

The Human Trafficking Matrix: Law, Policy and Anti-Trafficking Practices in the Canadian Criminal Justice System

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Abstract

International and domestic anti-trafficking agendas received an enormous boost in 2002 from the re-definition of human trafficking as a major and pressing transnational organized crime threat through the enactment of the UN *Trafficking Protocol*. This dissertation traces the way in which the definition of human trafficking and subsequent efforts to combat it are shaped in local context-specific ways through the ‘crime-security nexus’ (Pratt, 2005) and, what I call, the ‘human trafficking matrix’. While the issue of trafficking has received wide-ranging, interdisciplinary scholarly attention, there is to date only three empirical Canadian studies that examine frontline anti-trafficking policing and prosecution efforts with a focus on migrant worker justice (Millar and O’Doherty 2015), on international trafficking cases (Ferguson 2012) and on Indigenous communities (Kaye 2017), as well as a handful of European (Meshkovska et al. 2016; Lester et al. 2017) and American studies (Farrell et al., 2015, 2016). This doctoral dissertation combines detailed analysis of relevant national and international laws and policies, case law, court documents, transcripts, and interviews with criminal justice actors to provide an empirically grounded study of front line anti-trafficking policing and prosecution in Canada, with a particular focus on the province of Ontario. This dissertation asks two main questions: 1) How have international discourses around organized crime threats to national security and corollary concerns with victims and human rights come to shape international and domestic legal regimes and domestic criminal justice responses to criminal activity defined as trafficking? and 2) What are the varied local effects of these developments on the culture, organization and decision-making of frontline of anti-trafficking criminal justice enforcement and prosecution? The local empirical research of this dissertation displays that the international and national anti-trafficking regimes, which are embedded within the human trafficking matrix and are, at least in part, fueled by the crime-security nexus, have entailed a variety of practical effects on the frontline. These not only show the continuation of the historically longstanding criminalization of various activities associated with the sex trade and certain marginalized groups, but also reveal some interesting and novel effects relating to, for example, the infusion of resources, the development of various modes of policing and prosecution, the production and deployment of forms of knowledge and expertise, as well as the use of well-documented legal tactics in new ways that not only reshape trafficking victims and offenders but that also continually work to reshape and reproduce the problem of trafficking on the frontline.

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Table of Contents

Abstract.....	II
Acknowledgements.....	III
Table of Contents	IV
Acronyms	VII
Preface	IX
Chapter 1 - Introduction	1
Key Conceptual Tools.....	6
The Development of Anti-Trafficking Legal Regimes	9
Domestic Anti-Trafficking Action Plan and Funding.....	13
The Role of the US	15
Shaping the Complainant and the Accused in Trafficking Cases	18
A Word on Terms.....	22
Chapter Outline.....	23
Chapter 2 – Studying Trafficking	28
Human Trafficking and Sex Work.....	30
Modern Slave Trade and Trafficking	32
Migration and Human Trafficking	35
The ‘Saviour’ and the ‘Trafficker’.....	38
Organized Crime and Human Trafficking.....	40
Conceptual Toolkit	44
Research Methods	57
Chapter 3 – Law and the Definition of Human Trafficking	67
Considering the Legal Definitions of Human Trafficking	68
Understanding the Term ‘Exploitation’ in Trafficking.....	74
‘The Consent’ Factor	77
‘The Means’ Factor.....	79
The ‘Fear of Safety’ Component.....	81
The Legal Fusion of Procuring and Human Trafficking.....	83
Bill C-452.....	88
Legal Consequences of Human Trafficking Convictions.....	95
Conclusion	104
Chapter 4 –International Trafficking and the Crime-Security Nexus.....	106
The Problem of International Trafficking.....	107
Human Rights and Modern Day Slavery	112
Human Trafficking and Organized Crime.....	115
Linking Trafficking with Terrorism	124
Conclusion	130
Chapter 5 –The Making of Domestic Trafficking.....	131
The Sexual Violence Agenda and ‘The Girl Next Door’	132
Marginalized and Indigenous Victim of Trafficking	141

Vulnerability Factors	144
Responsibilization of the ‘Girl Next Door’	146
The Totalizing Threat of the Internet	149
Construction of Families in Trafficking Cases	153
Rejection of Victim Label	159
Police Pressure and Scripting of Complainant Narratives	161
Conclusion	172
Chapter 6 –Legal Strategies and the Creation of the Victim of Trafficking in the Courtroom	174
Vulnerability Factors and Legal Strategies	175
The Decision Making Power of Crown Attorneys	177
Role of Defence Counsel in Trafficking Trials	179
The Use of Legal Strategies from Sexual Assault Cases in Trafficking Trials	181
Courtroom Rituals, Legal Language and Tactics.....	185
Conclusion	214
Chapter 7 - The ‘Human Trafficker’	217
Who are the Traffickers?.....	218
Sexual Exploitation and Black Men	222
Racialization of Accused in the Media	224
Legal Strategies and Racialization in Trafficking Trials	229
The Role of Hip-Hop Culture in Constructions of ‘the Trafficker’	232
Hypersexual and Violent Black ‘Pimp’	235
Black Trafficker and White Victim	239
‘Romeo’ Tactics	242
Economic Factors and the Lavish Lifestyle of ‘Pimps’	244
Poverty and Lack of Education.....	246
Accused as Drug Dealers and/or Users.....	250
The Responsibility of Black Families	253
Depictions of Accused Traffickers as Superpredators, Animals, Parasites and Paedophiles .	257
The Female Trafficker	259
Conclusion	267
Chapter 8 – Policing Trafficking.....	269
Cooperation of Policing Agencies.....	270
Local Anti-Trafficking Police and Proactive Investigations	277
Funding, Competition and Pressure to Charge	279
Expertise or Common Knowledge?.....	282
Creating ‘Knowledge’ on Human Trafficking	290
Partnerships, Collaboration and Education.....	294
Crime Fighters and the ‘Hugging Types’	299
Investigation of Trafficking Cases	303
Conclusion	314
Chapter 9 –Conclusion	316
Directions for Future Research.....	328
References	332
Reports and Websites	354

Legal Cases.....	360
Laws and Bills	362
Media.....	367
<u>Appendices</u>	370
Appendix A: Human Trafficking Cases: Race, Age, Gender and Visual Depictions of Accused in the Media	370
Appendix B: Human Trafficking Charges and Outcomes	377
Appendix C: Interview Participants	404
Appendix D: Interview Questions	405
Crown Attorney Questions	405
Defence Attorney Questions	406
Questions for Judiciary.....	407
Police Interview Questions	408

Acronyms

ACT - Action Coalition on Human Trafficking Alberta

BCOCTIP – British Columbia Office to Combat Trafficking in Persons

CAS - Children’s Aid Society

CATW - Coalition Against Trafficking in Women

CBSA – Canadian Border Services Agency

CISC - Criminal Intelligence Services Canada

CPCCEHT - Contribution Program to Combat Child Sexual Exploitation and Human Trafficking

FINTRAC - Financial Transactions and Reporting Analysis Centre of Canada

GAATW - Global Alliance Against Trafficking in Women

INTERPOL - International Criminal Police Organization

IRPA - Immigration and Refugee Protection Act

HTNCC – RCMP National Coordination Center

MAG – Ministry of the Attorney General

MP – Member of Parliament

MPP – Member of Provincial Parliament

NAPCHT - National Action Plan to Combat Human Trafficking

NDP – New Democratic Party

NGO – Non-government organization

OPP – Ontario Provincial Police

PCEPA - The Protection of Communities and Exploited Persons Act

RCMP - Royal Canadian Mounted Police

SCC – Supreme Court of Canada

UN – United Nations

UNGift – United Nations Global Initiative to Fight Human Trafficking

UNODC – United Nations Office of Drugs and Crime

TVPA - The Trafficking Victims Protection Act

Preface

This study was approved by the York University Office of Research Ethics, certificate number STU 2015 -135.

