victim” needs under a paternalistic and state-centric legal regime.

<sup>160</sup> We also wish to note that the findings do not discuss the many reasons why cases do not progress to the formal justice system and why individuals do not report such victimization. See O’Doherty (2011) Criminalization and Off-street Sex Work in Canada. *Canadian Journal of Criminology and Criminal Justice*. 53(2), 217-245 for further discussion concerning the silencing effects of criminalizing aspects of commercial sex.

police investigative units that are part of vice squads or sexual exploitation units,<sup>161</sup> and by official reports on trafficking that overtly link trafficking in persons to commercial sex work.<sup>162</sup> Our study findings suggest that trafficking laws and their enforcement conflate trafficking and sex work: the laws are disproportionately used to prosecute pimping, procuring and bawdy house offences, especially those involving minors, as opposed to trafficking for forced labour or services or in relation to the other exploitive conditions contemplated by the *Trafficking Protocol*. Our findings also evidence what seems to be a clear departure from the *Trafficking Protocol*'s intent to counter transnational *and* organized crime and exploitation linked to migration. A majority of prosecutions to date have been in relation to domestic sex trafficking. Moreover, despite claims made by the government and in the media, based on the cases that have been prosecuted to date there is limited evidence of criminal organizations perpetrating such trafficking offences.<sup>163</sup>

The reductive narrative of human trafficking as predominantly an issue of extreme sexual exploitation is a major impediment to prosecuting cases successfully. This myopic and hyper-exaggerated focus affects cases where sexual exploitation is an actual concern, but it also severely impacts labour trafficking prosecutions and investigations, as well as noncommercial sex work contexts in which sexual exploitation also occurs.<sup>164</sup> The single narrative grossly misrepresents the

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<sup>161</sup> Such as the Halton Police Service Human Trafficking and Vice Unit: <http://www.haltonpolice.ca/specializedunits/humantraffickingvice/Pages/default.aspx>; Toronto Police Service Sex Crimes: <http://www.torontopolice.on.ca/sexcrimes/>; the Peel Regional Police Vice Unit: <http://www.peelpolice.on.ca/en/aboutus/viceunit.asp>; the VPD counter exploitation unit: <http://vancouver.ca/police/organization/investigation/investigative-services/special-investigation/vice.html>; York Regional Police vice unit: <http://ottawacitizen.com/news/local-news/a-revamped-vice-squad-detective-finds-better-way-to-fight-human-trafficking>; the Edmonton Police vice unit: <http://news.nationalpost.com/news/canada/chasing-the-money-sex-workers-lured-to-oil-rich-alberta-undercover-human-trafficking-probe-finds>, among other examples.

<sup>162</sup> See, especially, Royal Canadian Mounted Police. (2014). *Project safekeeping 2013*. Prepared by the Human Trafficking National Coordination Centre. Ottawa: RCMP; Royal Canadian Mounted Police. (2010). *Human trafficking in Canada*. Ottawa, ON: Royal Canadian Mounted Police. Retrieved from [http://publications.gc.ca/collections/collection\\_2011/grc-rcmp/PS64-78-2010-eng.pdf](http://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-78-2010-eng.pdf).

<sup>163</sup> See Dandurand, Y. and Chin, V. (2014). *Uncovering labour trafficking in Canada: Regulators, investigators, and prosecutors*. Prepared for Law Enforcement and Policing Branch, Public Safety Canada. Vancouver: International Centre for Criminal Law Reform, pages 11, 30 who make this same observation in relation to trafficking for the purpose of labour exploitation.

<sup>164</sup> For further discussion of the limitations related to labour exploitation, see Kaye, J. and Hastie, B. (2015). The *Canadian Criminal Code* offence of trafficking in persons: Challenges from the field and within the law. *Social Inclusion*, 3(1), 88-102. See also Dandurand, Y. and Chin, V. (2014). *Uncovering labour trafficking in Canada: Regulators, investigators, and prosecutors*. Prepared for Law Enforcement and Policing Branch, Public Safety

complexity of trafficking and results in unintentional harm to the very individuals it purports to protect. Exploitation exists on a spectrum and affects all forms of labour; our focus on exploitation as solely existing in marginalized forms of labour such as sex work renders invisible the exploitation that occurs elsewhere. Further, campaigns that rely on extremism, or depict exploitation along specific lines, such as sexual exploitation, make it difficult to persuade juries, and even judges, about non-extreme but still harmful forms of exploitation occurring in other contexts. There are far more cases with partial consent to exploitative labour, or consent to precarious and informal labour due to a lack of legal economic or migration opportunities.<sup>165</sup> Our data raise the concern that these cases become more difficult to investigate and prosecute in a context of sensationalism and “crimmigration.” If our goal is to improve labour conditions and reduce the exploitation of vulnerable labourers, such as im/migrant sex workers, we need to reconsider our reliance on inflated statistics and extreme depictions.

The data presented in this report demonstrates how beneficial it can be to work with front-line staff and grassroots groups, as well as individuals responsible for implementing and enforcing policy. We are excited at the lines of communication that have been developed as a result of our work and we look forward to finding ways to translate this data into concrete action. The following section outlines some of the recommendations that emerged from our interviewees, SWAN focus groups, and our preliminary legal analysis.

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Canada. Vancouver: International Centre for Criminal Law Reform, at pages 25-51 recommendations in relation to more effectively preventing and responding to labour trafficking.

<sup>165</sup> See, for example, Dandurand, Y. and Chin, V. (2014). *Uncovering labour trafficking in Canada: regulators, investigators, and prosecutors*. Prepared for Law Enforcement and Policing Branch, Public Safety Canada. Vancouver: International Centre for Criminal Law Reform. See also West Coast Domestic Workers Association. (2013). *Access to justice for migrant workers in British Columbia*. Vancouver: West Coast Domestic Workers Association. Available at: [http://www.wcdwa.ca/wp-content/uploads/2014/03/Access-to-Justice-for-Migrant-Workers\\_WCDWA\\_FINAL\\_30\\_07\\_20131.pdf](http://www.wcdwa.ca/wp-content/uploads/2014/03/Access-to-Justice-for-Migrant-Workers_WCDWA_FINAL_30_07_20131.pdf) ; Brazao, D. (2008, 30 August). Exploited workers Canada’s ‘slave trade’: Skilled Filipino workers packed into filthy house, denied pay, threatened with deportation. *The Star* (30 August 2008), available: <http://oppenheimer.mcgill.ca/Exploited-workers-Canada-s-slave?lang=fr>.

