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# A Formidable Task: Reflections on obtaining legal empirical evidence on human trafficking in Canada

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## Abstract

This article explores the experiences, challenges and findings of two empirical research studies examining Canada's legal efforts to combat human trafficking. The authors outline the methodologies of their respective studies and reflect on some of the difficulties they faced in obtaining empirical data on human trafficking court cases and legal proceedings. Ultimately, the authors found that Canadian trafficking case law developments are in their early stages with very few convictions, despite a growing number of police-reported charges. The authors assert it is difficult to assess the efficacy and effects of Canadian anti-trafficking laws and policies due to the institutional and political limitations to collecting legal data in this highly politicised subject area. They conclude with five recommendations to increase the transparency of Canada's public claims about its anti-trafficking enforcement efforts and call for more empirically-based law reform.

**Keywords:** human trafficking, empirical knowledge, research, anti-trafficking law, sex work, social justice, research methodology

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## Introduction

There is a growing consensus among critically-oriented scholars that research on human trafficking comprises a 'rigour free zone' of frequently unsubstantiated claims and increasingly expansive definitions.<sup>1</sup> These claims—that sex trafficking is a prolific and growing problem in Canada, linked to transnational organised crime and domestic criminal gangs, and that certain groups (Asian women, Indigenous women and youth) are at significant risk<sup>2</sup>—are repeated by government representatives, advocates, and even some academics in spite of a lack of empirical evidence to substantiate the claims.<sup>3</sup> Non-government organisations (NGOs)<sup>4</sup> and the media<sup>5</sup> further obscure matters by packaging their advocacy and journalism as 'studies' and 'research' on trafficking. The public accept these claims as facts, which then form the basis of political calls for action; in particular, for increasingly expansive and punitive law reforms and enforcement actions.<sup>6</sup>

<sup>1</sup> See: A T Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, New York, 2012; J Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law', *American Society of International Law*, vol. 108, issue 4, 2014, pp. 609—649; R Weitzer, 'Researching Prostitution and Sex Trafficking Comparatively', *Sexuality Research and Social Policy*, vol. 12, issue 5, 2015, pp. 81—91.

<sup>2</sup> See the annual US Department of State *Trafficking in Persons Reports*, Country Narratives for Canada (2001—2016); RCMP, *Human Trafficking in Canada*, Ottawa, Ontario, 2010; RCMP, *Project Safekeeping 2013*, Prepared by the Human Trafficking National Coordination Centre, Ottawa, Ontario, 2014.

<sup>3</sup> A De Shalit and K Roots, 'Evidence that Evidence Doesn't Matter: The case of human trafficking in Canada', *Atlantis: Critical Studies in Gender, Culture and Social Justice*, vol. 37, issue 2, 2016, pp. 65—80.

<sup>4</sup> See, e.g., F Gabriele, K Sapoznik, A Serjotdinov and E Williams, *The Incidence of Human Trafficking in Ontario: Ontario Coalition Research Initiative*, Alliance against Modern Slavery, Toronto, 2014; and E Wohlbold and K LeMay, *Local Safety Audit Report: Towards the prevention of trafficking in persons and related exploitation in the Ottawa area*, PACT-Ottawa, Ottawa, 2014.

<sup>5</sup> See, e.g., T Grant's *Globe and Mail* newspaper series on 'Missing and Murdered Women: The trafficked', 10 February 2016, retrieved 3 January 2017, <http://www.theglobeandmail.com/news/national/the-trafficked-sexual-exploitation-is-costing-canadian-women-their-lives/article28700849/> which was then linked to the Ontario provincial government unveiling an anti-trafficking strategy available at: <http://www.theglobeandmail.com/news/national/ontario-government-to-unveil-strategy-to-tackle-human-trafficking/article28740329/>. Grant initially referenced her investigative series as being based on three months of research, including conducting more than 60 'interviews' with key stakeholders.