Chapter 1 - Introduction

Gregory Salmon is a young man who was charged with human trafficking in Ontario in 2014. According to the evidence at trial, Salmon developed an online friendship with the complainant - a young woman¹ from Manitoba. After several months of communicating online, the complainant travelled to visit Salmon in Ontario. The two began a romantic relationship and she stayed to live with him. Soon after her arrival, however, Salmon lost his job and the young woman started working in the sex trade to provide financial support. The relationship was a troubled one and Salmon was frequently violent and abusive, escalating to the point that the complainant called the police. Because she was working in the sex trade and shared her income with him, the police charged Salmon with human trafficking, in addition to domestic violence related offences (*R.v. (Gregory) Salmon* 2014).

Despite the complainant's testimony in court that she freely chose to enter the sex trade, the Crown attorney² argued that Salmon had coerced her into the sex trade and that she was therefore a victim of trafficking. While there was no question that Salmon physically abused the complainant during their relationship, the Crown provided no evidence to demonstrate that the violence was used to force her into the sex trade. In fact, the Crown himself acknowledged that the complainant had entered into the sex trade on her own accord: "I'm not saying that he be convicted because he pushed her into prostitution, that was a choice she made". But the Crown was inconsistent on this key point, arguing later that the violence inflicted on the complainant by the accused was used to force her into the sex trade to "put her down and in her place" (*R.*

¹ The identity of all complainants in the legal cases discussed is protected by a Publication Ban (s. 486) and therefore cannot be disclosed.

² In Canadian legal system prosecutors are called Crown attorneys. In this dissertation, I use the terms 'Crown attorney', 'Crown', 'prosecutor' or 'Crown prosecutor' interchangeably to refer to Crown attorneys.

v.(Gregory) Salmon, Audio of Trial: May 25, 2014). In the end, the judge rejected this argument and acquitted the accused of trafficking charges.

While *R.v. (Gregory) Salmon (2014)* is not a notable or well-known case of human trafficking, it raises several important questions about how human trafficking is characterized by police and prosecutors. In particular, how does a case where the complainant admits to entering and staying in the sex trade *voluntarily* and with full control over the money produced from services rendered, come to be seen as a case of trafficking? How are the constituent elements of the trafficking offence construed and enacted by Crown attorneys, judges and police officers? And, in this case, how did domestic violence become re-framed as human trafficking? These questions highlight what Julie Kaye observes as an important gap in critical anti-trafficking scholarship that tends to focus on on migrant trafficking, and disregards the shift towards domestic trafficking (2017, 27).

In order to understand these specific questions, it is necessary to consider them in the broader socio-historical and legal context of international and national anti-trafficking regimes. This dissertation's empirically grounded examination of frontline policing and prosecution anti-trafficking efforts in Ontario, is guided by two main questions: 1) How have international discourses around organized crime threats to national security and corollary concerns with victims and human rights come to shape international and domestic legal regimes and domestic criminal justice responses to criminal activity defined as trafficking? and 2) What are the varied local effects of these developments on the culture, organization and decision-making of frontline of anti-trafficking criminal justice enforcement and prosecution in Ontario?

This dissertation investigates whether and how international concerns about transnational³ organized crime and national security and corollary concerns with human rights are mobilized by actors within the domestic criminal justice system in ways that maximize the political currency of anti-trafficking measures. I examine in rich empirical detail how the offence of trafficking is understood and acted upon on the frontline of day to day anti-trafficking policing and enforcement activities. While at the level of international and to some extent domestic policy, the guiding preoccupations revolve centrally around organized crime threats to public safety and national security, on the frontline things are decidedly more complicated. Anti-trafficking efforts in local police departments and courtrooms are shaped by a host of influences, practices and justifications and entail a variety of diverse effects.

At the local level, criminal justice authorities remain guided by the historically longstanding aim to protect women and children from the threats of physical and sexual assault, particularly in relation to the sex trade. These motivations are fueled by systemic race, class, gender and age biases that emphasize the need to protect some women, and in particular white, middle class women, while punishing and criminalizing all others. In the context of Canada's anti-trafficking efforts, as Durisin notes, "Fears about victimized white femininity and foreign threats present in government discourse gesture to the importance of white female bodies to the stability of national boundaries" (2017, 13). This white victimized female figure is represented by the category of the 'ideal victim' which in Canada's anti-trafficking discourses presents as the white, young and innocent daughter of middle class families – 'the girl next door', an image that bares the most resemblance to the 'white slave' through her innocence, youth/virginity and

³ While scholarship on international laws and transnational crime dictates that there are important differences between the meaning of the terms transnational and international, in this dissertation I will be using the terms interchangeably as these distinctions are not within the scope of this dissertation.

whiteness (Doezema 2000, 28). The protection of this group in a white, settler-colonial Canada is particularly important, since these women are responsible for the well-being of Canadian families, draw boundaries of national-belonging and establish Canada's moral purity and superiority over others (Kaye 2017; Durisin 2017; Doezema 2000). The need to protect the 'girl next door' serves to legitimize the law and policy expansions, increasing funding for anti-trafficking efforts and the overall need to 'do more' to combat human trafficking. Yet this whiteness, so central to the image of the 'ideal victim' is ambiguous and fails to hold up in the face of marginalizing factors, including drug and alcohol abuse, poverty and engagement in sex work.

And so, alongside 'the girl next door' we see the image of the marginalized and particularly Indigenous girl or woman, often involved in the sex trade, who is most commonly the target of anti-trafficking enforcement efforts. And while the complainants in the trafficking cases I analyzed were often young, white women and girls, their whiteness was negated by their marginalized status. As Kamala Kempadoo contends, the neoliberal concept of whiteness is not tied exclusively to skin colour, but is also premised on neoliberal ideology and associated values of the West (2015, 13), therefore those who fail to uphold neoliberal Western values are rendered as Others. Relying on the work of critical race scholars including David Goldberg and Sedef Arat-Koç, Elya Durisin writes that inclusion and exclusion within neoliberal systems are premised on "deep racial connotations and privilege" whereby inclusion is dependent on whiteness, yet whiteness is increasingly defined by class status and exclusion works to protect this neoliberal whiteness from all others (2017, 54). The racialized white victims of trafficking, then, walk the fine line between victims and criminals, wherein their agreement to take on the

victim label and testify to their victimization in court earns them the status of a ‘victim’, while rejection of the victim label may result in criminalization and other penalties.

The two dominant domestic victim of trafficking categories outlined above are shaped through historic concerns around sexual violence against women and children emerging in the 1970s and especially child sexual exploitation, and are animated by the panics that took hold in the 1980s and 1990s over youth in the sex trade. In the context of anti-trafficking, this longstanding aim of protection, which can be traced to the sexist and racist legacy of the ‘white slavery’ panic in the early twentieth century and to the more recent fears about youth in the sex trade, both of which are grounded in the perceived need to regulate women’s sexuality, re-emerges in anti-trafficking regimes and is operationalized through the key concept of exploitation.

The central importance of anti-trafficking protectionist discourses is also shaped by the socio-historical and thoroughly racialized legacy of concerns about ‘pimps’ and in particular, their perceived targeting of white women and girls. As my empirical research dictates, young, poor, racialized and particularly Black men are the primary targets of anti-trafficking efforts. The criminalization of this demographic is a manifestation of a deeply embedded systemic racism where Black men are seen as innately criminogenic and pathological (Maynard 2017; Davis 2017; Walker 2010; Hill Collins 2004; Alexander 2012). Black men’s overactive sexuality in this context is seen as particularly dangerous to the safety of white women. As Robyn Maynard writes, “despite wanting to avoid the appearance of American-style racism, state officials and powerful white settler groups [in Canada] mobilize around the image of Black men as dangerous sexual predators” (2017, 42). In this context, anti-trafficking practices and understandings are an extension of these systemic forms of age, sex, race and class-based discrimination aimed at

saving the white woman from the Black man (Doezema 2000, 2010; Kempadoo 2005; Kempadoo and Doezema 1998; Hua 2010; O'Connell Davidson 2015; Valverde 2008; Hunt 2015, 2017; Kaye 2017; Bernstein 2010, 2012).