## Recommendations

Our interviewees and focus group participants each provided several recommendations for change moving forward (discussed in the specific sections above).<sup>166</sup> In this section, we outline some general recommendations that emerged from the totality of the evidence.

Canada, like many other countries, has struggled to implement the international definition of human trafficking per the *Trafficking Protocol*.<sup>167</sup> A primary intention of the *Trafficking Protocol* was to address transnational and organized crime; however, our laws have been applied to transnational trafficking cases only four times and in an organized crime context once. Instead, the bulk of prosecutions in Canada have targeted individual situations involving sexual exploitation of minors or “pimping.” As a result, our discourse and policies appear to be moving away from vulnerability in global migration, a pressing issue warranting much more attention than it is currently receiving. Instead, the evidence demonstrates legislative expansionism into domestic situations of commercial sex, along with increased border securitization and reduced opportunities for safe migration. Such expansionism, absent strong empirical evidence, is particularly worrisome, especially in light of the strong critiques concerning im/migrants’ human rights and access to safe migration.

Access to justice for im/migrants—with particular emphasis on those in precarious work situations—requires a multi-faceted approach involving several stakeholders.<sup>168</sup> Legislative responses to irregular migration status need to be attentive to the underlying structural conditions and contextual factors that facilitate exploitation and promote workplace vulnerability. In our responses, we ought not to lose sight of the fact that the im/migrants themselves, their needs and

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<sup>166</sup> See also [Appendix A](#).

<sup>167</sup> For a more in depth discussion of Canada’s struggle to extend anti-trafficking laws to situations of international and organized crime-based contexts, see, e.g., Hastie, B. (2013). To protect and control: Anti-Trafficking and the duality of disciplining mobility. In M. Geiger & A. Pecoud (eds.), *Disciplining the Transnational Mobility of People*. (pp. 126-144). New York: Palgrave MacMillan.

<sup>168</sup> See the Dhaka principles for migration with dignity (<http://www.dhaka-principles.org/>). See also Dandurand, Y. and Chin, V. (2014). *Uncovering labour trafficking in Canada: Regulators, investigators, and prosecutors*. Prepared for Law Enforcement and Policing Branch, Public Safety Canada. Vancouver: International Centre for Criminal Law Reform.

their wishes, need to take priority in policy responses. One of our primary recommendations is to ensure increased avenues of non-judgmental communication between representatives of formal institutions—members of parliament, Department of Justice members, police, health care providers, CBSA and others—with vulnerable groups to better understand the individuals and meet their needs. This can sometimes be managed by working with NGO's, but we ought to also work towards creating ethical ways of involving the individuals most affected by our policies. As a part of this recommendation, increased communication ought to be reflective, setting aside personal ideological judgements and allowing for constructive criticism of our policies to ensure that our laws—and their enforcement—are effective as well as rights and evidence-based. Open dialogue about unintended harms associated with law enforcement and/or health services will ultimately allow for more tailored policies which could serve to eliminate existing harms to these already vulnerable groups and facilitate increased reporting of victimization to authorities. Likewise, NGO's and marginalized individuals need better access to criminal justice system representatives so that information about legal parameters, evidentiary thresholds—and other key issues such as responsibilities and funding limitations—that pose difficulties for CJS personnel can be communicated more directly to the groups seeking assistance or accountability for legal interventions.

We highly recommend working towards transparent, accountable, and empirically-based production of knowledge about human trafficking in Canada. We faced several barriers in accessing data that ought to have been public and easily obtainable, as they are in other countries. The difficulties that exist in accessing data contribute to a lack of confidence in the validity of the government publications, regardless of whether such assertions are warranted.<sup>169</sup> As a part of this recommendation, we urge media and those reporting to media to reduce the sensationalism in their reports and to resist conflating sex work and human trafficking. We ask those reporting on human trafficking to work inclusively to challenge stigma and promote counter-narratives based on

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<sup>169</sup> See also Kingston, A, (2015). Vanishing Canada: Why we're all losers in Ottawa's war on data. *Macleans* Sept. 18. 2015. Available at: <http://www.macleans.ca/news/canada/vanishing-canada-why-were-all-losers-in-ottawas-war-on-data/>

human rights. We all ought to reflect on whose voices are prioritized in these debates and why some voices are absent or silenced.<sup>170</sup>

From a socio-legal perspective, accurate statistics, evidence-based and non-ideological policy are instrumental to creating effective policy to address social issues.<sup>171</sup> From the perspective of those affected by the policies of unintentionally harmful protectionism or criminalization, accurate representations and understanding of the multiple identities and complex needs of those with lived migration experiences is the only way to create truly responsive services to meet those needs.<sup>172</sup>

These two arguments—or recommendations—have formed the basis of calls for change internationally and across academic and NGO sources.<sup>173</sup> The data from this study present a third perspective from which change in our representations and the discourse about human trafficking proves necessary. From the perspective of those trying to enforce and apply the criminal law, sensationalist and extreme depictions of torture, slavery, sexual assault, present a restrictive narrative that can make prosecuting labour exploitation—whether involving sexual exploitation or not—difficult.<sup>174</sup> Exploitation and coercion occur on a nuanced continuum.<sup>175</sup> We need far more

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<sup>170</sup> See Hele, C., Sayers, N. & Wood, J. (2015) *What's missing from the conversation on missing and murdered indigenous women and girls* Available at: <http://the-toast.net/2015/09/14/whats-missing-from-the-conversation-on-missing-and-murdered-indigenous-women/>

<sup>171</sup> See, especially, Weitzer, R. (2011), Sex trafficking and the sex industry: The need for evidence-based theory and legislation. *The Journal of Criminal Law & Criminology*, 101(4), 1337-1369. See also De Shalit, A., Heynen, R, and van der Muelen, E. (2014). Human trafficking and media myths: Federal funding, communication strategies, and Canadian anti-trafficking programs. *Canadian Journal of Communication*, 39, 385–412.