<sup>6</sup> See: A De Shalit, R Heynen and E van der Meulen, 'Human Trafficking and Media Myths: Federal funding, communications strategies, and Canadian anti-trafficking programs', *Canadian Journal of Communication*, vol. 39, 2014, pp. 385—412; G Soderlund,

The Canadian government has enacted both immigration (in 2002) and criminal (in 2005) laws prohibiting human trafficking. It has also created several inter-governmental and enforcement-oriented task forces to combat this form of exploitative conduct. Yet, it appears that the original laws and subsequent legal amendments are not based on rigorous empirical evidence demonstrating the nature and prevalence of trafficking. Instead, they are a by-product of Canada's international commitments and bilateral pressure from the United States of America (USA) through its annual *Trafficking in Persons Report*. In fact, it continues to take time for Canada's courts and law enforcement agencies to determine the legal parameters and application of the relevant anti-trafficking terminology in the Canadian context.<sup>7</sup>

Those working in social justice contexts with, for example, commercial sex workers, precarious labourers, and migrant workers, have witnessed this new era of prohibitions imposed on communities of marginalised persons. They have seen the development of a highly politicised discourse that has permeated public policy discussions on both commercial sex and human trafficking, regardless of community and individual resistance to the label 'human trafficking victim'.<sup>8</sup> Laws have been created without adequate consultation with members of affected communities, and enforcement actions have caused direct harms to their members.<sup>9</sup> These developments did not emerge from an evidentiary basis;<sup>10</sup> indeed, as is the case for most countries, there is very little empirical evidence underlying Canada's legal efforts to combat human trafficking.<sup>11</sup>

With this politicised context in mind, the authors of this paper sought to contribute to the existing empirical legal knowledge of human trafficking in Canada. In order to assess the formulation and enforcement of national anti-trafficking laws, Millar and O'Doherty engaged in a 20-month university ethics-approved independent collaborative research project with the NGO Supporting Women's Alternatives Network (SWAN) Vancouver Society. SWAN is an outreach organisation that works directly with im/migrant women indoor sex workers in the Greater Vancouver area. Roots conducted a 15-month university ethics-approved research study for her PhD dissertation focusing on the criminal justice system and Ontario courts as terrain on which the meaning of human trafficking is shaped, enforced and challenged.

The authors made three important findings from these studies. First, Canadian legal efforts rely on a one-dimensional and exaggerated view of human trafficking, equating it with sex work, especially if involving pimps and/or minors. Second, and related to this singular narrative, there are significant discrepancies between the available empirical evidence and the claims that the government, NGOs, and the media make about human trafficking. Third, there exist serious limitations associated with the available legal data and institutional and structural constraints to obtaining socio-legal data in this field.

The studies suggest several important public policy concerns, including starkly contrasting understandings of what constitutes evidence of the extent of human trafficking and differing opinions on which measurements, or indicators, are most accurate to represent incidents of human trafficking in Canada. The authors' findings contribute to the existing empirical evidence; however, the findings also expose the inherent limitations of conducting socio-legal research by examining police-reported charges, locating and analysing immigration and criminal trafficking cases prosecuted in the courts, observing human trafficking legal proceedings in the courts, and conducting interviews with legal experts and practitioners in Canada.

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'Running from the Rescuers: New U.S. crusades against sex trafficking and the rhetoric of abolition', *Feminist Formations*, vol. 17, issue 3, 2005, pp. 64—87.

<sup>7</sup> For a discussion of the legal interpretative challenges, see L. Barnett, *Background Paper: Trafficking in persons*, Legal and Social Affairs Division, Parliamentary Information and Research Service, Ottawa, 2016.

<sup>8</sup> See especially: De Shalit, Heynen, van der Meulen at pp. 385—412. This politicised context has been observed in numerous other country contexts. See, e.g., M. Dragiewicz (ed.), *Global Human Trafficking: Critical issues and contexts*, Routledge, London, 2015.

<sup>9</sup> See: K. Mackenzie and A. Clancey, *Im/migrant Sex Workers, Myths, and Misconceptions: Realities of the anti-trafficked*, SWAN Vancouver Society, 2015, retrieved 30 June 2016, <http://swanvancouver.ca/wp-content/uploads/2014/01/Realities-of-the-Anti-Trafficked.pdf>; and Canadian Alliance for Sex Work Law Reform (CASWLR) and Pivot Legal Society, *Joint Submission for Canada's Review Before the UN Committee on the Elimination of All Forms of Discrimination against Women 65<sup>th</sup> Session*, 2016, pp. 1, 9—16, retrieved 30 June 2016, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT\\_CEDAW\\_NGO\\_CAN\\_25385\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_NGO_CAN_25385_E.pdf)