It is important to note that while this dissertation builds on these rich insights, the starting point for the dissertation stems from my empirical data and focuses specifically on anti-trafficking efforts of the criminal justice system. In particular, the study pays attention to the ways in which the offence of human trafficking is continually made on the frontline of legal and criminal justice efforts in Canada. My findings show that anti-trafficking efforts are embedded within these deeply engrained race, gender, age and class based forms of discrimination. In addition, however, my empirical research also indicates that the heightened political and popular focus on the threats posed by human trafficking has entailed a variety of other notable effects. For example, police departments are now competing for the additional resources that have been made available in the fight against trafficking. The specialized anti-trafficking police and more recently prosecutorial teams that have been created are devoted to increasing arrests and convictions for trafficking offences, and have produced new forms of knowledge and expertise. And finally, legal tactics and strategies used in trafficking trials not only reshape trafficking victims and offenders but also reshape the meaning of trafficking on the frontline. By mapping the numerous, complex, varied and discontinuous effects of anti-trafficking regimes through grounded and detailed empirical findings, this study makes it more difficult to default to broad generalizations commonly seen in trafficking studies.

Key Conceptual Tools

In order to make sense of the empirical data and because the complexities that exist within Canada's anti-trafficking approaches cannot be explained in a neat and simple way, I

developed a concept I call the ‘human trafficking matrix’. The matrix refers to the dynamic and shifting web of diverse intersecting historical and contemporary discourses, specialized forms of expertise, technologies and strategies of application that have come together to govern human trafficking. These include turn of the twentieth century concerns about ‘white slavery’, 1970s feminist movement against sexual violence, as well as the panics that took place in the 1980s and 1990s over youth in the sex trade. Within the matrix, these discourses, specialized knowledges, technologies and strategies of application intersect with concerns over organized crime and threats to national security as captured by the ‘crime security nexus’, explained below. These concerns are further impacted by intersecting fears over terrorism. For example, recent findings by the UN Security Council suggest that proceeds from human trafficking are used to support terrorist activities (UNODC 2015(a)). The discursive linking of trafficking with terrorism, organized crime and national security threats has the effect of increasing the perceived urgency, severity and danger posed by trafficking activities. The intersection of these fears with domestic concerns over sexual violence, child sexual exploitation and youth involvement in the sex trade, through the matrix, shapes not only the understanding of human trafficking, but also the indicators and characteristics that constitute a trafficker and a victim. It also, however, impacts the strategies required to combat it, including on-the-ground enforcement and prosecutorial efforts and the motivations, decisions and actions of criminal justice and legal actors. The trafficking matrix, then, captures the intersection and effects of the various, complex, overlapping and at times contradictory developments in the anti-trafficking terrain.

In this context, my research points to the influence of developments captured by Anna Pratt’s concept of the ‘crime-security nexus’ (2005). Writing in relation to the developments in Canada’s immigration system, Pratt describes the way that the concept of national security has

been reconfigured to include the threats posed by organized crime to “public safety and the economy and to therefore encompass a host of ‘true crimes’ including, but not limited to organized crime, drug trafficking, and prostitution” (2014, 297). Pratt points out that while these crimes may have previously have been linked with ‘gang’ activity, they were not seen as national security threats, a term that was, until the 1990s, “reserved for threats posted to the political state by subversion, treason, espionage, and sedition” (ibid, 298). Through this redefinition of national security to include threats posed by organized crime, a variety of relatively small-scale domestic crimes have become seen as potential threats to national security due to their association with organized crime. Of particular relevance to the present study is Pratt’s (2014) explanation of the way in which small scale ‘street gang’ activity has become understood by law enforcement as the low end of an organized crime continuum which inextricably results in national security threats. In the context of anti-human trafficking efforts, this crime-security nexus has contributed to the redefinition and targeting of sex trade activities as trafficking through suggested links to organized crime.

This intersection of criminality and national security concerns through links to organized crime is also seen in the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* [henceforth the *Trafficking Protocol (2000)*] which is embedded in the *Convention against Transnational Organized Crime (2000)*. The entrenchment of the *Trafficking Protocol (2000)* within the United Nations’ *Convention against Transnational Organized Crime* is premised upon the assumption that human trafficking is always and already a form of organized crime. At the local level, this discursive construction encourages sustained efforts to link the activities of third party actors in the sex trade to (organized) ‘gang’

membership. This, for instance, is seen from paltry suggestions by police and prosecutors that any evidence of organization or sophistication renders the offence a form of organized criminal activity. It can involve as little as having in ones' possession a list of phone numbers for drivers and clients as demonstrated in the case of *R.v. Oliver-Machado (2014)*. Even more troubling are efforts to construe organized crime links through race-based stereotypes, for example those that describe the manner of speech and clothing of an accused person as 'gang-like', as seen in the case of *R.v. Burton (2013)*. The concept of the crime-security nexus can help us to understand how it is that domestic 'pimping' has come to be conceptualized as a form of organized crime and thus as a potential threat to national security. And, even though anti-trafficking law in Canada does not require the involvement of organized crime to make out the offence of human trafficking, and in most cases this connection is not proven in court, the attempts to establish a link between trafficking and organized crime by Crown attorneys and police at the local level demonstrate the powerful effects of the crime-security nexus.

The Development of Anti-Trafficking Legal Regimes

Contemporary anti-trafficking approaches are preceded and influenced by historical concerns over 'white slavery'. International agreements and conventions against 'white slavery' emerged between 1900 and 1920 in Britain and focused on the sexual exploitation of white women travelling abroad for work (Doezema 1997, 2000, 2007, 2010; Gallagher 2010; Cordasco 1981; McLaren 1990; Valverde 2008; Donovan 2006; Bullough and Bullough 1987; Walkowitz 1980). The first international treaty against 'white slavery', *The International Agreement for the Suppression of the White Slave Trade*, was signed in 1904 (Cordasco 1981, 5; Doezema 2007; Gallagher 2010). Since then, there have been five other international conventions targeting

‘white slavery’, later re-named ‘human trafficking’⁴, including the current *Trafficking Protocol (2000)*. These laws, which were fueled by panics around ‘white slavery’, were initially concerned with women being transported across international borders against their will and forced to work in brothels, but became increasingly focused on criminalizing the domestic sex trade (Doezema 2007, 2010; Gallagher 2010), a trend that continued with the UN *Trafficking Protocol (2000)*.

Unlike its predecessors, the UN *Trafficking Protocol (2000)* has gained significant traction within the international community, with 117 signatories and 173 parties at the time of writing in 2018.⁵ Since the enactment of the *Trafficking Protocol (2000)*, politicians, the media, international organizations and state governments, and more recently police and the criminal justice system have begun paying significant attention to the issue. Gallagher argues that this increased interest in and urgency surrounding trafficking stems from a shift that took place during the process of drafting the latest *Trafficking Protocol (2000)* from human rights to a criminal law framework, which linked trafficking to the international threats posed by the involvement of transnational organized crime in migrant smuggling. In this process, the Protocol became one part of the *Convention against Transnational Organized Crime (2000)*, which also includes the *Protocol against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition*, and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*. In order to ratify any of the protocols, states must first ratify the Convention itself since the protocols were not intended as stand-alone treaties but were meant to be interpreted

⁴ These include: *The International Convention for the Suppression of the White Slave Traffic* in 1910; *International Convention for the Suppression of the Traffic in Women and Children* in 1921; *International Convention for the Suppression of the Traffic in Women of Full Age* in 1933; *The Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others* in 1949.

⁵ This is in contrast with 13 signatures for the 1904 Convention; 13 signatures for 1910 Convention; 33 signatures for the 1921 Convention; and 81 signatures for the 1949 Convention, (Gallagher 2010, 57, 59).

together with the Convention (Gallagher 2010, 73). Any modifications to the interpretation of the protocols must also be made in light of the simultaneous application of the Convention (ibid). Therefore, the definition of human trafficking under the *Trafficking Protocol (2000)* must adopt the characteristics of legal norms surrounding transnationalism and organized crime, which inform the Convention. The *Trafficking Protocol (2000)*, with its emphasis on organized crime and transnationalism is the basis on which international discourses around trafficking have formed.

Since Canada's ratification of the *Trafficking Protocol* in 2002, there has been a flurry of legal reforms, as seen by the number of legal amendments to trafficking laws. In 2002, the government amended the *Immigration and Refugee Protection Act (IRPA)* to include section 118, which governs cross-border trafficking of persons. In 2005, sections 279.01-279.04 were added to the Criminal Code to criminalized domestic human trafficking. Since then, the trafficking provisions within the Criminal Code have been amended four times (undergoing yet another round of amendments under Bill C-38 at the time of writing in 2018), each time expanding the definition of trafficking in a way that allows for a wider range of activities to be categorized under the term and increasing penalties.