<sup>172</sup> See Global Alliance against Traffic in Women (GAATW). (2007). *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Thailand: GAATW. See also Shah, S. (2011) *Trafficking and the conflation with sex work: Implications for HIV control and prevention*. Working Paper for the Third Meeting of the technical Advisory Group of the Global Commission on HIV and the Law, 7-9 July 2011. Available at: <http://hivlawcommission.org/index.php/report-working-papers?task=document.viewdoc&id=100>

<sup>173</sup> For example, see the Canadian Alliance for Sex Work Reform, *Migrant sex workers and sex work related laws* available at: <https://drive.google.com/folderview?id=0B3mqM0hRg5FeNIY4ZkxFb2pLaWM&usp=sharing>

<sup>174</sup> In support of this finding that sensationalist depictions of human trafficking create a higher standard for prosecutors to meet, see Chuang, J. (2015). The Challenges and perils of reframing trafficking as “modern-day slavery.” *Anti-Trafficking Review*, 5, 146–149. Available at: [www.antitraffickingreview.org](http://www.antitraffickingreview.org)

<sup>175</sup> See especially Dandurand, Y. and Chin, V. (2014). *Uncovering labour trafficking in Canada: Regulators, investigators, and prosecutors*. Prepared for Law Enforcement and Policing Branch, Public Safety Canada. Vancouver: International Centre for Criminal Law Reform, at pages 2, 25, 28, 35-37. See generally the International Labour Office. (2009). *Operational indicators of trafficking in human Beings: Results from a Delphi survey implemented by the ILO and the European Commission*. Available: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf);

discussion about our definitions of trafficking in persons and the concept of exploitation and coercion, with application to the entire spectrum of situations where exploitation occurs.<sup>176</sup> Trafficking in persons is a complex phenomenon with very serious consequences for failed policy interventions; as a result we must work towards better addressing the concerns raised by those most affected by our policies and their enforcement. At their core, anti-trafficking policies should not adversely affect human rights and the dignity of vulnerable persons.

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Skrivankova, K. (2010). *Between decent work and forced labour: Examining the continuum of exploitation*. United Kingdom: Joseph Roundtree Foundation.

<sup>176</sup> See also the “Continuum of Choice” related to commercial sex created by the BC Coalition of Experiential Communities.

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## Appendix A: SWAN's Advocacy Tool Targeted Messages For Service

### Provision

#### Police Officers

Sex workers are often isolated because of the criminalized nature of their work-related relationships and clients. You as a police officer may be one of the only people outside of the sex industry with whom they come into contact. By being aware of how you can help, sex workers will be more likely to seek your assistance if they experience violence or victimization.

#### *12 Ways a Police Officer Can Help Address the Needs of Im/Migrant Sex Workers*<sup>177</sup>

1. Have a reason to visit an indoor venue and be aware of the consequences of casual visits (e.g. fear of keeping condoms on the premises, fear of police which can lead to the underreporting violence when it actually happens). Be as transparent as possible about the reason for a visit. If women are not aware of your reason to visit, they may assume that you are there to criminalize or penalize them.
2. Be cognizant of im/migrant sex worker stereotypes and misinformation. Do not assume an im/migrant sex worker is forced into doing sex work. Do not assume that a non-White worker is an immigrant or migrant. Do not ask her if she is forced unless you observe legitimate evidence to support the question. Consider what may be influencing a question such as “are you forced?” Are misguided anti-trafficking campaigns causing you to ask that question? Are Hollywood movies creating perceptions that all im/migrant sex workers are trafficked? Consider whether you would walk into other businesses and ask im/migrant workers “are you forced?”
3. Remember that you are not the morality police. Do not treat women or their clients in a paternalistic way. When you make comments such as, “You’re too good to be doing this”

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<sup>177</sup> Adapted from Living in Community *Curriculum for Change*.

or, “What do you really want to be doing with your life?” you are contributing to the shame and stigma associated with sex work.

4. If possible, provide a business card. Always state your name.
5. Use interactions as an opportunity to inform sex workers that the purpose of the new prostitution laws, the *Protection of Community and Exploited Persons Act*, is not to arrest sex workers. Do ask if there is anything of concern they would like to report.
6. Be aware of how your presence as a police officer can be intimidating. The uniform, the equipment you are carrying, and your size relative to the sex worker are all factors. Be aware of your body language, facial expressions and tone of voice.
7. Do not discredit sex workers’ reports as hearsay and assume they are unreliable witnesses because of what they do for a living.
8. Do not confiscate condoms or draw any attention to condoms that may be visible. Sex workers must have access to condoms; unprotected sexual services can have negative impacts on STI and HIV prevention and could contribute to a public health crisis.<sup>178</sup>
9. Use the least intrusive means to resolve situations. Call a sex work support organization such as SWAN to assist in non-emergency situations, especially those that involve community concerns or complaints. Is it necessary to visit an indoor venue in uniform? Consider visiting in plainclothes or in an unmarked car if possible.
10. Do not expect a sex worker to trust you or be thankful. Trust takes time to develop and must be nurtured. Recall that you represent an institution that at times strikes fear in some people’s minds.
11. Due to entrenched sex work stigma, consider that sometimes you should not treat a sex worker just like any other community member. This may seem counterintuitive, but understand that certain actions, even with good intentions, can often have unintended consequences due to sex work stigma. For example, you are doing a follow-up visit to a sex worker’s home in uniform and a marked car to ensure her safety. While the intention

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<sup>178</sup> Human Rights Watch. (2012). *Sex workers at risk: Condoms as evidence of prostitution in four US cities*. Retrieved from [https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities?\\_ga=1.196889324.1920651111.1434567549](https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities?_ga=1.196889324.1920651111.1434567549)

to ensure her safety is a good one, showing up at her private residence in uniform and in a marked car can have unfortunate consequences for her. Maybe her family doesn't know what she does for work. Maybe her landlord overhears your conversation, calls the Ministry of Children and Family Development and/or evicts her for being a sex worker.

12. Show discretion and respect for clients as well as workers. This goes a long way in building relationships with sex workers. Sex workers take note of your ability to distinguish between abusive and non-abusive clients. Nonessential harassment of good clients drives away business and creates barriers between you and sex workers.

## Policy Makers

As a policy maker, you are the backbone to ensuring im/migrant sex workers' needs are met because you set the foundation for policies that inform service provision, law enforcement, and even funding allocations.

