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Jesse Beatson

Jill Hanley

Alexandra Ricard-Guay

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The Intersection of Exploitation and Coercion in Cases of Canadian Labour Trafficking

JESSE BEATSON, JILL HANLEY & ALEXANDRA RICARD-GUAY*

À l'internationale, l'intervention, la recherche, et le développement de politiques sur la traite des personnes se sont penchés sur la traite aux fins d'exploitation sexuelle plutôt que de travail forcé. En tentant de comprendre les caractéristiques de la traite aux fins de travail forcé au Canada, un pays qui selon plusieurs offre des protections robustes pour les travailleuses et les travailleurs et un parcours clair pour la migration de travail, cet article présente les conclusions d'un examen de cas documentés au cours des quinze dernières années au Canada, où l'exploitation au travail et la coercition s'entrecourent. Notre analyse démontre qu'il s'agit là de l'essence de la traite aux fins de travail forcé — la coercition utilisée pour favoriser l'exploitation au travail. Nous avons recueilli trente-six cas en tout, qui impliquent environ 243 victimes. Nous les avons placés dans une matrice sur laquelle s'entrecourent une échelle relative à l'exploitation au travail (tromperie, violations des normes du travail, et violations des dispositions en matière de santé et sécurité au travail) et une échelle relative à la coercition (de la coercition systémique à la coercition directe). Nous avons recueilli ces cas en faisant une revue de sources médiatiques, gouvernementales, universitaires et juridiques. Cette matrice exploitation-coercition constitue une nouvelle contribution à la littérature et aide à souligner les limites des approches actuelles à la reconnaissance et à la réponse à l'exploitation au travail au Canada. Les résultats de notre étude démontrent : 1) jusqu'à quel point le statut d'immigration précaire est au centre de l'exploitation au travail ; 2) que ce type de traite est pratiqué fréquemment par les propriétaires de petites entreprises dans des secteurs d'emploi légaux ; et 3) que les hommes sont très nombreux et les mineurs peu nombreux parmi les victimes. Ces conclusions sont différentes de l'archétype de la victime dans les médias et la littérature sur la traite, comme étant une jeune femme, et de celui du trafiquant, comme étant un membre du crime organisé.

Internationally, human trafficking intervention, research, and policy-making has leaned towards sex trafficking rather than labour trafficking. Aiming to understand the characteristics of labour trafficking within Canada, a country considered by many to have strong labour protections and clear pathways for labour migration, this article reports on a review of documented cases over the past fifteen years in Canada where labour exploitation intersected with coercion. Our analysis is centred on the notion that this is the crux of what constitutes labour trafficking—coercion being used to facilitate

* Jesse Beatson is a law student at Osgoode Hall Law School. He completed his Master of Science in Psychiatry at McGill University between 2014-2016, primarily focusing his research on refugee health policy. Jill Hanley is an Associate Professor at McGill University. Her research focuses on community organizing and social policy as they intersect with people's immigration status, and she is involved in several research teams around this broad topic. Alexandra Ricard-Guay is a Research Associate at the Robert Schuman Center for Advanced Studies, European University Institute. Between 2012-2014 she conducted, with Prof. Jill Hanley, research on the coordination of services for victims of human trafficking in Canada, (in collaboration with CATHII).

labour exploitation. In total, we collected thirty-six cases, involving an estimated 243 victims, and we placed these within a matrix that crosses gradations of labour exploitation (deception, labour standard violations, and occupational health and safety (OHS) violations) with gradations of coercion (from systemic to direct). We collected these cases through a scan of media, governmental, academic, and legal sources. A new contribution to the literature, this exploitation-coercion matrix helps to highlight limitations in current approaches to the identification and response to labour trafficking in Canada. Our study results demonstrate: 1) the degree to which precarious immigration status is central to labour trafficking; 2) that this trafficking is frequently practised by small business owners in legal employment sectors; and 3) that there is a high presence of men and low presence of minors as victims. These findings contrast with the archetypal portraits found in much of the trafficking media and literature of the trafficking victim as young and female and the trafficker as organized criminal.

SINCE THE INITIAL ADOPTION OF THE PALERMO PROTOCOL by Canada in 2001, the label of human trafficking has become synonymous with sex trafficking for many, linked with sensationalized awareness campaigns. While a handful of high-profile trafficking cases in the Canadian media have focused on labour exploitation, the legal interventions are very often unsuccessful and the services available to victims¹ are difficult to secure (e.g., shelter, health care, income security, and labour rights).²

This paper seeks to shed needed light on the issue of labour trafficking in Canada, taking into account the many gradations of worker exploitation and coercion, and how these factors work together to instill fear and curtail free movement. We provide an analysis of thirty-six cases of labour trafficking in Canada over the past fifteen years; cases in which labour exploitation intersected with coercion and that were initially collected in a report commissioned by the Comité d'action contre la traite humaine interne et internationale (CATHII) based in Montreal, Quebec.³

Our understanding of labour exploitation and coercion is based in the literature and in legal and policy definitions.⁴ Exploitation involves changing the nature of the work (*i.e.*, below

¹ The use of the term victim in this article highlights the legal dimension of the crime perpetrated and is not employed to obscure the agency of the person and migrant who has experienced trafficking and exploitation.

² See for example Julie Kaye, John Winterdyk & Lara Quarterman, "Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada" (2014) 56:1 Can J Corr 23 at 33 [Kaye et al]; Alexandra Ricard-Guay & Jill Hanley, "Frontline Responses to Human Trafficking in Canada: Coordinating Services for Victims" (2015) 1 at 49, 51, 57, online: <ccrweb.ca/en/cathii-report-frontline-responses-human-trafficking-canada> [perma.cc/W95V-P9UP] [Ricard-Guay & Hanley]. Jenna Hennebry, Janet McLaughlin, & Kerry Preibisch, "Out of the Loop: (In)access to Health Care for Migrant Workers in Canada" (2016) 17:2 Journal of International Migration and Integration 521.

³ Jesse Beatson & Jill Hanley, "The Exploitation of Foreign Workers in Our Own Backyards: An examination of labour and exploitation and labour trafficking in Canada" (2015), online: <<http://www.cathii.org/sites/www.cathii.org/files/The%20Exploitation%20of%20Foreign%20Workers%20Report.pdf>> [perma.cc/L9VM-Q49E] [Beatson & Hanley].

⁴ We draw particularly from the works of Beate, Srivankova, and Hastie: Andrees Beate, "Forced Labour and Trafficking in Europe: How people are trapped in, live through and come out" International Labour Organization (11 February 2008), online: <ilo.org/global/topics/forced-labour/publications/WCMS_090548/lang--en/index.htm> [perma.cc/YRB3-TQY4] [Beate]; Klara Skrivankova, "Between decent work and forced labour: examining the continuum of exploitation" Joseph Rowntree Foundation (23 November 2010), online: <jrf.org.uk/report/between-decent-work-and-forced-labour-examining-continuum-exploitation> [perma.cc/N6UZ-7ZYT]; and Bethany Hastie,

legal standards) to unfairly extract a profit, primarily economic though sometimes it can be non-monetary (e.g., sexual services, caregiving or housekeeping, and social status). Coercion is an act or context that keeps a person trapped in an unfair and exploitative labour situation. Coercion can take either a direct or systemic form: in the case of direct coercion, an employer or intermediate third party (e.g. a recruiter) actively endeavors to prevent a worker from leaving, and in the case of systemic coercion, a policy and/or legal environment serves the same purpose of restricting a worker's freedom without any need for additional steps taken by the employer.