<sup>10</sup> For a complete discussion of the evidentiary record underlying the legislative changes in Canada, see Millar and O'Doherty in collaboration with SWAN Vancouver Society, *The Palermo Protocol & Canada: The evolution and human rights impacts of anti-trafficking laws in Canada (2002 - 2015)*, 10 October 2015, retrieved 30 June 2016, <http://icclr.law.ubc.ca/publications/palermo-protocol-canada-evolution-and-human-rights-impacts-anti-trafficking-laws-canada>

<sup>11</sup> See: L. Ogrodnik, *Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons* (Cat. No. 85-561-M), Canadian Centre for Justice Statistics, Ottawa, 2010.

## Existing Canadian Data Challenges

As is the case in most countries, relatively little is known about the actual nature and prevalence of human trafficking in Canada. Much of the available research consists of small-scale studies using convenience samples that are regionally or community specific; some of these studies suffer from serious methodological deficiencies.<sup>12</sup> Additionally, most Canadian research is government-sponsored, which often requires it to fit into specific government priorities and funding streams. Even though police-reported crime statistics and official government reports on anti-trafficking investigations and prosecutions are readily available,<sup>13</sup> many of these sources lack definitional rigour and consistency in reporting offences. For example, according to Ferguson, in 2003 the Royal Canadian Mounted Police (RCMP) published an intelligence estimate stating that each year 800 persons are trafficked into Canada, 600 of whom are women or girls forced to work in prostitution, and that an additional 1200 women and girls are trafficked through Canada to the USA to work in the sex industry.<sup>14</sup> In 2010, the RCMP retracted this estimate, indicating they could not accurately assess the scope of trafficking in persons. Nevertheless, the original 2003 estimate continues to be widely cited by the academic and NGO literature and Canadian legislators in public policy debates calling for increasingly expansive and punitive anti-trafficking laws.<sup>15</sup>

Further, government statistics reference a ‘trafficking-related’ category, in addition to a ‘trafficking-specific’ category.<sup>16</sup> This former category distorts statistics since criminal conduct such as assault, theft, drug trafficking, fraud, prostitution-related offences or any other conduct subjectively and variously determined by the reporting agency to be related to a trafficking case can be included. The ‘related’ category also includes cases where the accused persons *were not convicted* of trafficking-specific charges. The vicarious representation of such cases as trafficking verdicts contributes to the impression that trafficking convictions are more prolific than they actually are. In addition, government statistics tend to reference the numerous trafficking *investigations and charges* despite many of them being withdrawn or stayed for a variety of reasons, including lack of evidence. While these patterns are also evident in other countries,<sup>17</sup> relying on investigation or charging statistics has serious limitations in terms of the evidentiary strength of individual cases and the often political nature of charging practices. However, employing prosecution rates as a primary measure of success in global anti-trafficking efforts is equally problematic as employing investigation rates. To obtain an in-depth understanding of the extent of such complex social issues it is necessary to examine the entire process from investigation to conviction for each case. However, Canadian government and media reports typically do not provide this type or level of analysis, nor do they acknowledge the limitations of their data sources.

Existing estimates of the prevalence of human trafficking in Canada suffer from serious limitations due to systemic constraints to conducting independent empirical legal research. Further, Canadian policymakers, the public, and politicians seem to be unaware of—or discount—the complexities and challenges associated with empirically assessing the scope of human trafficking in Canada. In this contribution, the authors outline the main challenges they faced in their attempts to gather empirical data in a highly politicised legal environment. They also explain some of the realities of conducting socio-legal research in Canada and call for increased attention to developing more rigorous and ethical methods for data collection on human trafficking, identifying five recommendations for improved data collection in the Canadian context.

## Researching Canadian Legal Anti-Trafficking Efforts

<sup>12</sup> See, e.g., Gabriele *et al.*, 2014 and Wohlbold & LeMay, 2014.

<sup>13</sup> Examples of the agencies publishing reports include: Statistics Canada, the Department of Justice Canada, Public Safety Canada, and the RCMP Human Trafficking National Coordination Centre.

<sup>14</sup> J A Ferguson, *International Human Trafficking in Canada: Why so few prosecutions?*, Doctoral Dissertation, Faculty of Law, University of British Columbia, Vancouver, British Columbia, 2012, at pp. 1, 63—64, 187—188.