Anti-trafficking efforts in Canada have also been affected by developments in sex work laws. In 2013, the Supreme Court of Canada in the case of *R.v. Bedford (2013)* struck down key provisions of Canada's sex work laws, finding that they violated the rights of sex workers under section 7 of the *Canadian Charter of Rights and Freedoms*. On June 4, 2014, the (then) Conservative government introduced Bill C-36, *The Protection of Communities and Exploited Persons Act*, which received Royal Assent on November 6, 2014. Under the new law, sex workers are seen as victims to be protected while the criminalization focus is directed towards

clients and exploiters, thus bringing Canada's sex work laws in line with human trafficking laws, which also take a protectionist approach towards those deemed as victims.

Despite the extensive legal developments to support anti-trafficking efforts, the findings of this research suggest an ongoing ambiguity surrounding the meaning of human trafficking amongst criminal justice actors. Crown attorneys, judges and defence lawyers have very different and sometimes contradictory understandings of the meaning of human trafficking, particularly in relation to the distinction between trafficking and the legal offence of procuring (under section 286.3 of the Criminal Code), colloquially known as 'pimping'. Yet, rather than bringing anti-trafficking strategies into disrepute, this ambiguity is in some ways enabling as it imports a definitional elasticity that effectively expands the scope of activities that can be defined as trafficking and therefore who can be defined as a trafficker and a victim. This elastic definition of trafficking has been beneficial in bringing about increased numbers of trafficking arrests and prosecutions and thus is suggestive of a successful criminal justice response to the issue.

However, Gallagher and Surtees warn that these are "crude and potentially misleading success indicators" (2012, 23). This is because increases in arrests and successful prosecutions can be explained by a number of factors, including new or expanded trafficking laws, the application of trafficking laws to offences previously charged under other laws, such as sexual assault and 'pimping' (Gallagher and Surtees 2012, 23). In addition to these factors, in Canada, the increased charges can also be attributed to the relatively recent changes to the sex work laws through the Supreme Court's decision in *R.v. Bedford* (2013), as well as the development of national anti-trafficking strategies and the subsequent allocation of significant resources to this end.

Domestic Anti-Trafficking Action Plan and Funding

The Canadian government has invested quite heavily in the formulation of national strategies to combat human trafficking with a particular focus on increasing police and prosecutorial successes in human trafficking cases. For instance, in 2012, the federal government launched the National Action Plan to Combat Human Trafficking⁶, which promises to protect victims, prevent trafficking, prosecute offenders and promote cooperation domestically and internationally with a focus on organized crime networks (Public Safety Canada 2012, 9, 20). In support of the National Action Plan, the federal government allocated \$25 million over a four-year period to combatting trafficking, with \$8 million towards anti-trafficking efforts in 2013/2014 fiscal year and \$6 million annually thereafter (Public Safety Canada 2012; see also DeShalit et al. 2014). Notably, of the \$8 million in funding for the fiscal year 2013/14, \$5,375,000 was allocated towards law enforcement efforts (Public Safety Canada 2012, 10). Among other things, the National Action Plan emphasized the need for cooperation between various policing forces and resulted in the establishment of a dedicated integrated enforcement team headed by the RCMP. While the National Action Plan emphasizes the important role of federal policing agencies in leading anti-trafficking efforts, of particular importance to this dissertation, is my finding that the vast majority of anti-trafficking policing, as reflected in trafficking arrests and prosecutions, is carried out by newly formed specialized human trafficking teams within municipal police services.

Similar action plans have also been enacted at provincial levels. For instance, in Alberta, anti-trafficking efforts are led by the Action Coalition on Human Trafficking Alberta (ACT), an NGO established in 2010 to coordinate a response between NGOs, social service agencies,

⁶ National Action Plan expired March 2016 and is currently under review.

health care providers, police and the government agencies (Kaye 2017, 109). In British Columbia, the Office to Combat Trafficking in Persons (BCOCTIP) was established in 2007 to coordinate a provincial response to human trafficking and bring together partnering organizations including federal, provincial and municipal governments, NGOs and community organizations, law enforcement and academics (Kaye 2017, 75).

In June 2016 the province of Ontario launched its action plan entitled *Ontario's Strategy to End Human Trafficking*. The action plan was supported by \$72 million⁷ in funding (Government of Ontario, 2016) – almost three times the amount dedicated to the federal strategy. The Ontario strategy includes increasing awareness around trafficking, improving community services (housing, mental health services, trauma counselling, and job skills training) for victims; enhancing justice sector initiatives such as “effective intelligence-gathering and identification, investigation and prosecution of human trafficking” including Indigenous-led approaches; and establishing a provincial coordination and leadership, “including developing a provincial Anti-Human Trafficking Coordination Office to help improve collaboration across law enforcement, justice, social, health, education, and child welfare sectors” (Ministry of the Status of Women, 2016). Importantly, Ontario’s anti-trafficking strategy also includes the assignment of six new Crown attorneys specializing in human trafficking cases across the province. This emphasis on trafficking prosecutions and the introduction of specialized Crown attorneys is likely a response to the relatively low conviction rates and high rate at which trafficking charges are withdrawn,, despite a rise in the number of charges following the Bedford decision in 2013. For instance, according to the US Department of State 2017 *Trafficking in Persons* report on Canada:

In 2016, police charged 107 individuals in 68 trafficking cases (none for labor

⁷ According to an email response from the Ontario’s Anti-Trafficking Initiative, information regarding funding allocations of the initiative cannot be released by their office and can only be obtained through a freedom of informational request.

trafficking) compared to 112 individuals in 63 cases in 2015. Prosecutions continued against 300 individuals, including 34 suspected labor traffickers, compared to 314 individuals, including 24 suspected labor traffickers, in 2015. The courts convicted 10 sex traffickers and no labor traffickers in 2016, compared to six sex traffickers in 2015 (2017, 119).

The data provided to the US Department of State, therefore, shows a significant discrepancy between charges laid and convictions. As the US Department of State points out, in 2016, out of 107 individuals charged with human trafficking, only 10 were convicted (ibid.). The importance of this is further amplified by the fact that the US, which took on the task of monitoring and evaluating the efforts of individual states to prosecute and prevent human trafficking (Soderlund 2005; Gallagher 2010), uses prosecution rates of trafficking cases to rank countries on their anti-trafficking efforts (Suchland 2015, 55).

The Role of the US

The US evaluation of global anti-trafficking efforts is based on a Three-Tier ranking system: Tier One is awarded to countries who have fully complied with US anti-trafficking standards, while Tier Three ranking is attributed to countries who have failed to do so (Soderlund 2005). A few months before the US adopted the UN *Trafficking Protocol*, it also passed its own domestic anti-trafficking law, *The Trafficking Victims Protection Act (TVPA)*⁸ (2000) (Chuang 2014, 610; Soderlund 2005; Zheng 2010; Gallagher 2010; Suchland 2015). The TVPA empowered the US to place economic sanctions on countries that failed to abide by the anti-trafficking standards set out by them (Chuang 2014, 610), placing them in a powerful position to exert influence over international politics (Cameron 2008, 89). This is particularly so since a Tier 3 ranking can trigger sanctions for the rated country, including limiting access to aid from the

⁸ Since then there have been 4 amendments to the law in the form of *Trafficking Victims Protection Reauthorization Act (TVPRA)* revised in 2003, 2005, 2008 and 2013.

US, International Monetary Fund (IMF) and the World Bank.

The TVPA has also had a significant impact on the global meaning of human trafficking by setting out a US developed definition of the term. This definition removed the requirement that cross border transportation be established to prove human trafficking, placed an emphasis on sexual exploitation over other possible forms of exploitation, and defined trafficking as being “induced to perform a commercial sex act” (Gallagher 2010, 23; Bernstein 2012). In effect, the US definition of trafficking came to replace the definition suggested by the UN’s own Special Rapporteur on Violence against Women, Radhika Coomaraswamy, which focused on the distinction between trafficking and related practices (Gallagher 2010, 24). As explained by Coomaraswamy,

It is the combination of the coerced transportation and the coerced end practice that makes trafficking a distinct violation from its component parts. Without this linkage, trafficking would be legally indistinguishable from the individual activities of smuggling and forced labour or slavery-like practices (as cited in Gallagher 2010, 25).