We begin the article with a brief overview of the legal definitions of labour trafficking in Canada, noting seemingly small but not unimportant differences when compared to the Palermo Protocol.⁵ We will then discuss the limitations of these Canadian definitions, particularly the construction of exploitation as requiring that a victim fear for “their safety or the safety of a person known to them,” as is found in the *Criminal Code*.⁶ We then proceed to a discussion of the hidden nature of labour trafficking in Canada, addressing how its victims receive relatively little attention compared to victims of sex trafficking. Our methodology for generating the thirty-six cases is then described. The cases were identified through a scan of news media, legal databases and government websites, and academic literature. To those cases were added others from a prior study by authors Hanley and Ricard-Guay. Using a matrix framework based on gradations of exploitation and coercion, we categorize the cases (found across Canada) where exploitation and coercion co-exist. In other words, we include and categorize cases where the conditions of what we deem to be labour trafficking are present.

In our discussion, we identify the major challenges that remain in the identification and response to labour trafficking in Canada. Given our finding that all the victims in our sample are international migrants with precarious status and none are Canadian citizens, we explore potential ways to better serve the needs, and protect the human rights, of migrant workers.

The fact that Canada, like most countries of the Global North, has long had a legal framework to address forms of labour exploitation (e.g., deception about working conditions, violations of labour standards, or occupational health and safety (OHS) risks)⁷ makes it difficult for many to recognize the problem; namely, that various forms of coercion can impede victims from availing themselves of the usual labour protections. By closely exploring this relationship between labour exploitation and coercion, this paper intends to not just facilitate better understanding of the characteristics of labour trafficking in Canada, but also to offer reflections that address broader debates within both academic and policy circles about how to define labour trafficking as well as how to distinguish it from related forms of problematic labour relations.

“Doing Canada’s Dirty Work: A Critical Analysis of Law and Policy to Address Labour Exploitation and Trafficking” in Ato Quayson and Antonela Arhin, eds, *Labour Migration, Human Trafficking and Multinational Corporations* (New York: Routledge, 2012) [Hastie].

⁵ *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 (entered into force 25 December 2003) [*Palermo Protocol*].

⁶ RSC 1985, c C-46, s 279.04 (1) [*Criminal Code*].

⁷ See for example *Canadian Human Rights Act* RSC, 1985, c H-6; *Occupational Health and Safety Act*, RSO 1990, c O1.

I. UNRESOLVED AND ONGOING DEBATES SURROUNDING THE DEFINITION OF LABOUR TRAFFICKING: THE CANADIAN LEGAL FRAMEWORK

The coming together of labour exploitation and coercion, we argue, is what defines labour trafficking. This differentiates it from other problematic forms of labour relations, for instance unfree labour (coercion without necessarily exploitation) and labour violations (exploitation without necessarily coercion). Another way to articulate our sense of labour trafficking would be to say that it occurs when labour violations are added to a situation of unfree labour, as we see in the following table. Forced labour is a term that appears frequently in the literature. A key difference between labour trafficking and forced labour in some definitions is that the former is said to require a process of recruitment or transport.⁸ By contrast, our definition accords with the framing of trafficking under the Canadian *Criminal Code*, which does not require a transit process. To be clear, we consider the labour trafficking we are addressing in this article to be akin to many definitions of forced labour. We opt for the framing of “labour trafficking” over “forced labour” primarily because it fits better with the Canadian legal framework.

Table 1: Grid of Problematic Labour Relations

		EXPLOITATION	
		NO	YES
COERCION	NO	Decent Work	Labour Violations
	YES	Unfree Labour	<i>Labour Trafficking</i>

Unfree labour is a concept with increasing traction in political economy and development studies, as well as geography.⁹ According to Morgan and Olsen, there are at least three significant characteristics of unfree labour.¹⁰ First, the worker is not free to enter alternative employment relations. Second, the worker is not free to exit current employment. Third, the

⁸ The ILO, discussing forced labour, states that it “does not consider relevant how a person ended up in a forced labour situation, whether through trafficking or other systems (e.g., hereditary slavery)” Suzanne Hoff & Katrin McGauran, “Engaging the Private Sector to End Human Trafficking: A Resource Guide for NGOs” (2015) at 24, online: <some.nl/wp-content/uploads/2015/10/Resource-Guide-Egnaging-the-Private-Sector-to-End-Human-Trafficking.pdf> [perma.cc/7LYS-NTQF]. The domestic *Immigration & Refugee Protection Act (IRPA)* definition of trafficking, however, focuses on cross-border transportation (*Immigration and Refugee Protection Act*, SC 2001, c 27, s 118) [IRPA]. The *Criminal Code* does not require a transportation element.

⁹ See Hannah Lewis et al, “Hyper-precarious lives Migrants, work and forced labour in the Global North” (2015) 39:5 *Prog in Hum Geo* (2015) 580 at 581 [Lewis et al]; Kendra Strauss, “Coerced, Forced and Unfree Labour: Geographies of Exploitation in Contemporary Labour Markets,” (2012) 6:3 *Geo Comp* 137.

¹⁰ Jamie Morgan & Wendy Olsen, “Unfreedom as the Shadow of Freedom: An initial contribution to the meaning of unfree labour” in *Manchester Papers in Political Economy, Working Paper 2* (2009)., [Morgan & Olsen].

terms and conditions of the work contribute to the first two characteristics. Unfree labour, in this understanding, has all the characteristics of labour trafficking except for the purpose of it being explicitly about exploitation. While a situation of unfree work involves coercive pressure of some kind, the worker's employer can be a relatively ideal one in other senses: kind, respectful, and moreover, following several rules and thereby not explicitly violating any labour standards. This worker would still technically be unfree if, for instance, the legal and/or policy environment forecloses the option of seeking alternative employment, making it hard, if not impossible, for the worker to leave their employer. In Canada, many critics have argued that workers under the Temporary Foreign Workers Program (TFWP), discussed in the next section of the article, can be considered, *de facto*, to be engaged in unfree labour.¹¹

The way labour trafficking has been conceptualized and legally codified can help to explain some of the difficulties faced in current efforts to combat it. Here we briefly review the Canadian legal definitions of human trafficking before turning to the challenges of using these definitions as the basis for protecting worker rights. As Sikka puts it, complex analyses are often required where labour trafficking is concerned regarding “immigration policies, temporary foreign worker (TFW) programs, employment standards deviations, and criminal charges under both the *Criminal Code*, and the *Immigration and Refugee Protection Act (IRPA)*.”¹² Our proposed definition aims to simplify somewhat the process of identifying cases. We would not paper over legal nuance and suggest that our articulation of labour trafficking be immediately downloaded into existing Canadian law and used, for instance, for securing convictions. It is also important to note that this paper focuses on trafficking for labour exploitation, and does not include trafficking for the purposes of sexual exploitation, commonly called sex trafficking.¹³

The Palermo Protocol sets out the internationally accepted definition of trafficking.¹⁴ By definition, the Palermo Protocol, which supplements the United Nations Convention against Transnational Organized Crime, focuses on organized crime. This makes it a less-than-perfect match to the type of trafficking described in this paper, much of which is not perpetrated by organized criminals. Indeed, the Palermo Protocol is not a human rights instrument designed primarily to protect and give justice to victims, but rather an agreement to generate cooperation

¹¹ See Aziz Choudry & Adrian Smith, *Unfree Labour?: Struggles of Migrant and Immigrant Workers in Canada* (Oakland: PM Press, 2016); Kendra Strauss & Siobhán McGrath, “Temporary Migration, Precarious Employment and Unfree Labour Relations: Exploring the ‘Continuum of Exploitation’ in Canada’s Temporary Foreign Worker Program” (2015) 7:29 *Geoforum* [Strauss & McGrath]; Harsha Walia, “Transient Servitude: Migrant Labour in Canada and the Apartheid of Citizenship” (2010) 52:1 *Race & Class* 71 at 72.

¹² Anette Sikka, “Labour Trafficking in Canada: Indicators, Stakeholders, and Investigative Methods” (2013) *Public Safety Canada, Report No. 42*, 1 at 5.