“I think when you have that much responsibility in society-when you're making laws that affect people's lives in such a way, you have a responsibility to know the other side of the conversation and to listen to it and to have more self-awareness about the harms you are perpetuating in society.” – Focus Group Participant

### *9 Ways Policy Makers Can Help Address the Needs of Im/Migrant Sex Workers:*

1. Do not equate adult consensual sex work with human trafficking. Educate yourself on the difference, and reach out to sex work support organizations if you need more information.
2. Understand the differences between migration for work and human trafficking (see pg. #?).
3. Note that exploitation and human trafficking are not the same and focus on systemic ways exploitation can be prevented without the use of harmful anti-trafficking discourse and policies.
4. When developing policies, consult with community partners such as SWAN who work with the population for which you are creating these policies. Allow a critical perspective on human trafficking to be a part of the discussion.
5. Be cognizant of the harms that are perpetuated by anti-trafficking discourse and how you as a policy maker have the opportunity to curtail those harms.

6. Create policies that are informed by evidence, not by ideology. Use research such as ‘*The Palermo Protocol & Canada Ten Years On: The Evolution and Human Rights Impacts of Anti-Trafficking Laws in Canada*’ to formulate policies that are more representative of what is happening on the ground.
7. Understand that im/migrant sex workers who work indoors have very different needs than street-based sex workers. While street-based workers often need housing, addiction and/or mental health services, im/migrant sex workers rarely, if ever, request these services. Consider im/migrant sex workers in policy discussions about sex work because although street-based sex work is more visible, the majority of sex work occurs indoors.
8. If you have the dual role of policy making and funding allocation, consider how you may inadvertently contribute to the funding of anti-sex work initiatives when funding anti-trafficking organizations.<sup>179</sup>
9. Do not ignore other social justice realities such as gender inequality, racism, LGBTQ rights, socio-economic reforms, the prison system, im/migrant rights, and mental health because real anti-trafficking work often starts with addressing these issues.

## Researchers

Sex work, particularly migrant sex work, is a trendy and ‘sexy’ research topic at the moment, and continues to attract a lot of interest from students, researchers and academics. Despite this, it’s unclear how much of this research has benefited sex workers themselves or helped to decriminalize or destigmatize sex work.

### *5 Ways Students, Researchers and Academics can Conduct Respectful and Relevant Research with Im/migrant Sex Workers*

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<sup>179</sup> Clancey, A., Khushrushahi, N., & Ham, J. (2014). Do evidence-based approaches alienate Canadian anti-trafficking funders? *Anti-Trafficking Review*, 3, 87-108. Retrieved from <http://www.antitraffickingreview.org/index.php/atrjournal/article/view/66/85>

1. How are you defining or categorizing im/migrant sex workers? Researchers use different criteria to establish who the ‘migrant sex worker’ is. Some of these criteria relate to migration status, but researchers also use the category ‘migrant sex worker’ to refer to sex workers who aren’t White, sex workers from non-Western countries, sex workers who speak English with non-Western accents, or sex workers who are perceived to not ‘belong’ in the country or context they are working in. It’s important to be precise in how you define and categorize the ‘migrant sex worker’ and to reflect on the analytical implications of the criteria you use.
2. Are you equating racial/ethnic/cultural difference with risk or vulnerability? There can be a tendency when researching im/migrant sex workers to strongly link increased risk or vulnerability with being an immigrant or migrant. While it is important to recognize the challenges diverse groups can face, equating social ‘difference’ solely as a risk/vulnerability factor may end up misrepresenting the experiences of im/migrant sex workers. It is important to remember that im/migrant sex workers exercise a range of capabilities and resources. Risk and vulnerability arise out of context or structural factors such as systemic racism, and are not defining characteristics of particular social groups.
3. Are you asking the appropriate questions? Sex work is understandably an intriguing topic for many, but it is important to avoid voyeurism and the asking of personal or intrusive questions that are not relevant to the issue of sex *work*. If you are researching sex work, do your interview questions focus on *work*? If you have included more personal questions, can you explain why these are included?
4. How will your research be useful or helpful to im/migrant sex workers? Sex work research has produced benefits for researchers, academics, and students such as research funding, career advancement, publications, and an increase in media coverage that comes from researching a ‘sexy’ topic. Yet what benefits will your research produce for its participants? These can include direct benefits such as honoraria, compensation for time and travel, and/or indirect benefits such as contributing to policy change and respectful and accurate media coverage *if* you take the time and effort to strategically disseminate your findings.
5. Many researchers rely on community and service providers to assist with participant recruitment and data collection. However, community and support organizations may have significant concerns about the impact of research on staff workloads and staff relationships

with clients. Given that support organizations' involvement with sex work issues is likely to outlast the period of a typical research project, researchers need to take the time to establish mutually beneficial research protocols with community organizations. Researchers must remember that community organizations do not exist solely to supply researchers with research participants, and that support from research staff to participants are not intended to replace existing sex work support services/organizations.

## Appendix B: Consent Forms

### Letter of Informed Consent: Interviews

*An interview to assess the challenges and successes of anti-human trafficking laws in Canada.*

This research project seeks to examine the state of anti-trafficking legal efforts in Canada. With the support of the Law Foundation of British Columbia, the University of the Fraser Valley (UFV), in partnership with SWAN Vancouver Society, is undertaking a comprehensive study to gather empirical information on Canada's use of anti-trafficking legislation and contrast the findings against the experiences of one of the groups that has been identified as being particularly vulnerable to human trafficking: migrant sex workers. This academic and community partnership, led by Dr. Hayli Millar and Ms. Tamara O'Doherty, will provide the field with an evaluation of the stated intentions and actual effects of national anti-human trafficking laws.

We are inviting criminal justice practitioners with direct experience related to anti-human trafficking laws to share their expertise. We would like to collect information from these experts about the effectiveness and limitations of our current laws. Hence, we are asking you to take part in an informal interview that should last approximately 30-45 minutes. We can conduct the interview in the manner most convenient to you: in person, by phone, or by video-conference. Possible topics for our conversation include: some information about your range of experiences related to this topic, details about the challenges you have faced in relation to this work, your recommendations for addressing the issues you have identified and any other information that you feel would contribute to a critical assessment of Canadian efforts to combat human trafficking.

Confidentiality will be guaranteed; we will not disclose, nor keep records of, your identity. We would like to audiotape the interviews to ensure accuracy, but as soon as possible afterwards, we will have the recordings transcribed (within a month of the interview) and we will delete any potentially identifying information from the transcript (case names, cities or jurisdictions). Access to your audio-recording and transcript will be restricted to our research team, who are all subject to the confidentiality guarantee stated above. You will be free to withdraw your participation at any point, including up to the submission of the final report to our funding partner. In that case, any information you provided will be removed from the study and destroyed unless you have indicated otherwise.