Coomaraswamy’s definition drew strict boundaries around the meaning of trafficking to distinguish it from other criminal offences. The failure to include Coomaraswamy’s coupling of coerced transportation and coerced end practice in the international definition of human trafficking has effectively erased important distinctions between trafficking and other criminal activities. Human trafficking today is a vague and elastic umbrella term that can be applied to a wide range of cases and situations and maintains little to no resemblance to the offence as it was understood at the time the *Trafficking Protocol (2000)* was drafted. The US definition of trafficking then effectively undermined the goals of the UN *Trafficking Protocol (2000)* to focus not only on trafficking for sexual exploitation but also on other forms of trafficking, including labour trafficking, trafficking for organ harvesting and debt bondage with a focus on migrant exploitation. Canadian legal definition of trafficking shares the breadth of the US definition and

remains in its enforcement firmly focused on sexual exploitation, rather than other types of trafficking.

As such, the US has effectively replaced the standards of trafficking set out by the UN with its own and in the process shaped a distinctly anti-sex work enforcement approach, pressing on other nations to criminalize and abolish the sex trade (Gallagher 2010, 22, 2006; Zheng 2010; Doezema 2000; Soderlund 2005; Suchland 2015; Bernstein 2012). As Zheng observes, “by creating incentives to abolish prostitution and promote abstinence as the only US-approved approach as a means to stifle human trafficking, this international alliance has built, shaped and perpetuated an international moral and legal order of anti-trafficking movements” (2010, 4). It must also be noted that in the US, the issue of trafficking is influenced significantly by religious groups and has brought together a diverse group of activists and policy makers, including evangelical Christians and abolitionists (Bernstein 2010, 2012; Soderlund 2005). And while these groups vary in their views on a number of issues, they are united by the need for harsher penalties for traffickers, sex workers, clients and any nation that fails to enforce these norms (Bernstein 2010). Accordingly, during the first decade and a half of the global anti-trafficking efforts, the US encouraged states to establish “aggressive, perpetrator-focused criminal justice responses to trafficking” in an effort to abolish the sex trade (Chuang 2014, 610).

Canada has also been pressured by the US. In 2003, the US Department of State reduced the ranking of Canada’s anti-trafficking efforts from its usual Tier One to a Tier Two level (US Department of State 2003). Drawing a direct link between organized crime and trafficking, the 2003 US Department of State *Trafficking in Persons’ Report* criticized Canada’s border control strategies, claiming that its lenient immigration laws resulted in several Canadian cities becoming hubs for criminal organizations involved in human trafficking (Collacott 2006). Such

criticisms of Canada's anti-trafficking efforts echo the accusations and actions taken by the US during the 'white slavery' panics at the turn of the twentieth century. At that time, Canada was accused of being a "veritable vice haven" for vile practitioners due to its lenient sex work laws (McLaren 1986, 48; see also McLaren 1986 (a), 1990). The US Department of State Trafficking in Persons reports have continued to emphasize Canada's need to increase its efforts to investigate and prosecute human trafficking offences, increase proactive investigation techniques and improve coordination between national, provisions and international law enforcement (Jeffrey 2005; US Department of State 2017, 2016, 2015, 2014). The pressure placed by the US Department of State cannot be underestimated and is at least partly responsible for the increased attention to anti-trafficking efforts and strategies in Canada, which continue to maintain a particular focus on criminalization and prosecution of sex trade related activities.

Shaping the Complainant and the Accused in Trafficking Cases

In the context of such pressures placed on anti-trafficking police and Crown attorneys to increase arrest and prosecution rates of trafficking cases and in the absence of transnational trafficking cases (Ferguson 2012), criminal justice and legal actors have taken aim at the all-too-familiar target – the sex trade industry. While people across the spectrum can be exploited, anti-trafficking approaches focus almost exclusively on the victimization of women and girls working in the sex trade. Of particular focus in the media and Parliamentary debates is the 'ideal victim' who, as discussed above, is the white daughter of middle class families – 'the girl next door'. In contrast, front-line anti-trafficking police and prosecutorial efforts target marginalized girls and women involved in the sex trade under the justification that they are most vulnerable to becoming victims of trafficking. In order to re-construct sex trade workers as victims of trafficking, police and prosecutors use marginalizing factors, such as poverty, history of physical

and sexual abuse, drug abuse, involvement in the sex trade and self-esteem issues, to name a few, to construct women and girls as vulnerable to exploitation. And while the reliance on these marginalizing factors, which the United Nations Office of Drugs and Crime (UNODC) calls ‘pre-existing vulnerabilities,’ has been criticized because it casts too wide a net and risks cases being “incorrectly or too easily prosecuted as trafficking cases” (2013, 5), they continue to be used not only by police but also prosecutors and defence attorneys.

This contrasting focus by the Parliamentarians and the media on the one hand, to save the white daughter of the Canadian family and the police and prosecutorial targeting of marginalized women and girls particularly in the sex trade on the other hand, reveals the class, race, gender biases underlying the anti-trafficking efforts. Although my empirical data has led me to focus on constructions of domestic trafficking victims, we can see these glaring biases in the criminalization and deportation of racialized and racialized white migrant women and particularly migrant sex workers through anti-trafficking efforts (Durisin 2017; Kaye 2017; Sharma 2005; Jeffrey 2005; Kempadoo 2005; Kempadoo and Doezema 1998; Bernstein 2010). As Jo Doezema notes, “all over the world, communities are caught up in identity crises in the face of displacement, mass migration and globalization. The myth of ‘trafficking in women’ is one manifestation of attempts to re-establish community identity, in which race, sexuality, and women’s autonomy are used as markers of crucial boundaries” (2000, 46). Indeed, Doezema’s sentiments resonate in the context of Canada’s concerns over domestic trafficking particularly at a time when concerns over migration and the need to establish Canada’s national boundaries is becoming increasingly heightened.

At the same time that local police and Crown attorneys rely upon these features of marginalization to construct the women and girls as victims of trafficking, they are also used by

defence attorneys to discredit complainants. This legal approach of using factors such as drug abuse, involvement in the sex trade and criminal history to undermine the credibility of complainants has been well documented in sexual assault cases. These same factors, combined with legal strategies such as the use of controlled questions and the reliance on courtroom rules, which among other things limit the complainants' ability to speak, are also used by defence attorneys in trafficking cases to attack the credibility of complainants. The use of these factors has become even more important for defence attorneys due to the increased seriousness of the charge of trafficking as compared with previous 'pimping' charges and the consequent need to aggressively defend their client. At the same time as it is important for defence attorneys to aggressively defend the accused in trafficking cases, such a treatment of marginalized women and girls in court and police targeting of this group through anti-trafficking efforts also results in the criminalization of poverty. This is particularly well demonstrated by evidence that even when those suspected of being victims of trafficking reject the victim label, they are frequently pressured by police to accept the victim status under the threat of criminalization or other punitive consequences, such as losing their child to state custody.

The criminalization of race and poverty is also evident from the targeting of accused in trafficking cases. As my research indicates, a significant number of individuals arrested for trafficking offences are poor, young, racialized, and particularly black men. And while police targeting of black men under 'pimping' laws has significant historical precedency, current anti-trafficking efforts are set apart by the re-categorization of domestic 'pimping' offences as human trafficking – an offence now understood through its connection to organized crime as a potential threat to national security. This re-conceptualization of 'pimping' offences as trafficking is given new significance through the crime-security nexus, increasing the severity with which the

offence is viewed. And, although the vast majority of trafficking charges do not result in convictions, the charge alone can have significant impact on accused persons. Furthermore, arrests for trafficking related offences are often covered by the news media creating public stigma and shaming even before the allegations are proven in court. For those who are convicted of trafficking, there are also increased criminal justice penalties and additional immigration penalties for non-citizens convicted.