¹³ We would not consider sex work that was occurring in the absence of exploitation and coercion to be trafficking. There is already a large body of literature that studies human trafficking for the purposes of sexual exploitation, including Sheldon X Zhang, “Beyond the ‘Natasha’ Story—A Review and Critique of Current Research on Sex Trafficking” (2009) 10:3 *Global Crime* 178; Katrin Roots, “Trafficking or Pimping? An Analysis of Canada’s Human Trafficking Legislation and its Implications” (2013) 28:1 *Canadian Journal of Law and Society* 21 [Roots]. We chose to leave out such cases from our study for reasons of scope.

¹⁴ The Palermo Protocol, *supra* note 5, was adopted in 2000 and ratified by Canada in 2002. It establishes a tripartite definition of trafficking which encompasses the Act (*e.g.*, recruitment, transportation, harbouring a person), the means (*e.g.*, threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of authority) and the purpose—that is, exploitation. Elements of all three components have to be present for a situation to qualify as human trafficking. Exploitation is articulated as including “forced labour or services.”

among states to combat organized crime.¹⁵ Nevertheless, Canada's anti-trafficking laws are built on these foundations, making the adoption date of the Palermo protocol a relevant benchmark and it is the earliest point for which we collected cases of labour trafficking.

Human trafficking is an offence under two forms of legislation in Canada; immigration and criminal. *IRPA* has included human trafficking as a federal immigration offence since 2001. Section 118 of *IRPA* makes it an offence to, "by means of abduction, fraud, deception or the use or threat of force or coercion" recruit and/or bring people to Canada.¹⁶ Thus, under *IRPA*, the trafficking offence is related to the organization of cross-border smuggling, and is strongly associated with irregular migration.¹⁷

Human trafficking is also a crime under the *Criminal Code*. Section 279.01 (1) of the *Code* defines human trafficking as follows: "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."¹⁸ The significant difference between the *Criminal Code* definition and its *IRPA* counterpart is that the latter requires a border-crossing scheme whereas the former does not (one can merely "hold," "harbour," or control "the movements of a person").

A key clause of the *Criminal Code* definition requires that the listed activities be undertaken "for the purpose of exploiting them or facilitating their exploitation." "Exploitation" is given a definition in section 279.04 and this definition requires a person to fear for their safety or the safety of someone they know if they do not perform labour or services.¹⁹ This part of the definition has been criticized for being too narrow.²⁰ There have been few prosecutions under section 279.01, possibly due to this narrow focus in regards to the exploitation of victims, but also because there are many other sections of the *Criminal Code* that may be used to prosecute a trafficker (*i.e.*, prostitution-related offences, kidnapping, sexual assault, child abduction, etc.).²¹ These other offences, however, are not always relevant to labour trafficking cases. This suggests that the gap between the number of prosecutions and the number of actual instances of labour trafficking may be quite large.

The way exploitation is framed in the *Criminal Code* makes this specific standard for trafficking stricter than the one used in the international Palermo Protocol. Indeed, one key distinctive element of the legal definition of trafficking in the *Criminal Code* is the notion of "fear for safety"—which is in-existent in the Palermo protocol—and is determinative in establishing the presence of exploitation in Canadian law. Yet, that condition is difficult to prove in courts. As many of the Canadian cases of labour trafficking from our sample demonstrate, employers do not always directly threaten the physical safety of a person or their families, but rather employ the threat of deportation or use debt bondage to force victims to continue working

¹⁵ See Bridget Anderson & Rutvica Andrijasevic, "Sex, slaves and citizens: the politics of anti-trafficking" (2008) 40 *Soundings* 40 135 at 136
online: <lra.le.ac.uk/bitstream/2381/9384/2/%5B10%5Dsoundings.pdf> [perma.cc/5FX4-C56C].

¹⁶ *IRPA*, *supra* note 8, s 118.

¹⁷ Alexandra Ricard-Guay, "Labour trafficking in Canada: At the Margins of Anti-Trafficking Efforts" (2016) Working Paper EUI RSCAS no 2016/40. Florence: European University Institute [Ricard-Guay].

¹⁸ *Criminal Code*, *supra* note 6, s 279.

¹⁹ *Ibid.*

²⁰ Kaye, *supra* note 2 at 33; Hastie, *supra* note 4 at 34.

²¹ Katrin Roots, *supra* note 13 at 40.

for them. While not meeting the strict criteria for a threat to physical safety, these actions are arguably no less coercive and exploitative and may threaten safety in less apparent ways.

To make it easier for courts to identify and to prosecute trafficking, there have been some efforts to expand the definition of trafficking under the *Criminal Code*. A number of changes were introduced to the *Criminal Code* in June 2012. Among them was a list of elements (section 279.04), similar to what is suggested in the Palermo Protocol, that the courts may consider to assess whether trafficking has occurred: the accused trafficker having *used* or *threatened to use* (i) violence, (ii) force or any other form of constraint, or otherwise (iii) having made false declarations or used other fraudulent means to exploit the alleged victim.²² While these legislative changes may help Canadian courts determine if trafficking has occurred in a wider range of contexts, the “fear for safety” requirement remains an element of the offence and is a restrictive standard.

Another difference of the *Criminal Code* as compared with the Palermo Protocol remains. While the Palermo Protocol sets a non-exhaustive list of different forms of trafficking (forced prostitution, forced labour, removal of organs, slavery or slavery-like practices), the Canadian penal definition of trafficking does not specify the different forms of exploitation. Moreover, the *Criminal Code* does not provide a precise definition of trafficking for labour exploitation or forced labour, and it does not establish a stand-alone offence for the latter.²³ Where labour trafficking cases are concerned, there are complex ways both traffickers and immigration policies can prevent victims from leaving an exploitative workplace that are not currently recognized in government legislation. Table 2, appearing below, offers examples of the forms that coercion can take in relation to labour trafficking.

A. THE NEED TO DOCUMENT AND COMBAT LABOUR TRAFFICKING IN CANADA

There is a broad misconception that labour trafficking is exclusively, or at least mostly, a phenomenon in developing countries. This belief leads to the inaccurately optimistic conclusion that labour protections in Western countries avert the possibility of trafficking. On the contrary, Faraday reports that abuse against migrant workers in Canada is endemic but that labour trafficking tends to be hidden from public awareness.²⁴ This may be due in part to a pretense of legality. As our results indicate, labour trafficking is frequently occurring in legal employment sectors, under the legitimizing guise of the Temporary Foreign Worker Program (TFWP).

The TFWP has existed in one form or another since the 1950s. Today, the program is jointly managed by Human Resources and Skills Development Canada (HRSDC)

²² Ricard-Guay *supra* note 17 [emphasis in the original].

²³ By contrast, the EU Anti-trafficking directive (Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims) definition of trafficking has not only included the different forms of exploitation as established in the Palermo Protocol, but has even expanded it to include trafficking for begging, and for criminal activities. By transposing the EU anti-trafficking Directive into national legislations, most EU member states have expanded their trafficking offence to include forms other than sexual exploitation (when these forms were previously inexistent). See Ricard-Guay, *supra* note 17.