<sup>15</sup> See, e.g., the 2012 legislative debates concerning *Bill C-310: An Act to Amend the Criminal Code (trafficking in persons)* where various Members of Parliament cite the retracted RCMP 2003 estimate, available at <https://openparliament.ca/bills/41-1/C-310/>

<sup>16</sup> See, e.g., Human Trafficking National Coordination Centre, <http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>, referencing 151 individuals convicted of human trafficking-specific *or related offences* as of January 2015.

<sup>17</sup> See: K Kangaspunta, ‘Was Trafficking in Persons Really Criminalised?’, *Anti-Trafficking Review*, issue 4, 2015, pp. 80—97.

Internationally, based on 2014 United Nations Office on Drugs and Crime data, Kangaspunta at pp. 80—87 indicates that for every 100 trafficking in persons suspects, 45 are prosecuted and of those prosecuted 24 (55%) are convicted at the court of first instance.

The common research questions that the authors sought to address were: (1) how has Canada responded to its international obligations under the UN Trafficking Protocol to enact and enforce criminal and immigration anti-trafficking laws, and (2) how are these laws perceived and experienced by those tasked with enforcing them and those who are subject to law enforcement efforts? Millar and O'Doherty, in collaboration with SWAN Vancouver Society, employed a triangulated methodology comprising three different samples:<sup>18</sup> focus groups with SWAN Vancouver outreach workers and board members, interviews with eight criminal justice practitioners, and an analysis of the evolution of the immigration and criminal laws and prosecution of trafficking-specific offences nation-wide from 2002 to 2014.

Roots conducted a 15-month independent research study for her PhD dissertation using qualitative research methods to trace the shifts in the meaning of trafficking through translation from international law to Canada's domestic legislation and its application by legal practitioners. Focusing on the province of Ontario, the study employed legal databases (Quicklaw and CanLII), media sources, NGO and government reports and correspondence with the Ministry of the Attorney General, to identify all reported names of individuals charged under human trafficking-specific criminal laws from 2005 to 2015. Roots collected court information and/or indictments for 126 charged individuals, which provided biographical data, accompanying charges and legal outcomes. Roots also obtained audio recordings of eight human trafficking trials and conducted sixteen interviews with police officers, prosecuting attorneys, defence attorneys, and judges. Millar and O'Doherty employed similar strategies in collecting primary court documents and triangulating sources to verify their validity.

Ultimately, Millar and O'Doherty were able to verify 33 Canadian trafficking in persons cases<sup>19</sup> resulting in either a conviction or another legal outcome (full or partial acquittal, stay of proceedings, withdrawn charge, mistrial and new trial ordered) on a trafficking-specific charge. Roots, using the individual accused as the unit of analysis, was able to track 126 individuals charged with a trafficking-specific offence.<sup>20</sup> Collectively, the authors found that most offenders pleaded guilty as opposed to being found guilty through a trial process. In a majority of cases, trafficking charges were stayed or withdrawn by the prosecuting attorney. Overall, these cases indicate that not only have few trafficking-specific prosecutions been undertaken in Canada, but that relatively few—only 17 case prosecutions—secured a conviction on a trafficking-specific charge. Collectively, the authors' findings indicate that, like other jurisdictions,<sup>21</sup> Canada's prosecution efforts are in their infancy stages with only a handful of appellate judgments to draw on in interpreting the legal elements of the offence, and significant variations in legal actors' understandings of what human trafficking means.

### *Accessing Primary Court Documentation*

The authors encountered several challenges in trying to comprehensively track and verify immigration and criminal case prosecutions, in part because Canada, like most countries, lacks a central repository for human trafficking judgments. The process of accessing primary court documentation was complex and laborious, especially in instances where specific details about a case were required.

Both sets of authors employed similar case and primary court documentation location methods, using national legal databases and provincial legal judgment databases to systematically search for cases. Millar and O'Doherty informally conversed with the main government agencies that publish human trafficking reports and statistics, some of which provided primary court documents for some cases or were able to verify whether a case was prosecuted as a trafficking-specific case. In order to track primary court documentation, Millar and O'Doherty also filed three access to information (ATI) requests in an effort to obtain the case names or case file numbers for Government of Canada published statistics

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<sup>18</sup> The study was funded by the Law Foundation of British Columbia, which is a non-profit foundation that funds legal research.