As such, a great deal of investment, financial and otherwise, has been made internationally and domestically to advance international and domestic anti-trafficking objectives. In this context, one would expect focused and sustained attention to the nature and effects of these efforts. As explained by Anne Gallagher and Rebecca Surtees, “it is not difficult to sustain a strong argument that counter-trafficking interventions, including those in the criminal justice sector, should be carefully monitored and evaluated” (2012, 11). Yet, despite the proliferation of expansive anti-trafficking agendas, mandates, laws and policies, very little is known about the way they play out on the front line of policing actions and in courtrooms (Gallagher and Surtees 2012; Farrell et al. 2016). While a few studies examining this have emerged in recent years, these are primarily focused on the US (Farrell et al. 2015, 2016; Esser et al. 2016) and Europe (Meshkovska et al. 2016; Lester et al. 2017). To date there are three local empirical Canadian studies that examines frontline anti-trafficking policing and prosecution efforts, one of which focuses on migrant worker justice (Millar and O’Doherty 2015), another on international trafficking cases (Ferguson 2012) and the most recent study by Julie Kaye (2017) explores anti-trafficking efforts in Canada’s settler-colonial context. This dissertation then, begins to fill this lacuna in the Canadian context by examining in finely grained empirical detail policing and prosecutorial anti-trafficking efforts between 2005 and 2016, with a primary focus

on the province of Ontario. Attending to the ways that at the level of federal law and government policy, Canadian responses to trafficking give expression to the guiding concerns over violence against women, child sexual exploitation and youth in sex work and intersecting issues of organized crime and national security, the focus of this dissertation is on the local frontline police and prosecutorial efforts in the jurisdiction of Ontario. While it would certainly be interesting to carry out future studies that compare what is happening in Ontario with other regions in Canada, it is also true that the Ontario police departments and courts, which are the focus of this study, represent large urban centers where the vast majority of trafficking cases are enforced and prosecuted.

A Word on Terms

In taking a position that is critical of the anti-trafficking framework, my intention in this dissertation is to avoid reproducing the numerous harmful stereotypes often reproduced in discussions of trafficking and sex work. As such, and given the feminist, pro-sex work and critical race perspectives of this dissertation, I use the term ‘sex work/er’ as opposed to ‘prostitution/prostitute’ unless it is a part of a quote or describes statements and opinions made by others. I also use the terms ‘labelled victims’, ‘suspected victims’ or ‘complainants’ in reference to women and girls labelled as victims of trafficking in order to avoid the totalizing narrative of the trafficking victim. Furthermore, because anti-trafficking laws, policies and criminal justice interventions focus almost exclusively on women and girls as victims of trafficking, and while acknowledging that individuals of all genders can become victimized by exploiters, in this dissertation, the labelled victim of trafficking will be treated as a gendered category. Throughout this dissertation, I also use quotations to disrupt the use of the racially stereotyped term ‘pimp’ when referring to accused in trafficking and procuring cases. And,

finally, the word ‘trafficking’ in this dissertation will refer to ‘human trafficking’, rather than drug, weapons, or any other type of trafficking and will be used interchangeably with ‘human trafficking’.

Chapter Outline

Each chapter in this dissertation provides a different window into the specific ways in which the human trafficking matrix works and is impacted by the crime-security nexus to create an on-the-ground understanding of trafficking, the trafficker and the victim, through expansive laws and policies as well as specialized and pro-active policing and prosecutorial techniques.

To set the context for the study, Chapter 2, “Studying Trafficking” explores the relevant academic conversations and debates in the diverse and interdisciplinary scholarship relating to human trafficking and points to the ways in which this dissertation contributes to these discussions. This chapter also outlines the conceptual tools employed in this dissertation to make sense of the findings. Rather than using an overarching theoretical framework, this dissertation is guided by a number of theoretical insights offered by scholars from various disciplines including socio-legal studies, women’s studies, critical race studies and criminology. These insights form a conceptual toolkit through which I examine the findings of this research. Finally, this chapter provides a detailed outline of the research methodology used to gather the empirical data for this dissertation.

Chapter 3, “Law and the Definition of Human Trafficking” investigates Canada’s human trafficking laws and draws a comparison between the meaning of trafficking as laid out in the *UN Trafficking Protocol (2000)* and Canada’s legal definition of the offence in the Criminal Code. This chapter demonstrates that Canada’s definition of trafficking, which diverges from the UN definition in some important ways, has been expanded through legislative amendments to

allow more activities to be defined as trafficking. In particular, the chapter explores how the meaning of human trafficking continues to be understood by criminal justice actors in different and sometimes contradictory ways. Yet, rather than creating trepidation about what exactly is being fought and why, these varying understandings of trafficking are instead effectively expanding the range of activities and offences that can be defined as trafficking. Tracing the expansion of Canada's human trafficking laws alongside changes to sex work laws, this chapter details the ways in which trafficking laws have come to be applied to sex work cases and particularly ones where a third party actor is involved.

While criminal justice actors and lawmakers are frequently dismissive of transnational trafficking, Crown attorneys as detailed in Chapter 3, see human trafficking as a more serious offence than procuring. As Chapter 4, "International Trafficking and the Crime-Security Nexus" demonstrates, concerns over human trafficking intersect with trafficking discourses prominent at the level of international legal regimes to link trafficking with a range of other issues. These include humanitarian concerns about victims of trafficking, but also securitization concerns about organized crime, national security and terrorism, which continue to fuel the urgency of the problem of trafficking. This chapter examines the ways in which human trafficking has become understood as a national security issue through reconceptualization of the concept of national security to include public safety and economic threats in addition to threats against the political state. This reconceptualization, as captured by the crime-security nexus, has had the effect of increasing the number of activities that can be viewed as posing a threat to national security, encompassing a wide range of even very small scale activities that can be linked to organized crime. The effects of the crime-security nexus then, have enabled the redefinition of domestic small-scale 'pimping' offences as human trafficking. These concerns around national security

have been further enhanced by fears about terrorist threats, thus, as I detail in this chapter, the linking of trafficking with terrorism further heightens its perceived danger.

Chapter 5, entitled “The Making of Domestic Trafficking” turns to the domestic front in Canada and explores the ways that dominant trafficking discourses are shaped by range of pre-existing concerns over sexual violence against women, sexual exploitation of children and youth involvement in the sex trade. This chapter explores the ways in which the two dominant images of the domestic trafficking victim, ‘the girl next door’ and the marginalized and often Indigenous girl and woman, are taken up by lawmakers, the media and police and legal actors in front-line anti-trafficking efforts. In particular, the chapter demonstrates how ‘the girl next door’ imagery is used to fuel fears about trafficking through suggestions that any woman or girl can be a victim, regardless of their position in society. These women and girls are deemed to be ‘at risk’ and are therefore tasked with protecting themselves from traffickers through responsabilization strategies and enhanced vigilance. In contrast, marginalized women and girls, particularly if involved in the sex trade are seen as a ‘risk-takers’ and therefore are far more likely to be constructed in court as responsible for their own victimization. Although, in sexual assault cases, as scholars have well documented, the ‘risk takers’ are generally denied any victim status, the same is not true for trafficking cases. As evidence shows, marginalized girls and women make up the vast majority of complainants in trafficking court cases analyzed in this study. The ability to focus on the victimization of this group enables the police and prosecutors to construct sex workers as victims of human trafficking through reliance on a series of risk indicators known as ‘vulnerability factors’. And while marginalized women and girls often reject the victim label, the police, through threats of criminalization, pressure these women and girls to admit victimization and script them to tell a particular version of events. This chapter then, demonstrates the ways in

which domestic trafficking discourses are shaped and how, through the human trafficking matrix, they are then relied upon to achieve very different means; on the one hand targeting the sex trade, while on the other hand regulating the sexuality of white, middle-class women and girls.

Chapter 6, “Legal Strategies and the Creation of the Victim of Trafficking in the Courtroom” juxtaposes the emphasis placed on the protection of trafficking victims under the *UN Trafficking Protocol (2000)* and *Canada’s National Action Plan to Combat Human Trafficking (2012)* with the treatment of women and girls as complainants in domestic trafficking trials. The chapter explores how notions of protection are displaced at the trial stage where complainants are cross-examined by defence attorneys through similarly troubling strategies as those used in sexual assault trials. This chapter focuses on the way in which vulnerability factors, including poverty, substance abuse, involvement in sex work etc., are used by both Crown and defence attorneys to advance opposing arguments. Interestingly, while defence attorneys use these factors to undermine the credibility of the complainant, Crown attorneys use them to demonstrate the complainant’s vulnerability to exploitation.