²⁴ Fay Faraday, “Made in Canada: How the Law Constructs Migrant Workers' Insecurity” (2012) *Metcalf Foundation* (2012), online: <metcalfoundation.com/stories/publications/made-in-canada-how-the-law-constructs-migrant-workers-insecurity/> [perma.cc/J59R-6ECN].

and Immigration, Refugees, and Citizenship Canada (CIC).²⁵ Workers are recruited overseas (often with the help of private recruitment agencies) to come to work in Canada on limited-term contracts.²⁶ They are hired for a specific job for which the employer has obtained permission to hire a foreign worker through a Labour Market Impact Assessment that shows that the employer tried unsuccessfully to hire a Canadian and that they are offering competitive conditions. The work permits received by temporary workers tie them legally to their employer and classify them either as high-value (giving eventual access to permanent residency) or low-value (no path to permanent residency).²⁷ For decades, scholars and advocates have decried the vulnerability to exploitation created by this program, particularly for the low-value, low-wage categories of caregivers and farmworkers.²⁸ Since 2001, however, the program has expanded dramatically so that the numbers coming as temporary workers has exceeded permanent residents for the past ten years. The link between the TFWP and human trafficking has been made before.²⁹

The exploitation of workers typically unfolds outside the attention of law enforcement authorities. Employers try to avoid identification and/or prosecution while victims are reluctant to come forward out of fear of criminalization or deportation. In Canada, it seems unfortunately to be the case that a large majority of instances where workers are exploited never reach authorities, NGOs, or the media. A key informant interviewed in the study by Ricard-Guay and Hanley discussed how international cases of labour exploitation remain invisible and “under the radar” because migrants are reluctant to disclose their situation to the authorities. This in turn creates a discrepancy with the number of cases that police are in a position to report:

[The] constant pattern that we see with the international cases [of labour trafficking] is that the survivors don't want any police involvement. They don't want to go the RCMP route. So much of that remains under the radar. That is why I always kind of cringe when I see the statistics around the sexual exploitation and the labour

²⁵ Immigration, Refugees, and Citizenship Canada, “Fact Sheet—Temporary Foreign Worker Program”, online: <<http://www.cic.gc.ca/english/resources/publications/employers/temp-foreign-worker-program.asp>>

[perma.cc/UM2F-GH9Z].

²⁶ Delphine Nakache, “Temporary Workers: Permanent Rights?” (2010) Canadian Issues 45 at 47, online: <s3.amazonaws.com/migrants_heroku_production/datas/91/cdn_issues_CITC_mar10_e_original.pdf?1310677488> [perma.cc/X2UB-TUYL].

²⁷ While research has focused on the lower-wage category of the TFWP, there is increasing evidence that those in the higher wage categories can be vulnerable to similar forms of exploitation. In our sample of trafficking victims, for example, there are several cases of higher wage workers (welders and machinists). For more examples see Jill Hanley, Eric Shragge, Andre Rivard, & Jahhon Koo, “Good Enough to Work? Good Enough to Stay! Organising Among Temporary Foreign Workers” in Patti Tamara Lenard & Christine Straehle, eds, *Legislated Inequality. Temporary Labour Migration in Canada*, (Montreal & Kingston: McGill-Queen's University Press, 2012) 407, 245-271; for more on the distinction between high and low value workers see Luan G Gingrich, “The Symbolic Economy of Trans-Border Governance: A Case Study of Subjective Exclusion and Migrant Women from Mexico” (2010) 29 *Refugee Survey Quarterly* 161.

²⁸ Kerry Preibisch, “Migrant Workers and Changing Workplace Regimes in Contemporary Agricultural Production in Canada” (2012) 19:1 *Int. Jnl. Of Soc. Of Agr. & Food* 62 at 74 Abigail B Bakan, & Daiva Stasiulis, *Not One of the Family: Foreign Domestic Workers in Canada* (Toronto, University of Toronto Press, 1997).

²⁹ See Louise Langevin, “Trafficking in Women in Canada: A Critical Analysis of the Legal Framework Governing Immigrant Live-in Caregivers” (2007) 31:2 *Int J Comp Appl Crim Justice* 191; Jill Hanley, Jacqueline Oxman-Martinez, Marie Lacroix & Sigalit Gal (2006) “The “Deserving” Undocumented?: Government and Community Response to Human Trafficking as a Labour Phenomenon” (2006) 39:2 *Labour, Capital and Society/Travail, capital et société* 78.

exploitation because I know how much of the labour exploitation that is in our area that is just totally under the radar and it is never going to get on a database. Often the people end up going underground and probably go into a worse situation than they came out of.³⁰

Further, of those situations that are reported very few are classified and treated as criminal offenses indictable under Canada's trafficking-in-persons laws.³¹ In Canada, reported incidents not typically addressed through criminal law can include being denied basic health and safety standards, being forced to perform dangerous tasks, having passports and IDs confiscated by employers, failing to receive the national minimum wage or even receive any pay at all, and a whole range of even more serious forms of exploitation and coercion.³²

According to a key informant in The Incidence of Human Trafficking in Ontario report: “[Service providers] don’t understand human trafficking. They believe it’s only about rescuing and saving a person in a sexual exploitation situation, but with forced labour, they don’t believe this is happening in Canada.”³³ This incredulity that labour trafficking could be happening in places like Canada is widespread and speaks to the critical need to better inform both professionals and the public alike.³⁴

B. THE GRADATIONS OF EXPLOITATION AND COERCION IN LABOUR TRAFFICKING: A FRAMEWORK FOR ANALYSIS

Building upon recent scholarly contributions to categorizing and analyzing the various abuses experienced by trafficked workers, we have developed an analytical framework that situates problematic labour experiences within a matrix of exploitation and coercion.³⁵ Combining these two important concepts allows for: (1) an understanding of the complex ways in which victims of labour trafficking can be coerced to enter and remain in a negative situation; and (2) the nuanced forms that the labour exploitation can take. Both Andrees and Skrivankova put forward the helpful idea of a continuum of labour exploitation that we will build upon in this paper.³⁶

Coercion and exploitation are best unpacked as being divisible into gradations, ranging in form and severity. It is also worth noting the temporal notion of a “tunnel of entrapment” developed by Morgan and Olsen; even labour relations that start out voluntarily can later develop into various forms of abuse and degradation, while options for exit become concomitantly slimmer and less viable.³⁷

³⁰ Ricard-Guay & Hanley, *supra* note 2 at 94. The interviewee works for an anti-trafficking coalition and oversees responses to different situations of trafficking, both for sexual and labour exploitation.

³¹ See Yvon Dandurand & Vivienne Chin, “Uncovering Labour Trafficking in Canada: Regulators, Investigators, and Prosecutors” (2014) Public Safety Canada [Dandurand & Chin].

³² Karen McCrae, “Labour Trafficking in Edmonton: Holding Tight to a Double-Edged Sword” (2016) online: <actalberta.org/uploads/112916_Nw7T9fXW3Wbh4d_134135.pdf?utm_source=Labour%20Trafficking%20Report&utm_campaign=b351922850-EMAIL_CAMPAIGN_201...> [perma.cc/C5K2-JK6A] at 24, 26, 34 [McCrae].

³³ Felicia Gabriele et al, “The Incidence of Human Trafficking in Ontario” (2014) *Alliance Against Modern Slavery* 1 at 36 <allianceagainstmmodernslavery.org/sites/default/files/AAMS-ResearchData.pdf> [perma.cc/M9DE-RAZG].

³⁴ McCrae, *supra* note 32.

³⁵ See Strauss & McGrath, *supra* note 11; Beate, *supra* note 4.

³⁶ Beate, *ibid*; Skrivankova, *supra* note 4.

³⁷ Morgan & Olsen, *supra* note 10.