<sup>19</sup> A case refers to one or more accused adults or minors who were prosecuted for at least one trafficking-specific immigration or criminal offence. The 33 cases represent 60 accused in total, although only 27 of these accused were convicted for a trafficking-specific offence.

<sup>20</sup> Forty out of these 126 individuals' cases are ongoing at the time of publication.

<sup>21</sup> See, e.g., A T Gallagher, 'Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice', *Anti-Trafficking Review*, issue 6, 2016, pp. 1–11, [www.antitraffickingreview.org](http://www.antitraffickingreview.org); A Farrell, C Owens and J McDevitt, 'New Laws but Few Cases: Understanding the challenges to the investigation and prosecution of human trafficking cases', *Crime Law and Social Change*, vol. 61, issue 2, 2014, pp. 139–168; A Farrell, M J DeLateur, C Owens, and S Fahy, 'The Prosecution of State-Level Human Trafficking Cases in the United States', *Anti-Trafficking Review*, issue 6, 2016, pp. 48–70, at pp. 50–67, on first and second generation prosecutions in the USA.

citing ‘trafficking-related’ offences. The ATI process was lengthy, with the deadline extended twice for the three requests. Ultimately, all three requests were declined on the basis that the data being requested had been provided to the police agency in confidence by a municipal or regional government.

Additionally, the authors used media reports to identify cases, but were cognizant of the attrition between charges reported by the media and prosecuted cases. Still, examining media reports elicited important information, allowing a comparison between charges and convictions, and demonstrating quite clearly that a majority of cases result in a withdrawal of charges or stays of proceedings. Examining media reports also captures how the perceived prevalence of trafficking offences is created through the frequency and sensationalism with which the media reports on charges, with limited follow-up about the subsequent legal proceedings in a particular case unless some type of a conviction is obtained.

The authors relied on secondary literature produced by other researchers and NGO advocacy networks to identify or verify the names of trafficking suspects and then formally corresponded with provincial justice ministries to obtain information on the court locations for specific cases. The authors then contacted the specific courts to request primary case documentation, eliciting varying responses. While some courts were helpful in providing the information, others required formal written requests before releasing the requested data and some courts simply did not respond to the authors’ formal requests. Nearly half the requests submitted by Roots were lost or misplaced, and had to be re-filed, sometimes several times. In selected instances, Millar and O’Doherty contacted journalists and/or the named prosecution or defence counsel in media reports to verify specific *public* details about cases. Ultimately, Millar and O’Doherty were able to obtain some form of primary court documentation (an indictment, an information, a judgment and/or a sentencing decision) for 27 of 33 cases. Recent statistics produced by the Canadian Centre for Justice Statistics confirm this number of criminal convictions obtained across Canada since 2005.<sup>22</sup>

In brief, the authors found that tracking cases from the point of arrest to completion is an onerous and time consuming task. Information on court appearances is provided exclusively to the involved parties. Members of the public must contact the court office and provide specific information, such as date of birth or file number, to obtain information on specific court dates for a case. Court dates, times and locations also change frequently and quickly without notification to the public. Finally, ordering court transcripts is an expensive endeavor. Combined with the delays in accessing court records in the first place, the challenges identified above severely hamper academic research efforts in trying to access primary court documentation.

### *Accessing Interview Participants*

In addition to the identified challenges in locating primary court records, both sets of researchers encountered challenges in obtaining interviews with frontline service providers and criminal justice practitioners/experts about their experiences with the formulation, enforcement and effects of anti-trafficking laws. Using a collaborative and participatory action research model,<sup>23</sup> Millar and O’Doherty conducted three focus group interviews with outreach workers and board members of SWAN Vancouver Society.<sup>24</sup> Collaborating with a frontline agency ensured co-creation and collective ownership of the rich knowledge generated. Millar and O’Doherty incorporated a knowledge uptake strategy; they sequenced the focus groups first in a reflexive effort to share the initial SWAN research findings—about the real and/or perceived effects of immigration and criminal anti-trafficking laws on their frontline work and the communities they serve—with those who develop and enforce these laws.