Chapter 7, “The Trafficker” explores how those who are accused of trafficking offences are characterized by police and legal actors. Anti-trafficking efforts in Ontario primarily target poor, young, racialized men involved in ‘pimping’ activities. This chapter shows, in empirical detail, the attempts made by police and Crown attorneys to characterize accused as human traffickers by creating trafficking indicators from racialized stereotypes of black men as dangerous, hypersexual, violent and in particular, posing a threat to white women and girls. And while the accused in trafficking cases are largely involved in small-scale criminality on an individual basis, police and prosecutors go to great lengths to build links between the activities of the accused and organized crime, relying on strategies and knowledges from the 1980s and

1990s panics over youth involvement in the sex trade, which targeted young racialized men for their involvement in ‘pimping’ related ‘street gangs’.

Chapter 8, “Policing Trafficking” looks at police anti-trafficking strategies and focuses especially on the recent creation of anti-trafficking units within municipal police departments across Canada. The chapter demonstrates that despite the emphasis in *Canada’s National Action Plan to Combat Human Trafficking (2012)* on cooperation of police forces across municipal, provincial, federal and international jurisdictions, the vast majority of trafficking arrests are carried out by specialized trafficking teams within municipal police forces, who compete with each other for arrest rates and funding opportunities. Drawing from interviews with members of two anti-trafficking policing units in southern Ontario, the chapter demonstrates how local, day to day police decision-making effectively shapes the problem of human trafficking, its victims and perpetrators on the frontline of anti-trafficking enforcement. The chapter also recounts how the heightened pressures for police to find and arrest traffickers have led to some troubling police tactics including the fabrication of evidence.

Finally, in the concluding chapter, I revisit the central findings of this dissertation and provide some preliminary thoughts about directions for future research.

Chapter 2 – Studying Trafficking

Since the establishment of the UN *Trafficking Protocol* in 2002, considerable attention has been paid to the issue of human trafficking by international bodies, state agencies, non-government organizations (NGOs) and academics. Trafficking has been presented as a new phenomenon emerging in response to globalization and one that requires urgent international and state-level attention. Much of the existing scholarship focuses on deciphering what trafficking means and, who are the victims and traffickers. According to Claudia Aradau, mainstream literature on trafficking operates under the assumption that trafficking is “a phenomenon whose truth is to be discovered” (Aradau 2008, 14). The now extensive body of scholarship that critiques the anti-trafficking framework has drawn attention to the legal ambiguity and definitional uncertainty of domestic and international law and policy on human trafficking (Weitzer 2015, 2015(a); Chuang 2014; Doezema 2007; Kempadoo 2005; Gallagher 2010; Sanghera 2005; Roots 2013). This scholarship problematizes anti-trafficking efforts and raises concerns about the ways that trafficking is used as an umbrella term that incorporates a wide variety of issues and concerns.

While law and definitional challenges surrounding trafficking have been the focus of examination, little, albeit growing, attention has been paid to the way these definitions are interpreted and applied by state agents on the ground in domestic contexts (Chuang 2014; Esser et al. 2016; Farrell et al. 2016; Gallagher 2016; Lester et al. 2017). This focus is made particularly important by the emergence of a broad and flexible definition of the crime of human trafficking, which enables the term to be significantly shaped at the local level by criminal justice and legal actors. According to Anne Gallagher and Rebecca Surtees, discussions about the definition of trafficking have no place within the context of trafficking related prosecutions since

accused persons' basic right to a fair trial is dependent on the existence of a clear definition (2012, 8). Unfortunately, as they observe, many countries are struggling to provide a clear definition. Instead, domestic laws "reflect a version of the complex, somewhat ambiguous international legal definition of trafficking" established by the *Trafficking Protocol (2000)* (Gallagher and Surtees 2012, 8).

In light of these circumstances, this project takes up the challenge of examining the way in which trafficking is understood, taken up and shaped at front-lines of domestic anti-trafficking efforts in Canada, with an empirical focus on the province of Ontario. In doing so, I explore how the intersection of various exceptional yet mundane global and local issues, including organized crime, War on Terror, national security, but also sexual violence, child sexual exploitation, and youth involvement in the sex trade come to intersect within the trafficking matrix, to form trafficking as a fluid and constantly shifting concept. The present study avoids the temptation to make broad and generalizing claims and instead attempts an analysis that flows much more directly from local findings. These may at times be consistent with the broader themes outlined by trafficking scholarship, but also provide the opportunity to acknowledge and take seriously points of discontinuity, conflict, and tension that more general perspectives obscure.

Broadly speaking four main approaches characterize the field of trafficking studies: 1) feminist perspectives (primarily divided into abolitionist and pro-sex work positions); 2) migration studies; 3) human rights-based approaches, and 4) critical security studies. While the vast majority of scholarship on trafficking is descriptive and tries to figure out the best ways to 'fight' human trafficking, in this dissertation, I build on the work of scholars who are critical of the anti-trafficking framework, challenge the meaning of the term 'human trafficking' and question the existing knowledge on the issue. In particular, I build on the work of scholars from

feminist and securitization perspectives, contributing to this body of scholarship through an empirical examination of how criminal justice practices dictate which cases can be made into ‘human trafficking’.

Human Trafficking and Sex Work

Human trafficking has provided another site within which debates on sex work can take place (Aradau 2008, 29; Bernstein 2012; Kempadoo 2005; Doezema 2010, 2007, 2004; Lepp 2013; Soderlund 2005). The conflation of trafficking with sex work has historical precedent in ‘white slavery’ panics that emerged in Britain and focused on the sexual exploitation of white women travelling abroad for work (Doezema 1991, 2001, 2007, 2010; Gallagher 2010; Cordasco 1981; McLaren 1990; Valverde 2008; Donovan 2006; Bullough and Bullough 1987; Walkowitz 1980). While initially the panics were centered around women transported across borders against their will and forced to work in brothels, as several critical scholars have documented, anti-trafficking laws became increasingly focused on the sex trade (Doezema 2007, 2010; Gallagher 2010). Despite efforts to move away from a focus on sex work, some feminists argue that the current UN *Trafficking Protocol (2000)* has continued to operate under an anti-sex work agenda (Doezema 2007, 2010; Bernstein 2010, 2012, 2012(a); Vance 2011; Soderlund 2005), therefore debates on the meaning of human trafficking mirror those around sex work itself (Aradau 2008, 30).

Current debates about the relationship between trafficking and sex work fall into two polarized feminist perspectives: 1) sex work as labour perspective, led by the Global Alliance Against Trafficking in Women (GAATW), which problematizes the human trafficking framework by pointing out its use for anti-sex work agenda and advocates for a sex work as labour issue, and 2) the abolitionist perspective, which views all sex work as essentially

exploitive and a violation of human rights. The abolitionist perspective is led by the Coalition Against Trafficking in Women (CATW) and advanced by a wide range of organizations and activists including international NGOs, such as the Polaris Project in the US and the Future Group, Hope for Sold and Walk with Me in Canada, and state governments, most notably the US which has pursued a strong and influential domestic and international abolitionist agenda. This perspective contends that sex work is degrading and inherently harmful because it can only be entered into as a result of coercion and violence, therefore making the question of consent in sex work irrelevant (Doezema 2001, 27; 2007). Some abolitionists take the position that sex work inevitably leads to trafficking and that all sex work must, therefore, be made illegal in order to effectively combat human trafficking. In short, abolitionists, who find themselves in the company of neoconservatives, Christian groups and celebrities in the US, support tough and unapologetic criminalization of the sex trade (Howard and Lalani 2008; Ditmore 2005; Bernstein 2012, 2012(1), 2010; Weitzer 2007; Soderlund 2005). This perspective, as Julie Kaye (2017) has observed, remains dominant in the Canadian context and remains necessary in order to secure funding for anti-trafficking efforts (see also DeShalit et al 2014). Those critical of this perspective suggest that abolitionists employ the “symbolic power of the ‘modern sex slave’ to galvanize an international movement to end trafficking and the sex trade” (Zheng 2010, 5; see also Bernstein 2012, 2012(a), 2010; Weitzer 2007; Frederick 2005; O’Connell Davidson 2015).