Table 2 offers examples of the forms that coercion can take in relation to labour trafficking:³⁸

Table 2: Different forms of coercion applied to workers in Canada

	Gradations of coercion	Examples
Direct	Threats	Threats of reporting them to immigration or legal authorities; threats of violence; threats to their families
	Administrative control	Withholding information; keeping identity documents (especially passports)
	Financial control	Debt bondage; withholding wages; dependency for access to the means of subsistence
	Psychological control	Creating emotional dependency; encouraging feelings of shame and inadequacy; enforcement of social isolation
	Physical control	Locking into the workplace; geographic isolation without access to transportation; episodes of physical violence
Systemic	Immigration risk	Deportation; loss of work permit; being blocked from permanent residency; inability to sponsor family members
	Criminalization	Charges related to drug cultivation or trafficking, document fraud

We would like to underline the proposition that coercion can be direct or systemic.³⁹ In direct forms of coercion, the person benefitting from the coerced labour takes direct action to compel their victim to remain in the situation: the perpetrator's words or deeds are applied toward the control of the worker. By contrast, systemic coercion describes the legal and policy conditions that enable the employer to benefit from the exploited labour without having to take direct action to ensure the worker's compliance.⁴⁰ Larger systemic forces—an immigration status that requires continued service to a fixed employer in order to remain in the country, absence of

³⁸ Based on and taking inspiration from International Labour Organization, "ILO Indicators of Forced Labour" (1 October 2012) online: <ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm> [perma.cc/C8JB-J69D].

³⁹ See Lewis *et al.*, *supra* note 9 for a discussion of policies that contribute to the precariousness of migrant worker experiences.

⁴⁰ Bethany Hastie, *By Any Means Necessary: Towards a Comprehensive Definition of Coercion to Address Forced Labour in Human Trafficking Legislation* (LLM Thesis, McGill University, 2011) (Montreal & Kingston: McGill University Libraries, 2011).

viable employment alternatives when the worker’s family is reliant on their income for survival, the worker’s knowledge that the activities in which they are engaged make them vulnerable to criminal prosecution—serve to keep the workers in the exploitative situation.⁴¹ In other words, systemic coercion is not a means of coercion applied by the employer, but is coercion that is applied to workers inherently as a result of policy and law.

As with coercion, we see a similar gradation of the forms that exploitation can take among trafficked workers in Canada, as summarized in Table 3. Here we include the practices that allow employers to extract unfair profit (usually economic but potentially sexual, without sexual exploitation being the core object of the work) from the labour of trafficked workers, in other words changing the nature of their work, often below the legal standards in Canada. This can range from employers using deception to recruit workers to labour in what may be legal conditions but that are below what was promised, to employers violating labour standards or health and safety requirements. In its worst form, employers create or fail to prevent dangers to a worker’s physical or psychological wellbeing in the workplace, potentially resulting in illness, disability or even death.

Table 3: Different forms of exploitation experienced by workers in Canada

Gradations of exploitation	Examples
Deception	False information about employment tasks, working conditions, wages, benefits, location, term of employment, etc.
Violation of Labour Standards	Pay below the minimum wage, excessive hours, lack of vacation, lack of privacy, discrimination
Occupational Health and Safety Violations	Dangerous or unhealthy work conditions, exposure to physical or psychological violence in the workplace, sexual harassment or sexual exploitation

A framework of the intersection of exploitation with coercion guides our analysis of the sample of cases of trafficked labour as presented below.

II. METHODOLOGY

Using the conceptual definitions outlined above, this project sought to provide a thorough compilation of documented cases of labour trafficking in Canada between 2001—the year Canada harmonized its legal definition of organized crime with the Palermo Protocol’s to

⁴¹ See Fay Faraday, “Profiting from the Precarious: How Recruitment Practices Exploit Migrant Workers” *Metcalf Foundation*, (2014) online: <metcalffoundation.com/stories/publications/profitting-from-the-precarious-how-recruitment-practices-exploit-migrant-workers> [perma.cc/S7HV-ZY69] [Faraday,Profiting]; See also Judy Fudge & Fiona MacPhail, “The Temporary Foreign Worker Program in Canada: Low-skilled Workers as an Extreme Form of Flexible Labor” (2009) 31 *Comp Lab L & Pol’y J* 101; and Tanya Basok, “Temporary Migrant Workers in Canada: Protecting and Extending Labour Rights” in Gordon DiGiacomo, ed. *Human Rights. Current Issues and Controversies* (Toronto: University of Toronto Press, 2016) 145.

incorporate “trafficking in persons” as a punishable offense—and 2015. Our objective was to understand the ways in which exploitation intersected with coercion in these cases, and get a sense of the challenges that exist in combatting this specific form of trafficking.

In seeking to document such cases, we were able to begin with the raw data available from a previous study conducted by Ricard-Guay and Hanley. In their report, Ricard-Guay and Hanley described the broad trends identifiable from their data, but did not include a discussion of specific cases of trafficking reported by study respondents.⁴² Our initial analysis of raw data from that study led to the identification of nine cases (sometimes described by more than one respondent), where a “case” is just an event or series of events that constitutes labour trafficking experienced by a worker or group of workers on a single job site. We then moved on to a systematic literature scan that encompassed different sources (academic, government, legal, and media) in an effort to find additional cases of labour trafficking in Canada.

We used the following search terms, gleaned from the most common keywords used in the labour trafficking literature: Canada, trafficking in persons, human trafficking, labour trafficking, labour exploitation, domestic servitude, and forced labour. We applied these terms to searches of the following sources: academic literature (*e.g.*, Worldcat database); government documents (*e.g.*, Parliament of Canada website); Canadian legal databases (CanLii, QuickLaw, WestLaw); and media reports (*e.g.*, Google News, CBC News, The Globe and Mail, Toronto Star, Huffington Post, Calgary Sun). We retained case examples that included, at a minimum: location, number of victims, nature of exploitation, nature of coercion, and sector of work. We did not include cases of labour exploitation without coercion or cases of sex trafficking (as mentioned above). Our search results are organized as follows:

Table 4: Principle sources of case examples

Principal source of case example	Number of cases identified
Raw data from Ricard-Guay & Hanley	9
Academic sources	7
Government sources	2
Legal databases	3
News media	15

Most of the cases we identified were discussed in more than one source. We categorized the source of the case according to which source provided the most detailed information, but supplemental information was often drawn from other sources covering the same case. We then collated information on each case using the following grid:

⁴² This 2015 study was based on seventy-nine semi-structured interviews with ninety stakeholders and practitioners from different sectors (community, law enforcement, social services, and health sectors). For a full description of the methodology used for the study, see the final report of the study Ricard-Guay & Hanley, *supra* note 2.

Table 5: Data collection grid

Case Number	
Date	
Source of Data	
City	
Province	
Identified Victims	
Victim(s) Country of Origin	
Gender	
Type of Work	
Type of Deception/Coercion	
Type of Exploitation	
Identified Perpetrators/Traffickers	
Criminal Investigation	
Classification/Charges Laid	
Criminal Prosecution	
Legal Outcome	
Source Reference/Link	
Summary	

Our scan revealed thirty-six specific, discrete cases of trafficked labour. It is important to note, however, that this is surely an under-representation of instances of labour trafficking that have occurred during this time frame. As has been mentioned above and documented consistently in the literature on labour trafficking, few people come forward for help and, of those, only a small number of cases are publically documented. We must also recognize the limitations of such a scan. The level of detail available for different cases was highly variable and some sources, particularly the media, are not peer reviewed. Details may have been incorrectly reported in some stories. However, we did try to triangulate different sources of data and we believe that, given the overall scarcity of data on labour trafficking, such a scan makes a contribution to the scholarship despite its limitations. Readers interested in a summary of each of the thirty-six cases identified may consult the original report available online.⁴³

III. RESULTS: CANADIAN CASES OF LABOUR TRAFFICKING 2001-2015

In total, to reiterate, we documented thirty-six cases of trafficked labour, involving approximately 243 victims. Each case was most likely taken up at some point by Canadian authorities and community organizations, although we do not know this for certain. In this section, we begin by presenting our findings about the characteristics of the people and the sectors of work involved in these cases. We then consider how these cases relate to our analytic

⁴³ The original report offers a preliminary analysis of the data used in the present article. Beatson & Hanley, *supra* note 3.

framework by identifying whether exploitation and/or coercion were present in the cases. Finally, we share some observations about patterns regarding who is involved in these cases.