We do not foresee any risks associated with your involvement in this study, but if there are questions that make you feel uncomfortable, please know that you are welcome to skip them or to discontinue the interview at any time. The information shared will be used as a part of our evaluation of Canada's anti-human trafficking efforts. We intend to publish scholarly journal articles and take part in academic and legal conferences to disseminate the findings. Ultimately, it is our hope that this study will contribute to law reform and improve access to justice for diverse communities, and that these data will be used to increase public, professional and academic evidence-based knowledge about the use of human trafficking laws in Canada. To obtain a copy of the findings, or if you wish to speak with us about anything else related to the study, please contact us at [UFVPalermoProject@ufv.ca](mailto:UFVPalermoProject@ufv.ca)

In the event of any kind of concern about the project, contact the Associate Vice-President of Research, Engagement, & Graduate Studies, Adrienne Chan, at [Adrienne.Chan@ufv.ca](mailto:Adrienne.Chan@ufv.ca) or 604-557-4074. The ethics of this study have been reviewed and approved by the UFV Human Research Ethics Board.

**Please give us your verbal consent if you agree to participate in this study.**

## **Letter of Informed Consent: Board and Collective Focus Group**

*Participation in a focus group to discuss the impacts of anti-trafficking laws.*

This research project seeks to examine the state of anti-trafficking legal efforts in Canada. With the support of the Law Foundation of British Columbia, the University of the Fraser Valley (UFV), in partnership with SWAN Vancouver Society, is undertaking a comprehensive study to gather empirical information on Canada's use of anti-trafficking legislation and contrast the findings against the experiences of one of the groups that has been identified as being particularly vulnerable to human trafficking: migrant sex workers. This academic and community partnership, led by Alison Clancey, Hayli Millar and Tamara O'Doherty, will provide the field with a critical evaluation of the stated intentions and actual effects of national anti-human trafficking laws.

We are inviting SWAN staff and volunteers to share their knowledge and opinions with us in a series of three focus groups about the human rights impacts of our current anti-trafficking laws. The focus groups should last approximately one hour for two consecutive weeks. Possible topics for our conversation include: some information about your range of experiences related to this topic, details about the challenges you have seen migrant sex workers face in relation to the laws, your recommendations for addressing the issues you have identified and any other information that you feel will contribute to a critical assessment of Canadian efforts to combat human trafficking.

Confidentiality will be guaranteed; we will not disclose, nor keep records of, your identity. We ask that you respect the confidentiality of the other participants. We would like to audiotape the focus groups to ensure accuracy, but as soon as possible afterwards, we will have the recordings transcribed (within a month of the interview) and we will delete any potentially identifying information from the transcript. Access to your audio-recording and transcript will be restricted to our research team, who are all subject to the confidentiality guarantee stated above. You will be free to withdraw your participation at any point, including up to the submission of the final report to our funding partner. In that case, any information you provided will be removed from the study and destroyed unless you have indicated otherwise.

To compensate you for your time, we would like to offer you a \$50 honoraria for your participation in the two focus groups. We do not foresee any risks associated with your involvement in this study, but if there are questions that make you feel uncomfortable, please know that you are welcome to skip them or to discontinue the interview at any time. The information shared will be used as a part of our critical evaluation of Canada's anti-human trafficking efforts. We intend to publish scholarly journal articles and take part in academic and legal conferences to disseminate the findings. Ultimately, it is our hope that this study will contribute to law reform and improve access to justice for diverse communities, and that these data will be used to increase public, professional and academic evidence-based knowledge about the use of human trafficking laws in Canada. To obtain a copy of the findings, or if you wish to speak with us about anything else related to the study, please contact us at [info@swanvancouver.ca](mailto:info@swanvancouver.ca), or [UFVPalermoProject@ufv.ca](mailto:UFVPalermoProject@ufv.ca)

In the event of any kind of concern about the project, contact the Associate Vice-President of Research, Engagement, & Graduate Studies, Adrienne Chan, at [Adrienne.Chan@ufv.ca](mailto:Adrienne.Chan@ufv.ca) or 604-557-4074. The ethics of this study have been reviewed and approved by the UFV Human Research Ethics Board.

**Please give us your verbal consent if you agree to participate in this study.**

### **Letter of Informed Consent: Outreach Staff & Volunteers**

*Participation in a focus group to discuss the impacts of anti-trafficking laws.*

This research project seeks to examine the state of anti-trafficking legal efforts in Canada. With the support of the Law Foundation of British Columbia, the University of the Fraser Valley (UFV), in partnership with SWAN Vancouver Society, is undertaking a comprehensive study to gather empirical information on Canada's use of anti-trafficking legislation and contrast the findings against the experiences of one of the groups that has been identified as being particularly vulnerable to human trafficking: migrant sex workers. This academic and community partnership, led by Alison Clancey, Hayli Millar and Tamara O'Doherty, will provide the field with a critical evaluation of the stated intentions and actual effects of national anti-human trafficking laws.

We are inviting SWAN staff and volunteers to share their knowledge and opinions with us in a series of focus groups about the human rights impacts of our current anti-trafficking laws. The focus groups should last approximately one hour. Possible topics for our conversation include: some information about your range of experiences related to this topic, details about the challenges you have seen migrant sex workers face in relation to the laws, your recommendations for addressing the issues you have identified and any other information that you feel will contribute to a critical assessment of Canadian efforts to combat human trafficking.

Confidentiality will be guaranteed; we will not disclose, nor keep records of, your identity. We ask that you respect the confidentiality of the other participants. We would like to audiotape the focus groups to ensure accuracy, but as soon as possible afterwards, we will have the recordings transcribed (within a month of the interview) and we will delete any potentially identifying information from the transcript. Access to your audio-recording and transcript will be restricted to our research team, who are all subject to the confidentiality guarantee stated above. You will be free to withdraw your participation at any point, including up to the submission of the final report to our funding partner. In that case, any information you provided will be removed from the study and destroyed unless you have indicated otherwise.