All three authors interviewed criminal justice practitioners (law enforcement officials, legal counsel, members of the judiciary), legal and academic experts and policymakers. Although both sets of authors were able to secure several interviews, they encountered some unexpected challenges. First, given relatively few trafficking in persons investigations

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<sup>22</sup> See: M Karam, *Trafficking in Persons in Canada, 2014*, Statistics Canada, Ottawa, 2016, retrieved 30 June 2016, <http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14641-eng.htm>

<sup>23</sup> For further discussion of this research method, see R Bowen and T O’Doherty, ‘Participant-Driven Action Research (PDAR) with Sex Workers in Vancouver’ in C Showden and S Majic (eds.), *Negotiating Sex Work: Unintended consequences of policy and activism*, University of Minnesota Press, Minneapolis, 2014, at pp. 53—74.

<sup>24</sup> Their decision to interview SWAN members, rather than im/migrant women sex workers, was deliberate, relating mainly to the complexities of conducting ethically sound and robust participatory action research with vulnerable and hidden populations. The authors recognise the omission of im/migrant women sex worker *direct voices* remains a critical deficiency for much of the Canadian human trafficking research and is an inherent limitation of their study.



and prosecutions, there are correspondingly few practitioners and experts with any relevant legal experience who can be interviewed and only a handful of practitioners who have expertise in more than one trafficking in persons case,<sup>25</sup> which also makes it difficult to protect the anonymity of interview respondents. Second, as independent academic researchers, they experienced relatively limited access to criminal justice practitioners who were willing to be interviewed, which they attribute in large part to a highly politicised context (a prevailing neo-Conservative law and order and prostitution-prohibitionist policy agenda) at the time of their research. Here, both sets of authors are mindful of having framed their study as a *critical appraisal* of the formulation and enforcement of Canadian anti-trafficking laws. Many of those contacted either opted not to be interviewed or could not be interviewed without first receiving higher-level permission in view of formal agency policies that regulate cooperation with independent academic researchers. For example, provincial prosecutors in British Columbia and Ontario require senior-level approval for interviews with independent academic researchers and the authors were unable to secure this approval within their study time frame. Curiously, despite this policy, some prosecutors with whom the authors had personal connections participated in each of the studies.

While all three authors were able to conduct police interviews, the police were equally reluctant to speak to independent researchers. Out of six jurisdictions contacted by Roots, only two approved interviews. One of these jurisdictions needed the approval of the Chief of Police and the completion of a formal protocol where Roots was required to enter into a contractual agreement giving the police force permission to vet relevant research findings prior to publication. Although none of the police forces rejected the request outright, four of six contacted forces did not provide any response at all, despite several follow-up attempts. Millar and O'Doherty experienced a similar encounter with a municipal police agency which required completion of a formal interview protocol necessitating approval of the Chief Constable. Border enforcement officials simply did not respond to interview requests. While the challenges of conducting research with criminal justice personnel have been noted more generally by other Canadian socio-legal scholars,<sup>26</sup> our interviewees assert that the politicised nature of human trafficking makes accessing human trafficking related government data difficult for independent researchers.

## Discussion and Recommendations

At the outset of both research studies, the authors aimed to explore the evidence of human trafficking, with a particular focus on investigating the complexities of formulating and enforcing Canada's anti-trafficking laws. The authors were perhaps somewhat naïve in this undertaking, underestimating the degree of difficulty in accessing empirical legal evidence. Some of the challenges of collecting court records and substantiating charges were surmountable, as discussed above, but others remain serious impediments to understanding the scope of human trafficking—specifically accessing information that government agencies are unable or unwilling to share. Further, the authors did not anticipate the significant structural discrepancies in reporting mechanisms between information sources (police reporting compared to court records, government publications, and media reporting on charges versus prosecutions). Hence, the authors' findings demonstrate not only how little empirical data exists, but also how challenging it is to obtain and triangulate primary legal data in Canada.<sup>27</sup>

As a result, the authors were not able to substantiate the core claims about human trafficking in Canada. For example, most prosecuted cases did not have organised crime links,<sup>28</sup> as government, media and NGO discourse suggests. Instead, they frequently involved a single accused or typically not more than two accused persons, while the official legal definition of an organised criminal group is that it consists of three or more persons. Nearly all cases concerned domestic as opposed to transnational trafficking. Rather than expanding to new grounds of exploitation, human trafficking charges now target what used to be known as 'pimping,' particularly in relation to minor victims.<sup>29</sup> The replacement of 'pimping' with trafficking charges demonstrates a unidimensional understanding of human trafficking as

<sup>25</sup> See, e.g., Farrell *et al.*, 2014 and 2016, who document similar challenges in the USA.