A. PROFILE OF DOCUMENTED LABOUR TRAFFICKING CASES IN CANADA, 2001-2015

The cases documented in our study show some interesting demographic and labour sector trends. The following table summarizes the findings in terms of employment sector, total number of cases, total number of victims, and the gender and age (adult or child) of victims.

Table 6: Sectoral and demographic profile of 243 victims in Canadian labour trafficking cases, 2001-15.

Sector	# Cases	# Victims	# Women	# Men	# Adults gender unspecified	# Boys
Retail and Hospitality Services	7	22	1	10	11	-
Domestic Work	14	15	15	-	-	-
Agriculture	7	94	19	69	6	-
Skilled and Technical Work	2	61	-	61	-	-
Manual Labour	3	48	-	19	28	1
Unknown	3	3	1	-	-	2
TOTAL	36	243	36	159	45	3

While there are only thirty-six cases documented in our study, there were a total of approximately 243 victims involved, an average of seven per case. Labour trafficking does not appear to be limited to any one sector, with a total of five broad sectors being identified. However, domestic work and agricultural work—two sectors that have specific Temporary Foreign Worker programs (TFWP) to recruit international migrants—were the two sectors with the most number of cases.

The largest number of cases was in domestic work (fourteen cases) but since these are nearly always situations in which the worker is a lone employee, the number of victims is relatively low (fifteen). Notably, all the victims in the domestic sector were adult women and most of them had come to Canada legally through the Live-In Caregiver Program (called the Caregiver Program since November 2014).

The second most common sector was agriculture. Seven cases alone involved ninety-four victims. The majority of victims were men (sixty-nine) but there were also nineteen women and six people whose gender was not documented. It is of note that the women were concentrated in just two of these cases, demonstrating the gendered division of work in this sector. And, again, most of these victims had entered Canada legally on the Seasonal Agricultural Workers Program or the Low-Skill category of the TFWP.

The sector with the third highest number of cases was retail and hospitality services. There was a total of seven cases involving a family-run store, a motel, a gas station, and four different restaurants. Out of the twenty-two victims, there were ten men and eleven whose gender was unknown. Of note, the lone woman documented was forced to work in a family business as part of a forced marriage and subsequent domestic abuse.

The two remaining sectors had low numbers of cases but relatively high numbers of victims. In manual labour, there were three cases documented with forty-eight victims. This was one of the only sectors where a child (a boy) was documented to have been a victim, along with nineteen men and twenty-eight whose gender was not documented. In skilled and technical work, the pattern was similar with only two cases but sixty-one men who were victims. Finally, there were three cases, involving a woman and two boys, where the sector was not specified.

B. WORKERS CAUGHT IN A MATRIX OF COERCION AND EXPLOITATION

Earlier we outlined the ways in which employers rely on coercion to ensure that a worker’s labour can be continuously exploited. Our results reveal that contrary to the common perception that labour trafficking only merits minor concern, violence was used fairly frequently, as was active and direct coercion. Table 7 summarizes the intersection of the different forms of coercion and exploitation among our thirty-six cases. It should be noted that cases were categorized according to the most obvious or serious forms of coercion or exploitation noted in their case. For example, in a case categorized as involving occupational health and safety (OHS) violations, it should not be assumed that there were no labour standard violations.

Table 7: The matrix of exploitation and coercion in Canadian cases of labour trafficking

		Gradations of Labour Exploitation		
		Deception	Labour Standard Violations	Occupational Health & Safety Violations
Gradations of Coercion	Systemic	3 cases (19, 20, 21)	4 cases (26, 31, 32, 36)	4 cases (4, 11, 17, 25)
	Direct	2 cases (12, 30)	10 cases (5, 6, 10, 15, 18, 22, 23, 27, 28, 34)	13 cases (1, 2, 3, 7, 8, 9, 13, 14, 16, 24, 29, 33, 35)

Given that all the victims documented in these cases were migrants to Canada with precarious immigration status, existing research leads us to believe it is likely that systemic coercion (in the form of immigration policy that provides for the possibility of their deportation) was a factor across the board.⁴⁴ In eleven cases, one third of the total, systemic coercion was

⁴⁴ See Judy Fudge, “Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers” (2012) 34:95 *Comp Lab L & Pol’y J* 95 ; and Nandita Sharma, “On Being Not Canadian: The social organization of “Migrant Workers” in Canada (2001) 38:4 *The Canadian Review of Sociology* 415 at 423.

sufficient—at least for a time—to keep the victims under the control of employers. In the remaining twenty-five cases, employers also engaged in some form of direct coercion.

For the workers that we categorized as having only experienced systemic coercion, fear of punitive actions from immigration officials and police was a factor. This kept the workers under the control of their abusive employers. Therefore, without the employer having to exercise direct control, exploitative conditions continued. When the employer did exercise direct coercion, the systemic coercion served as reinforcement.

Our sample also includes examples of a gradation of labour exploitation. Only five cases remained at the level of deception, where victims were deceived about the type of work or the salary they would receive when they were initially recruited for the work. Similarly, they were told lies about payments to come or future opportunities for themselves and potentially for their family members as well. As Andrees observes, “[t]he chain of exploitation starts with deception about working and living conditions.”⁴⁵ One form of deception identified in our study involved Labour Market Impact Assessments (LMIAs), documents required by employers to show that they have made sufficient efforts to hire Canadians before hiring foreign workers. These “labour market opinions,” originally issued by the Canadian government for legitimate contracts, have been used overseas to recruit foreign workers for contracts that have expired and no longer exist. There were multiple examples, especially among farmworkers, of workers being taken, upon arrival in Canada, by recruiters and leased out to alternate employers who are not bound by any employment agreements or contracts. It should be noted that the LMIA process, nominally in place to protect both Canadian and foreign workers, was easily exploited by intermediaries and, ultimately, employers.

In thirty-one of the cases, the presence of coercive pressures (either systemic or direct) enabled escalation from deception to labour standard violations and OHS violations. There were many examples of wage theft, excessive work hours, workplace harassment, and unsafe workplace health, and safety conditions. It is our observation that the gravity of both coercion and forms of exploitation tend to escalate with time. One might expect the opposite: that workers would be treated better over time as they become familiar with their surroundings, acquire some information about Canadian employment standards, and perhaps develop a personal relationship with their employer. Just the opposite was documented. In only five out of thirty-six cases was exploitation limited to deception. The increasing intensity of exploitative practices used by employers, escalating from deception to labour standard and OHS violations, must be understood in terms of an evolving relationship between the employer and the worker. Power dynamics between these two actors are complex and the presence of exploitation and coercion may be obscured or downplayed by the worker initially due to feelings of gratitude toward the employer for providing an opportunity or the worker’s sense of dependence on the job.⁴⁶

It is noteworthy that, from our sample, it appears that labour trafficking is less tied to organized crime than sex trafficking. Apart from a very few cases in our sample, most employers seem to have been private individuals or entrepreneurs engaged in legitimate small or medium-

⁴⁵ Beate, *supra* note 4 at 22.

⁴⁶ See Bakan, *supra* note 28; Nandita Sharma, “The “Difference” That Borders Make: “Temporary Foreign Workers” and The Social Organization of Unfreedom in Canada” in Patti T Lenard & Christine Straehle, eds, *Legislated Inequality: Temporary Labour Migration in Canada*, (Montreal & Kingston: McGill University Press, 2012) 26-47; Jahon Koo & Jill Hanley, “Migrant Live-In Caregivers: Control, Consensus and Resistance in the Workplace and the Community” in Aziz Choudry & Adrien Smith, eds, *Unfree Labour? Struggles of Migrant and Immigrant Workers in Canada*. (Oakland: PM Press, 2016).

sized businesses whose practices over time evolved from deception to other forms of labour exploitation.⁴⁷ An example of this evolution is instructive. A worker named Aba, whose story was relayed initially by Perrin,⁴⁸ was brought from Ghana to Canada on a visitor's visa. She quickly found herself in conditions of domestic servitude for a Vancouver family who did not pay her or allow her to access any medical care. Her papers were confiscated and she may have been physically mistreated as well. She worked an excessive number of hours and was only permitted to leave the house to attend church for half a day per week. The family that Aba was working for suddenly decided to move to the United States and Aba was simply abandoned. Aba contacted immigration officials to try to obtain legal status, however they did not help her. Troublingly, Aba's fate is unknown as there is no documentation of what happened to her after—she then disappeared.