To compensate you for your time, we would like to offer you a \$50 honoraria for your participation. We do not foresee any risks associated with your involvement in this study, but if there are questions that make you feel uncomfortable, please know that you are welcome to skip them or to discontinue the interview at any time. The information shared will be used as a part of our critical evaluation of Canada's anti-human trafficking efforts. We intend to publish scholarly journal articles and take part in academic and legal conferences to disseminate the findings. Ultimately, it is our hope that this study will contribute to law reform and improve access to justice for diverse communities, and that these data will be used to increase public, professional and academic evidence-based knowledge about the use of human trafficking laws in Canada. To obtain a copy of the findings, or if you wish to speak with us about anything else related to the study, please contact us at [info@swanvancouver.ca](mailto:info@swanvancouver.ca), or [UFVPalermoProject@ufv.ca](mailto:UFVPalermoProject@ufv.ca)

In the event of any kind of concern about the project, contact the Associate Vice-President of Research, Engagement, & Graduate Studies, Adrienne Chan, at [Adrienne.Chan@ufv.ca](mailto:Adrienne.Chan@ufv.ca) or 604-557-4074. The ethics of this study have been reviewed and approved by the UFV Human Research Ethics Board.

**Please give us your verbal consent if you agree to participate in this study.**

## Appendix C: Interview and Focus Group Schedules

### Interview Guide: CJS Personnel

*Reminder at outset: Please note that these are merely guidelines and you can decline to answer any question or propose new areas of discussion if you feel there is more we should know or a different issue we should be addressing. You can also withdraw your participation from the interview and study at any time.*

1. Why did you agree to participate in this research?
2. What is the nature of your work in relation to human trafficking laws? Can you tell us a bit about your experiences related to Canada's anti-trafficking efforts...
3. What do you consider to be the most rewarding part of your work in this area? What do you consider to be the most difficult part of your work in this area?
4. In your opinion, what are the strengths or best parts of our current anti-trafficking laws? In your opinion, what are the limitations of our current laws? What kind of challenges do you face in enforcing/applying/researching these laws?
5. What do you consider to be the positive effects of the anti-trafficking laws and their enforcement in Canada? And are there any negative effects of the laws or their enforcement?
6. If you were amending our current laws or drafting new legislation, what would you keep from our current laws? What would you change about our current laws?
7. Are there any other recommendations you would like to make in relation to our current anti-trafficking laws or efforts in Canada? Are you aware of any best practices from other jurisdictions that you think Canada should consider?
8. Is there anything else that you think people should know about anti-trafficking laws and efforts in Canada? Is there anything else you think we should include in our assessment of these efforts? What do you hope we accomplish with this project?
9. Is there other research that you are aware of that we should consider as part of our study? Are there other individuals or organizations you suggest that we should contact?

Thank you so much for your time and for sharing your expertise with us. Would you be interested in attending a meeting at the end of the project to discuss the findings?

## **SWAN Focus Group #1: Board and Collective**

*Please note that you can decline to answer any question or propose new areas of discussion if you feel there is more we should know or a different issue we should be addressing. You can also withdraw your participation from the focus group at any time.*

General process: we would like to provide each person a chance to answer each question, but you are welcome to pass at any time. You are also welcome to engage in discussion, or ask questions of each other out of order; this is meant to be a conversational discussion rather than a rigid structure.

Our hope is that you will use these forums to tell policy-makers, through us, what you think they need to know about the laws, enforcement of the laws and the issue of human trafficking in Canada or internationally.

### **Starting Point Questions**

- 1.) Can you tell us why you would like to participate in this research?
- 2.) Can you please give us an idea of how your work with SWAN relates to Canada's anti-trafficking efforts?
- 3.) Why do you think there have been so few prosecutions of human trafficking in Canada? (e.g., does the construct of victim impact prosecutions? Is there something wrong with the police investigations? Is it hard to detect? Is there a fear of the police?)
- 4.) Based on your discussions with the women you work with, what are the effects of anti-human trafficking laws? How do these laws affect the day-to-day personal and/or work situations of migrant women? Are human trafficking laws perceived to make their work safer or more challenging?
- 5.) Can you think of any examples of government legislation, initiatives or campaigns that have had specific consequences for migrant sex workers? (e.g., enhanced policing, profiling of certain groups etc.)?
- 6.) Is there anything else you think policy-makers should know about migrant sex workers and anti-human trafficking efforts in Canada?

Thank you so much for your participation. We will be holding a public forum in a couple of months to share the results of this project and we hope to see you there!

## **Focus Group Guide: Outreach Workers**

*Reminder: you can decline to answer any question or propose new areas of discussion if you feel there is a different issue we should be addressing. You can also withdraw your participation from the focus group at any time.*

General process: we will provide each person a chance to answer each question, but you are welcome to pass at any time. You are also welcome to engage in discussion with each other, or ask questions of each other; we want this to be a conversational discussion rather than a rigidly structured interview.

Depending on our progress today, we may hold a second focus group. To begin, we will focus on the women you work with and on issues of migration and sex work as they relate generally to the topic of human trafficking. Then, we would like to shift the conversation to focus on the effects of human trafficking discourse and laws on migrant sex workers and your recommendations for how to address the issues. Our hope is that you will use these forums to tell policy-makers what you think they need to know about the laws, enforcement of the laws and the issue of human trafficking in Canada or internationally.

### **Knowledge of Human Trafficking**

1. Can you tell us why you would like to participate in this research?
2. Can you describe how many women you work with and the women you work with? (e.g., countries of origin, reasons for coming to Canada, methods of coming to Canada, length of time in Canada, experiences in Canada ....). Was their migration ever facilitated by a third party? If so, in what forms did this facilitation take?
3. Based on your discussions with the women your work with, why did these women decide to engage in sex work and what factors were important in their decisions to engage in sex work?
4. Based on your discussions with the women your work with, what are your perceptions of human trafficking in Canada? What are your perceptions of Canadian human trafficking laws?
5. Given the population you support, how knowledgeable do you feel you need to be about Canadian human trafficking laws in order to carry out your work competently and support migrant sex workers?

### **Effects of Human Trafficking Discourse and Laws**

1. Based on your discussions with the women you work with, what are the effects of anti-human trafficking laws? How do these laws affect the day-to-day personal and/or work situations of migrant women? Are human trafficking laws perceived to make their work safer or more challenging?
2. Based on your discussions with the women you work with, what are your perceptions of anti-trafficking awareness campaigns and discourse (including 'victim' labels)? What are

the responses of the women your work with when SWAN has distributed anti-trafficking resources and information?

3. Can you think of any examples of government legislation, initiatives or campaigns that have had specific consequences for migrant sex workers? (e.g., enhanced policing, profiling of certain groups etc.)?
4. Among the women you support as a SWAN outreach worker, what are their most pressing needs? Do anti-trafficking laws affect your efforts to provide services and meet women's needs?
5. Is there anything else you think policy-makers should know about migrant sex workers and anti-human trafficking efforts in Canada?