<sup>26</sup> See, e.g., E Sheehy, *Defending Battered Women on Trial: Lessons from the transcripts*, 2014, pp. 13—14; E Comack and G Balfour, *The Power to Criminalize: Violence, inequality and the law*, Fernwood Publishers, Halifax, 2004, pp. 14—17.

<sup>27</sup> For similar methods of locating and triangulating human trafficking cases, see: F Skodmin, R Dunham and D M Hughes, 'Analysis of Human Trafficking Cases in Rhode Island, 2009-2013', *Sage Open*, vol. 6, issue 2, 2016, pp. 1—12, at p. 2.

<sup>28</sup> The authors found one criminal labour trafficking case involving cross-charges pertaining to an organised criminal group. Similar dubious links between domestic trafficking and organised crime have been documented elsewhere: e.g., K Chin and J O Finckenaer, *Selling Sex Overseas: Chinese women and the realities of prostitution and global sex trafficking*, New York University Press, New York, 2012.

<sup>29</sup> See: K Roots, 'Trafficking or Pimping: An analysis of Canada's human trafficking legislation and its implications', *Canadian Journal of Law and Society*, vol. 28, issue 1, 2013, pp. 21—41. See also *Anti-Trafficking Review*, issue 6, Prosecuting Human Trafficking, 2016.

an experience of exploitation within commercial sex work. Indeed, Canada has rarely prosecuted other forms of trafficking, which renders less visible the sexual exploitation that takes place in other labour contexts.

Court records and criminal justice practitioners' insights can provide important information about the scope of anti-trafficking legal efforts in Canada; however, the first-hand accounts of trafficked persons, and others (namely sex workers, migrant workers and workers in precarious work sectors) directly affected by anti-trafficking efforts are generally absent from anti-trafficking discourses. Academics and others who seek evidence-based policy would benefit from increased access to criminal justice practitioners, too. The authors' two studies do not adequately reflect the experiences of diverse criminal justice practitioners. There is an extensive literature on the myriad conceptual, ethical, and other methodological challenges associated with conducting human trafficking research, including gaining access to criminal justice practitioners as interview participants.<sup>30</sup> Millar, O'Doherty and Roots contribute to this body of methodological knowledge by documenting several comparable challenges in the Canadian anti-trafficking empirical context where the authors encountered various institutional barriers.

For both studies, it remains unclear whether the reluctance by criminal justice practitioners to participate was due to a lack of political will or the difficulties in speaking candidly on a highly politicised subject matter, despite assurances of anonymity. Criminal justice personnel who did participate indicated that other issues affect institutional approval, such as fiscal concerns about ongoing government funding for anti-trafficking efforts if the extent of trafficking is less than what is publicly portrayed, and fear of an adverse rating by the USA in its annual *Trafficking in Persons Report*. Other factors include institutional or bureaucratic incapacity, such as an inadequate number of personnel to deal with such requests. At the same time, like the larger body of international research, the Millar, O'Doherty and Roots studies underscore the vital need to find innovative ways of ensuring that legal practitioner views and the direct voices of trafficked persons are adequately represented in anti-trafficking research and that anti-trafficking research and law enforcement actions be extended beyond the commercial sex sectors.

These studies demonstrate how much work needs to occur in Canada to comprehend the full scope and nature of human trafficking, and the effects of anti-trafficking legal efforts. As academics, the authors sought credible, verifiable information on which to base their claims. Due to serious problems related to transparency, ambiguous and inconsistent government and NGO definitions, and significant concerns about the misrepresentation of data to fulfil political goals, the authors remain deeply concerned about the state of empirical evidence on human trafficking at the national, regional and local levels. The fact that the authors were not able to substantiate the dominant claims does not necessarily mean the claims are inaccurate. For example, the lack of evidence of Indigenous complainants likely speaks to a systemic failure of the Canadian legal system to respond adequately to the victimisation of Indigenous women and girls, or that Indigenous women and girls do not fit into the narrow legal definition of what constitutes a 'trafficking victim'. The authors acknowledge the limitations in their methodologies: this process of investigating court records and other legal empirical data is limited to information which enters the formalised legal system in the first place and which then meets varying legal thresholds for prosecution. As a result, the only conclusions the authors are confident in substantiating are the significant discrepancies that exist between sources, and a general lack of credible evidence about the nature and extent of human trafficking in the country.