Understanding this escalation of exploitative practices, a phenomenon documented elsewhere,⁴⁹ can be important for frontline workers aiming to identify victims of labour trafficking and prevent or protect people from it. Just as in sex trafficking, victims may feel they can endure the exploitation at early stages of the process but the conditions can change and ramp up over time. Morgan and Olsen's concept of the "tunnel of entrapment," previously referred to, is apt.⁵⁰

As noted above, all the workers documented in our study were engaged in legal employment sectors. Most of these workers, therefore, were not facing legal exclusions from their labour rights. What we see instead is the various forms of coercion, both direct and indirect, that allow this exploitation to occur. As we will see in the following subsection, differing social locations appear to play a role in who becomes a victim of labour trafficking in Canada.

C. VULNERABILITIES TO LABOUR TRAFFICKING: MIGRANT, NOT MINOR, AND MALE

It has been noted by a number of researchers that the documented cases of sex trafficking in Canada have overwhelmingly involved Canadian-born women.⁵¹ Between 2009 and 2014, for instance, there were 396 victims of police-reported human trafficking and 93% of these victims were female.⁵² While the victims of sex trafficking share other social vulnerabilities (e.g., Indigenous women, social isolation, a history of abuse, drug addictions), they are not often in Canada with a precarious immigration status. In stark contrast, all the victims of labour trafficking in our sample of cases are foreign-born individuals, all with precarious immigration status.

⁴⁷ Specifically, these individuals include farmers, factory managers, restaurant and small business owners, and in the domestic sphere, mothers and fathers. While their specific actions may differ, it seems reasonable to infer that they each have the shared motives of economic opportunism.

⁴⁸ Benjamin Perrin, *Invisible Chains: Canada's Underground world of Human Trafficking* (Toronto: Penguin Canada, 2010) at 173.

⁴⁹ See Preibisch, *supra* note 28 ; Andrew Crane, "Modern Slavery as a Management Practice: Exploring the Conditions and Capabilities for Human Exploitation" (2013) 38 *Academy of Management Review* 49.

⁵⁰ Morgan & Olsen, *supra* note 10.

⁵¹ See Ricard-Guay & Hanley, *supra* note 2; Kaye et al, *supra* note 2.

⁵² Maisie Karam, "Trafficking in Persons Canada, 2014" *Statistics Canada* (2014) online <statcan.gc.ca/pub/85-002-x/2016001/article/14641-eng.htm> [perma.cc/P64V-WZH6].

The reality for many migrant workers is that they arrive through legitimate, legal channels. However, once they are here in Canada it is very easy for them to be taken advantage of and for their status to become irregular. Take for example the case of Saswati, a native of Thailand, whose experience was first reported by Sikka.⁵³ Saswati paid a Thai recruiter \$10,000 plus interest to work in Canada but, upon arrival, her passport was confiscated and she noticed that her work permit and her workplace did not match up.⁵⁴ Moreover, her workplace changed frequently. She was injured on the job one day and her recruiter charged her several hundred dollars to take her to the hospital. The recruiter also charged her \$1,500 to return her passport when her work permit was about to expire. Saswati returned home when her work permit had expired, knowing that she could not return to Canada to work for four months. After this time had passed, she was charged \$5,000 plus interest by her recruiter to return to Canada. However, when she arrived there was not enough work for her. After some time and out of necessity, she took on work at a neighbouring farm. She was deported and barred from Canada when immigration officials raided her workplace.

This vignette speaks to a larger pattern in our cases in which legal migration (*i.e.*, arriving through temporary foreign worker program) is leading to illegality, a major factor in creating vulnerability to abuse. A profile of the migrant workers who experienced these abuses provides a clear indication of the degree to which precarious status makes people vulnerable. We repeat, there were no Canadian citizens or permanent residents in our sample and this was not because we restricted our search to temporary migrant workers. With more secure forms of legal status come greater protections against employment-based exploitation and coercion. Further, Canadians and permanent residents have far more options and this flexibility creates a safety net for workers and their families. In addition, there is much less taboo associated with labour exploitation than to sexual exploitation, making it more difficult for employers to emotionally manipulate workers with secure citizenship status from publicizing their experiences and/or seeking legal recourse. Canadian citizens, we imagine, tend to be better able to walk away from labour exploitation and are less vulnerable to the forms of coercion most commonly applied in our sample.

In very few of the cases we documented (only three) were foreign minors the victims of labour trafficking. Further, we found no minors that were female. In terms of both age and gender, therefore, there is a major difference between who falls prey to sex trafficking versus labour trafficking. It may well be that the potential profit margin may not warrant the heightened risk, even for employers who have demonstrated willingness to be abusive and exploitative towards adult migrant employees. The legal penalties are substantially more severe for victimizing a child compared to an adult. As an example, the charge of “withholding or destroying a person's identity documents (for example, a passport) for the purpose of committing or facilitating trafficking of that person,” carries a maximum penalty of five years’ imprisonment for an adult victim.⁵⁵ For a child victim, the same charge carries a ten year maximum prison term with a minimum penalty of one year imprisonment.⁵⁶ Additionally, it is difficult to arrange for the unaccompanied legal migration of minors.

⁵³ Sikka, *supra* note 12.

⁵⁴ All monetary amounts indicated are in Canadian dollars.

⁵⁵ *Criminal Code*, *supra* note 6, s 279.03(1)

⁵⁶ *Ibid* s 279.03(2)

There were many male victims in our sample of cases. The experiences of Hiten and Suresh are not uncommon within our sample. Both men were offered jobs in Ontario working for a caterer.⁵⁷ They were promised standard working conditions and living quarters. Furthermore, they were told that the employer would pay each of their families in India \$350 per month and that they would personally receive \$67 per month (\$2.60 per hour). When Hiten and Suresh arrived in Toronto, their passports were taken away immediately by the employer. They joined other temporary foreign workers of the caterer, sleeping eight to a room and working over seventy hours a week. The Workers Action Centre (WAC) reported that the families of both workers each received only \$700 total. Each worker was owed well over the \$10,000—the maximum amount recoverable under the *Employment Standards Act*—by the time they could actually leave their jobs.

According to Surtees, trafficking offences are most commonly associated with the victimization of women and children, rather than with male victims, and in fact a majority of studies and projects exclude men from their focus.⁵⁸ There is a common stereotype, perpetuated by the lack of focus that male victims have received, that men are not vulnerable. Consequently, there appears to be less public sympathy for male victims, although this apparent bias might be capable of correction through greater knowledge and understanding.

D. PATHWAY TO EXPLOITATION

Before moving to implications and conclusions, allow us to broadly describe the pathway to exploitation that many of the workers in our sample experienced. The victims of labour trafficking from our sample are from poor economic backgrounds and likely perceived opportunities for economic enrichment in Canada. Sometimes these individuals sold off possessions or took out sizeable loans in their country of origin to pay exorbitant recruiter fees, as was the case with Saswati. This is so they could secure what they believed to be a job with reasonable pay and working conditions, as advertised.

Recruitment fees are illegal. Nevertheless, as was found in our sample, several victims reported paying approximately \$10,000 to recruiters to work in Canada. Labour recruiting entities also intentionally misfiled application paperwork and lied to workers about which permit they were receiving (*e.g.*, a worker receives a visitor permit rather than work permit, or receives a permit that does not match up with place of employment). In one of the cases we collected, for example, a recruited live-in-caregiver was forced into “illegality” when her abuse led her to seek work with another employer.