## Appendix D: Table of Cases

Verdict	Case name, type of verdict and main information source
Conviction	<p><i>R v. Nakpangi</i> [2008] (guilty plea) O.J. No. 6022  <i>R v. St. Vil</i> [2008] (guilty plea) O.J. No. 6023  <i>R v. Lennox</i> 2008 (guilty plea) (unreported) [Perrin, 2010]  <i>R v. Emerson</i> 2009 (guilty plea) (unreported) [primary court documentation]  <i>R v. Vilutis</i> 2009 (guilty plea) (unreported) [primary court documentation]  <i>R v. Urizar</i> 2010 (verdict by judge; upheld on appeal) [2013] QCCA 46  <i>R v. Estrella</i> [2011] (verdict by jury) O.J. No. 6616  <i>R v. AA(1)180</i> 2012 (verdict by jury; upheld on appeal) 2013 ONCA 466 (CanLII)  <i>R v. Domotor</i> [2012] (guilty plea) O.J. No. 3630181  <i>R v. McFarlane</i> [2012] (guilty plea) O.J. No. 6566  <i>R v. Hosseini</i> 2012 (verdict by judge; upheld on appeal [2014] QCCA 1187  <i>R v. Byron</i> 2013 (verdict by judge) 2013 ONSC 6427  <i>R v. Williams</i> 2014 (guilty plea) 2014 ONCJ 425  <i>R v. Burton</i> (Tyrone) 2014 (verdict by judge) (unreported) [primary court documentation]  <i>R v. Oliver-Machado</i> 2014 (verdict by judge) (unreported) [primary court documentation]</p>
Other Legal Outcome	<p><i>R v Ng</i> 2007 (verdict by judge; Crown appeal against sentence allowed) 2008 BCCA 535  <i>R v Downey</i> 2009 (verdict by jury) 2010 ONSC 1531  <i>R v. Tynes</i> 2010 (verdict by judge) 500-01-035485-108; 500-01-034231-099  <i>R v. Johnson</i> 2011 (verdict by judge) 2011 ONSC 195  <i>R v. Salmon</i> (Courtney) 2011 (verdict by judge; upheld on appeal) 2013 ONCA 203  <i>R v. Lynch</i> 2012 (guilty plea) unreported [primary court documentation]<sup>182</sup>  <i>R v. Burton</i> (Mark Anthony) 2013 (verdict by judge) 2013 ONSC 4531</p>

<sup>180</sup> There are two different *R v. AA* cases, the first involving a jury trial and a conviction on the trafficking-specific charges in 2012 (OSCJ, Wein, J) and a 2013 appeal by the accused (2013 ONCA 466), which was dismissed, upholding the trial jury verdict. The second case, which we refer to as *AA*<sup>(2)</sup> was tried by a judge (Alder, J, OCJ) resulting in an acquittal on the trafficking-specific charges in 2013 and a 2014 (2015 ONCA 558) appeal by Crown and cross-appeal by the accused resulting in the verdict being set aside and a new trial ordered.

<sup>181</sup> Our primary reference for the *Domotor* case is the bail hearing in 2011 and the reasons for sentence in the *Domotor, Domotor & Kolompar* case in 2012. In addition to these three accused, two of whom were found guilty of trafficking, an additional nine persons appear to have pleaded guilty to trafficking offences in separate trials according to information we located in the press. We do not have primary documentation on these other related co-accused.

<sup>182</sup> The 2012 date reflects the dismissal of charges at the preliminary hearing. A trial was held in May 2013 resulting in the withdrawal of all charges except the two to which Lynch pleaded guilty.

	<p><i>R v. Ladha</i> 2013 (verdict by judge) 2013 BCSC 2437</p> <p><i>R v. Orr</i> 2013 (verdict by jury; verdict set aside and new trial ordered on appeal) [2015] BCCA 88</p> <p><i>R v. McCall</i> 2013 (verdict by judge) unreported</p> <p><i>R v. McPherson</i> 2013 (verdict by jury) 2013 ONSC 1635</p> <p><i>R v. Mataev</i> 2013 (verdict by jury) case file number: 500-01-054780-116</p> <p><i>R v. Beckford</i> 2013 (verdict by judge) unreported 2013 ONSC 653 [ruling on constitutionality]</p> <p><i>R v. AA(2)</i> 2013 (verdict by judge) unreported; verdict overturned on appeal and new trial ordered (2015 ONCA 558)</p> <p><i>R v. Salmon</i> (Gregory) 2014 (verdict by judge) unreported</p> <p><i>R v. GKS</i> 2014 (verdict by judge) 2014 ONCJ 542</p>
<p>Mixed Verdict (Conviction &amp; Acquittal)</p>	<p><i>R v. Gashi</i> 2014 (guilty plea and verdict by judge) (unreported) 2014 ABPC 72 [ruling on obstruct justice related to trafficking in persons charges]</p> <p><i>R v. Moazami</i> 2014 (verdict by judge) 2014 BCSC 1727</p>

## Appendix E: A Comparison of the UN *Trafficking Protocol* and Canadian Legal Definitions of Trafficking in Persons

<i>UN Trafficking Protocol</i> <sup>183</sup>	<i>IRPA</i> <sup>184</sup>	<i>Criminal Code</i> <sup>185</sup>
<p><b>Action:</b> “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons,</p> <p><b>Means:</b> by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,</p> <p><b>Purpose:</b> for the purposes of exploitation, minimally to include exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs</p>	<p><b>Action:</b> No person shall knowingly organize [with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons] the coming into Canada of one or more persons</p> <p><b>Means:</b> by means of abduction, fraud, deception or use or threat of force or coercion.</p>	<p><b>Action:</b> Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person</p> <p><b>Purpose:</b> for the purpose of exploiting them or facilitating their exploitation [s.279.04: ... a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service]</p>
		<p><b>Means:</b> [added in 2012 and is not a required element of the offence but part of an interpretive aid for the courts]: In determining whether an accused exploits another person the Court <i>may</i></p>

<sup>183</sup> UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000 [Article 3 extracted verbatim], available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> [accessed 5 August 2015].