In conclusion, the authors offer five recommendations. First, the federal government must provide better access to information and increase the transparency in their reporting mechanisms, including increased rigour in data collection and legal definitions in resulting government publications. Second, in view of the highly politicised socio-legal context, and to address concerns about accuracy and transparency, Canada ought to develop a repository for human trafficking cases. A database could be developed and maintained in partnership with a university or NGO; it should be publicly accessible, easily searchable, sufficiently anonymised to protect privacy rights, and regularly updated. In this regard, the authors note the University of Queensland Online publicly accessible Migrant Smuggling Case Database as a potential best practice.<sup>31</sup> Additionally or alternatively, Canada should continue to increase the expanse of its open access legal research platforms as other countries like Australia and the USA appear to be doing.<sup>32</sup>

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<sup>30</sup> See: A T Gallagher, 2016, p. 3; and S X Zhang, 'Beyond the "Natasha" Story—A review and critique of current research on sex trafficking', *Global Crime*, vol. 10, issue 3, 2009, pp. 178–195, at pp. 187–193.

<sup>31</sup> See: University of Queensland, *Migrant Smuggling Case Database*, available at <https://ssl.law.uq.edu.au/som-database/home.php>

<sup>32</sup> See, e.g., L Mirando, 'Open Access, Free Access to Law and Access to Canadian Legal Scholarship (Part 2)', *Slaw*, 20 February 2014, retrieved 3 January 2017, <http://www.slaw.ca/2014/02/20/open-access-free-access-to-law-and-access-to-canadian-legal-scholarship-part-2/>

Third, the authors wish to see more financial support for independent (academic/university) socio-legal research,<sup>33</sup> with increased ability for criminal justice practitioners to participate in such research. Funding streams can be opened that are sufficiently distant from government politics for independent socio-legal organisations, such as the Law Foundations of each province, or the recently disbanded Law Commission of Canada. Practitioners have a wealth of information that is largely untapped in academic studies. Their knowledge is pivotal in understanding best practices, and institutional and other challenges in applying the law. We recommend creating opportunities for communication between representatives of formal institutions—for example, with members of parliament, Department of Justice members, police, health care providers, border and immigration agencies—and vulnerable groups to increase understanding of the individual and community needs. Open dialogue about unintended harms associated with law enforcement and/or health services could serve to reduce these existing harms and facilitate victimisation reporting. Likewise, access to criminal justice system representatives would assist NGOs and marginalised individuals to better understand legal parameters, evidentiary thresholds—and other key issues such as responsibilities and funding limitations—that affect law enforcement actions and priorities.

Fourth, criminal justice practitioners, judges and lawyers specifically, together with Canadian politicians and legislators more generally, need more education and training about legal and social science research methods, especially how to determine the validity and reliability of research data.<sup>34</sup> If lawyers are to effectively cross-examine and judges are to assess the degree of weight to attribute to an expert or an expert's report, and parliamentarians are to formulate and amend law and policy in an evidence-informed way, these individuals must have access to education and training on how to measure reliability and validity.

Finally, the authors ask for greater rigour and transparency in evaluating legal anti-trafficking efforts in Canada and the development and amendment of national laws and policies. The authors understand all too well the highly politicised nature of criminal justice in Canada, especially in relation to countering human trafficking. Despite this, they idealistically call for a move away from exaggerated claims and sensationalism, and encourage the use of non-partisan empirical evidence and rights-based approaches as the basis of Canadian law reform efforts.

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<sup>33</sup> In this regard, we note that the Law Reform Commission of Canada was a permanent body that previously provided such independent research, but was disbanded in 2006. We strongly recommend the reestablishment of such a Commission to ensure Canada's capacity to conduct arms-length legal empirical research.

<sup>34</sup> See, e.g., J Lowman, 'In the Eye of the Storm: The abuse of research in the Canadian prostitution law reform debate', paper presented at 'Sex Work and Human Rights: Lessons from Canada for the UK', Durham Law School, Durham University, 18—19 September 2014.