Upon arrival in Canada, workers’ employers almost always confiscated identity documents as the first step to their exploitation. Victims were then forced to work long hours for little pay and were often severely isolated. Employers used a range of tactics to ensure compliance and to prevent victims from leaving or reporting their situation. Victims were threatened with physical violence, but more often with deportation and destitution. Workers who had families back home were often reminded by their employers of the workers’ responsibility to feed and support their families. In a small number of particularly egregious cases, labour exploitation was also combined with sexual assault. In at least one of the cases this treatment led

⁵⁷ As related in 2009 by Toronto’s Workers Action Centre (WAC) to an Ontario Legislative Assembly hearing on Bill 210, Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others).

⁵⁸ Rebecca Surtees, “Trafficked Men as Unwilling Victims” (2008) 4 *St Antony’s International Review* 16.

to a diagnosis of posttraumatic distress disorder (PTSD). In some cases, even when medical attention was desperately needed, employers refused to allow workers to access it. In at least one instance, not receiving medical attention for a workplace injury resulted in a death.

IV. IMPLICATIONS AND CONCLUSIONS

Extrapolating from our research results and joining them with the findings of other scholars, it is fair to presume that a not insignificant number of foreign workers are mistreated and taken advantage of here in Canada. Within our sample it was rare that police and/or prosecutors treated these instances as “labour trafficking” offences, even where both exploitation and coercion were present. In fact, very problematically, it is far more likely for these cases to be treated as issues of illegal immigration than as cases of labour trafficking, reversing the blame and pinning it on the victims of these situations.⁵⁹ The rarity in approaching these cases as labour trafficking may be in part due to the way the offence is defined in the *Criminal Code* and *IRPA*.⁶⁰ Judges may have a role to play in taking readings of these pieces of legislation that are not overly narrow and that discourage victims from coming forward. Ultimately, however, judges are limited by the provisions they are given, such as the one in the *Criminal Code* requiring “fear for safety”. Legislative action is warranted, for instance to remove or widen the scope of the “fear for safety” requirement. Such an amendment to existing trafficking legislation will make it easier for police to lay charges for labour trafficking and for judges to be able to determine that labour trafficking has occurred in a wider range of cases and situations. Strengthening existing mechanisms that empower victims to come forward will also be an essential component of reducing cases of labour exploitation in Canada.

In the policy realm, changes must be made to the Temporary Foreign Worker Program. As Faraday states: “[migrant] worker’s insecurity is built by law. The law does not only create vulnerability but it fails to address exploitation and allows it to flourish.”⁶¹ Faraday goes on to point out that the problems faced by migrant workers within Canada are “systematic There is a deepening concern that Canada’s temporary labour migration programs are entrenching and normalizing a low-wage, low-rights ‘guest’ workforce.”⁶² Progressive changes would include removing the limitation that a foreign worker be tied to a single employer, as well as giving workers rapid (if not immediate) access to permanent residency. These changes will make it easier for victims to leave exploitative workplaces and reduce the employer’s ability to apply coercion.

Some victims of trafficking have benefited from the Canadian government’s temporary resident permit (TRP) program for trafficking in persons, which enables certain individuals without legal status to stay in Canada for 180 days. In one prominent case involving Thai agricultural workers, the victims all received TRPs. It is important to note that these permits have

⁵⁹ Dandurand & Chin, *supra* note 31.

⁶⁰ As examples, each previously mentioned, the *Criminal Code* requires a ‘fear for safety’ requirement that has been read narrowly, while *IRPA* requires the perpetrator to have been involved in transportation of the victim in some capacity. See *IRPA*, *supra* note 8.

⁶¹ Nicholas Keung, “Abuse of Migrant Workers ‘Endemic’ in Canada, New Study Says,” *Toronto Star* (17 September 2012), online: <thestar.com/news/gta/2012/09/17/abuse_of_migrant_workers_endemic_in_canada_new_study_says.html> [perma.cc/ALD6-XXMS].

⁶² *Ibid.*

been more difficult for victims of trafficking to attain in recent years, with far fewer issued.⁶³ Citizenship and Immigration Canada issued on average thirty-two TRPs each year between 2006 and 2012. Just fourteen permits were issued across the country in 2013, the most recent year for which figures are available.⁶⁴ Not having an open police case against their former employer can make it especially difficult for victims to attain TRPs.⁶⁵ To make this program more effective and accessible to victims of labour trafficking, TRP permits should be issued more frequently to workers in such situations. It should also be recognized that having an open police case is not always realistic.

The cases of labour trafficking collected in this study suggest a pattern of migrants being brought into Canada under false pretenses, through shady and illegal recruitment processes, and subsequently coerced into enduring the exploitation of their labour. In terms of recruitment, the Canadian Council for Refugees (CCR)⁶⁶ has urged the federal government to take responsibility for curtailing predatory recruitment practices.⁶⁷ While recruitment fees are not technically legal, there appears to be a sizeable enforcement gap. We propose the concrete measure of creating a formalized registration system for recruiters so that government agencies can keep closer track of their activities.

Cases of labour trafficking are masked if there is an almost exclusive focus on sex trafficking, as we see too often among many organizations, media outlets, and law enforcement and criminal justice actors. Our argument is not that community organizations focusing on sex trafficking (even exclusively so) should cease to operate in this way; rather, a greater number of victim experiences and situations should be recognized and this can be done through a general widening of attention to include labour trafficking. This widening of attention is a precursor to making safety and justice accessible to labour trafficking victims, and as our study results convey, it will be important to acknowledge the many ways in which the labour of foreign workers can be exploited. Approaching coercion and exploitation as having gradations of form and severity is a useful tool to avoid creating blind spots or neglecting victims in cases where current criminal justice thresholds are not met.

Labour trafficking in Canada is a neglected subject, something that must change if we are to address the experiences of the migrant workers in Canada who get caught in this matrix of coercion and exploitation. As mentioned, a more active criminal justice approach to labour trafficking—one that targets abusive employers without penalizing their worker victims—will no doubt form part of the solution. Detering and punishing individual traffickers through the courts will reduce the opportunities to commit these crimes with impunity. Engaging the criminal justice system alone will not be sufficient, however, given the systemic factors—particularly with regards to immigration policy—that apply coercive pressures to vulnerable migrant workers

⁶³ Ricard-Guay & Hanley, *supra* note 2.

⁶⁴ Tara Carman, “Permits for Human Trafficking Victims Becoming Harder to Get: Advocate,” *The Vancouver Sun* (7 April 2015), online: <<http://vancouver.sun.com/life/permits+human+trafficking+victims+becoming+harder+advocate/10950113/story.html>> [perma.cc/LVG5-N4H9].

⁶⁵ Ricard-Guay & Hanley, *supra* note 2.

⁶⁶ A national non-profit organization focused not only on refugees but also other vulnerable migrants.

⁶⁷ Canadian Council for Refugees, “Government Overhaul of Temporary Foreign Worker Program” (November 2014), online: <http://ccrweb.ca/sites/ccrweb.ca/files/ccr_reponse_government_overhaul_en.pdf> [perma.cc/39JG-8JFH].

to stay in situations where their labour can be opportunistically and aggressively exploited. The possibility for employers to exploit migrant workers is currently all too straightforward, given the nature of immigration policy that ensures precarity of legal status. A solution with good faith intentions to make substantive changes to safeguarding migrant dignity and worker rights will therefore include policy and legal reform in both the criminal justice and immigration realms. By adopting some or all of the above recommended changes, Canada would be taking great strides towards ensuring the basic wellbeing of the temporary migrant workers within its borders, workers it needs and relies upon for its economic prosperity.