<sup>184</sup> Immigration and Refugee Protection Act [of Canada], SC 2001, c 27, [s.118 offence – trafficking in persons], available at: <https://www.canlii.org/en/ca/laws/stat/sc-2001-c-27/117101/sc-2001-c-27.html#history> [accessed 5 August 2015].

<sup>185</sup> *Criminal Code [of Canada]*, RSC 1985, c C-46, [ss. 279.01 trafficking in persons and 279.04 exploitation], available at: <http://laws-lois.justice.gc.ca/eng/acts/c-46/page-153.html#docCont> [accessed 5 August 2015].

		<p>consider, among other factors, whether the accused: (a) used or threatened to use force or another form of coercion; (b) used deception; or (c) abused a position of trust, power or authority; previously existed only in relation to organs/tissue removal</p>
<p>The <b>consent</b> of a victim of trafficking in persons to the intended exploitation ... shall be irrelevant where any of the [listed] means ... have been used.</p> <p>[For child victims, legally defined as a person under age eighteen years] the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the [listed] means ...</p>		<p>No <b>consent</b> to the activity that forms the subject-matter of a charge under subsection (1) is valid.</p>

## Appendix F: A Comparison of Original to Current Trafficking in Persons Offences (2005-2015)

<p><i>Criminal Code Trafficking in Persons</i>  <b>Offences &amp; Penalties when introduced in November 2005</b></p>	<p><i>Criminal Code Trafficking in Persons</i>  <b>Offences &amp; penalties as of July 2015</b></p>
<p><b>279.01(1). Trafficking in Persons.</b> Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable (a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during commission of the offence; or (b) to imprisonment for a term of not more than fourteen years in any other case.</p> <p><b>Consent.</b> (2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.</p>	<p><b>279.01(1). Trafficking in persons:</b> Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable (a) to imprisonment for life and to a minimum punishment of imprisonment for a term of five years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or (b) to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of four years in any other case.</p> <p><b>Consent.</b> (2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.</p> <p><b>279.011. Trafficking of a person under the age of 18 years:</b> [same offence phrasing as 279.01, but specific to a person under the age of eighteen years] (a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or (b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.</p> <p>Consent (2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.</p> <p><b>Presumption of exploitation:</b> For the purposes of subsections (1) and 279.011(1), evidence that a person who is not exploited lives with or is habitually in the company of a person who is exploited is, in the</p>

	<p>absence of evidence to the contrary, proof that the person exercises control, direction or influence over the movements of that person for the purpose of exploiting them or facilitating their exploitation [not yet in force]</p>
<p><b>279.02 Material Benefit.</b> Every person who receives a financial or other material benefit, knowing that it results from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.</p>	<p><b>279.02(1). Material benefit (trafficking):</b> Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years</p> <p><b>279.01(2). Material benefit — trafficking of person under 18 years:</b> Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under <a href="#">subsection 279.011(1)</a>, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.</p>
<p><b>279.03. Withholding or destroying documents:</b> Every person who, for the purpose of committing or facilitating trafficking an offence under subsection 279.01(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person’s identity or immigration status is guilty of an indictable offence and liable to imprisonment for a term of not more than five years, whether or not the document is of Canadian origin or is authentic</p>	<p><b>279.03(1). Withholding or destroying documents:</b> Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years</p> <p><b>279.03(2). Withholding or destroying documents (trafficking of a person under 18 years of age:</b> Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years</p>
<p><b>279.04. Exploitation:</b> Exploitation: For the purposes of <a href="#">ss. 279.01</a> to <a href="#">279.03</a>, a person exploits another person if they (a) cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or (b) cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.</p>	<p><b>279.04(1):</b> For the purposes of ss. 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.</p> <p><b>279.04(2):</b> In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the</p>

	<p>accused (a) used or threatened to use force or another form of coercion; (b) used deception; or (c) abused a position of trust, power or authority.</p> <p><b>279.04(3):</b> Organ or tissue removal. For the purposes of ss.279.01 to 279.03, a person exploits another person if they cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.</p>
	<p><b>279.05.</b> A sentence imposed on a person for an offence under ss.279.01 to 279.03 shall be served consecutively to any other punishment imposed on the person for an offence arising out of the same event or series of events and to any other sentence to which the person is subject at the time the sentence is imposed on the person for an offence under any of those sections. <b>[not yet in force]</b></p>

## Appendix G: The Collaborative Partners

**SWAN (Supporting Women’s Alternatives Network) Vancouver Society** is a Vancouver-based non-profit organization engaging in community-based activities to address issues related to sex work among women in im/migrant communities. SWAN offers front-line support services; publishes a quarterly newsletter on health, safety and other work-related issues; participates in municipal initiatives that promote im/migrant sex workers’ rights; and conducts research that informs policy and dialogue on sex work and human trafficking at municipal, national and international levels. For more information, please visit <http://swanvancouver.ca/>

**Hayli Millar** has a PhD in international law and MA and BA degrees in criminology. She has lived and worked internationally as a consultant to the United Nations and as a gender, law and development specialist for the Asian Development Bank on a research project assessing South Asia’s regional anti-human trafficking convention. Hayli has conducted desk and field research in several countries, including in Canada’s Northwest Territories and Yukon Territory on sexual assault sentencing decisions, alternative dispute resolution, and Indigenous community justice. She has written various technical reports, published an article on women and truth commissions, and is a contributor/co-author for a UFV study on the situation of Canadian children experiencing parental incarceration.

**Tamara O’Doherty** has completed a BA in Criminal Justice, a JD (law degree), a MA in Criminology, and is in the process of completing a PhD in Criminology. She has extensive experience with collaborative research, mixed methodologies (in-depth interviews and online surveys) and legal analysis. Tamara has published in peer-reviewed journals and other academic books on the effects of criminalization on marginalized populations, victimization in Canada’s sex industries, feminist theory, criminal law, and collaborative research methods.

**Alison Clancey**, the Executive Director of SWAN, has a Masters of Social Work, Bachelor of Social Work and Bachelor of Arts. Alison has research experience in critical discourse analysis of human trafficking perspectives and has published a peer-reviewed journal article on anti-trafficking funding in Canada. She has extensive experience providing front-line services to sex workers which informs her sex work public education and policy reform efforts.

**Kimberley Mackenzie**, received her Bachelor of Arts from the University of the Fraser Valley in 2011 with a major in Psychology and an extended minor in Criminology. She is currently the Outreach Coordinator for SWAN Vancouver Society while she pursues her Masters of Public Policy at Simon Fraser University.