In contrast, pro-sex work scholars argue that not every sex trade and migrant sex worker is forced or coerced into their situation; therefore, blanket assumptions regarding the lack of consent remove the agency and undermine the autonomy and freedom of these individuals (Doezema 1991, 2007, 2010; Hua 2010; Ditmore 2005; Bernstein 2010; Weitzer 2010; Soderlund 2005). Feminists who adopt this position see it as a form of employment and suggest

that the criminalization and other forms of penalization imposed on individuals engaged in sex work are a “denial of human rights to self determination” (Anderson and Adrijasevic 2008, 139; Hua 2011). The emphasis here is on the need for protections and employment standards for sex workers that address the violence and exploitation of the workers within it (ibid). Advocates of this perspective question the utility and ethical responsibility of labeling all cases of sex work as trafficking, particularly when those labeled as victims choose to escape from the protection provided through anti-trafficking efforts (Soderlund 2005; Hua 2011, 2012; Doezema 2010, 2007, 2004, 2001, 1991).

Although scholars have paid significant attention to the conflation of sex work and trafficking, their studies have mostly focused on the way in which the conflation is constructed through rhetorical tools and discourses and on how laws, policies, and regulations contribute to this amalgamation (Doezema 1991, 2010; Kempadoo 2005; Sanghera 2005; Gallagher 2010; Soderlund 2005; Chuang 2014; Bernstein 2007, 2012; Kempadoo et al 2017). What is largely missing from the scholarship, and what the present study aims to contribute, is empirically located inquiries on how trafficking discourses are shaped and taken up on the front-lines of legal and criminal justice efforts to construct sex work as trafficking or to distinguish the two.

Modern Slave Trade and Trafficking

The conflation of sex work and human trafficking has been embedded within the framework of modern day slavery, further fueling these concerns. Jo Doezema describes modern day slavery discourses as powerful and inherently racist discourses that borrowed “the language and the sense of moral outrage generated by anti-slavery activism” and worked to erase the distinction between consensual sex work and slavery (2010, 82; see also Kempadoo 2005; Bunting and Quirk 2017; Chuang 2014; O’Connell Davidson 2015). These discourses continue

to be anchored in the UN's *Trafficking Protocol (2000)*, and the US *Trafficking Victims' Protection Act (2000)* which take the position that human trafficking, especially of women and girls for the purposes of providing sexual services, is 'modern day slavery' that urgently requires government intervention, international collaboration and tough on crime mandates (Shelley 2010; Kara 2009; Perrin 2010; Bales 2005). As articulated by Kevin Bales, a prominent academic and activist against modern day slavery, "human trafficking is the modern term for a phenomenon – that of forcing and transporting people into slavery – which has been a part of civilization since the beginning of human history" (2005,126). Bales and others taking this perspective call for an expansion of the term, which they see as currently ignoring many other dynamics that should rightfully be called slavery (2005; Bales and Soodalter 2009; Perrin 2010; Kara 2009; Shelley 2010). Indeed, in recent years this equation of 'modern day slavery' with trafficking has shifted from "invoking slavery imagery for rhetoric flair to explicitly suggesting that slavery should replace trafficking because the latter term is a passe" (Chuang 2014, 624). This re-conceptualization of trafficking as slavery has contributed to the practice of reframing a broad range of practices as trafficking (Chuang 2014; see also O'Connell Davidson 2015; Bunting and Quirk 2017).

This new abolitionism, as O'Connell Davidson calls it, is criticized for its lack of definitional precision and continuous expansion of the term 'modern-day slavery' in the name of protecting the victim of trafficking (2015, 5). Bunting and Quirk, for instance, note that modern day slavery discourses encompass diverse and sometimes competing agendas of a range of practices and problems which have been loosely knit together under the larger global cause of 'modern day slavery', 'contemporary forms of slavery' or 'human trafficking' (2017, 6). These emotional narratives that emphasize violence and pain, according to some scholars, divert

attention from larger structural issues, such as the role of states in labour exploitation, while emphasizing a small subset of ‘safe’ issues, including sex work, migration and organized crime (Bunting and Quirk 2017). As such, scholars critical of the modern-day slavery framework reject the parallel between slavery and human trafficking on the grounds that this association is used as a political strategy with powerful effects for migrants, sex trade workers and other vulnerable populations, including poor, young, racialized men. Bunting and Quirk maintain that the political cause of combatting modern day slavery under the umbrella term human trafficking “have not only struggled to make an impact, but they have also been complicit in a larger series of questionable political and ideological agendas” (2017, 5). According to Bunting and Quirk, the cause of ending slavery is presented as one that transcends everyday politics (2017, 19). The reason for this, as they suggest is that the vast majority of efforts to combat modern day slavery are focused on the commercial sex trade, rather than anything that would “directly challenge major economic and political interests of the foundations of our profoundly unjust global economy” (Bunting and Quirk 2017, 20).

In line with this, Aradau adds that presenting trafficking as a human rights violation is a politically explicit strategy that uses emotional narratives embedded with human suffering by “presenting a one-dimensional image of the trafficking victim as a suffering individual” (2008, 34). As scholars have pointed out, this one-dimensional narrative of a victim excludes all others who do not fit into this rigid category on the one hand, while on the other hand, negating the agency and choices of migrants, sex workers and other vulnerable populations by insisting on their ‘victimhood’ (O’Connell Davidson 2015; Hua 2011, 2012). According to Aradau, humanitarian discourses around trafficking are also used to support politics of security through which risk technologies are relied upon to carry out anti-trafficking enforcement practices (2008,

103). As Aradau explains, women are always seen as ‘risky’ beings for their potential to be re-trafficked, embodying in “themselves the danger of illegal migration” and therefore becoming the subjects of risk logic and inciting the need for securitization (2008, 103).

A key thread of the scholarship that has focused on trafficking as slavery is the tendency to represent traffickers, victims, and their saviours in rather one dimensional, moralized fashion. This approach has been effectively and thoroughly critiqued by feminist, anti-racist and securitization scholars who have drawn attention to the way in which the equation of trafficking with slavery and its remediation through human rights discourses has created three central figures which Mutua, in the context of human rights projects more broadly, has called ‘the victim, the villain and the rescuer’ (Mutua 2002, 2007; Aradau 2008; Doezema 1991, 2010; O’Connell Davidson 2015; Hua 2011, 2012). As Makau Mutua suggests, the concept of victimization is central to human rights discourses because “without the victim there can be no savage or savior” (2001, 227). While mainstream scholarship on human trafficking focuses on understanding who the ‘real’ victim of trafficking is (Aradau 2008, 14), critical feminist, anti-racist and securitization literature notes that the category of the ‘trafficking victim’ is a political one and is premised on sensationalist images of trafficking victims as young, innocent, naïve and duped women (Doezema 1991, 2010, 2012; Soderlund 2005; Suchland 2015; Andrijasevic and Anderson 2008; Andrijasevic 2007; O’Connell Davidson 2006, 2015; Aradau 2008). In this way, as Doezema observes, the ‘archtypical white slave’ makes a re-appearance as a modern trafficking victim, constructed as innocent through her lack of knowledge and purity (2010, 34).

Migration and Human Trafficking

Scholarly critiques in human trafficking scholarship also focus on distinguishing trafficking victims from migrant sex workers, with whom they are often conflated. Trafficking is

seen as an extension of concerns over illegal migration as “almost all definitions of trafficking include the element of ‘movement across borders’” (Aradau 2008, 22). Literature on trafficking with a migration lens focuses mostly on the need to distinguish between illegal migrants and trafficking victims due to the need to protect trafficking victims and punish illegal migrants, which results in calls for strengthened immigration policies and harsher border control functions (Kara 2009; Sulaimanova 2006; Englund et al. 2008). This stems from the UN *Trafficking Protocol* (2000), which emphasizes migration and calls for state parties to “strengthen, to the extent possible, such border control as may be necessary to prevent and detect trafficking in person” (2000, 7). This perspective has been criticized for reliance on simple binaries between ‘trafficking victim’ and migrant. Instead, as scholars have noted, these categories are much more fluid since trafficking can start off as voluntary migration and end in exploitation (Aradau 2008, 23; Hua 2011; Sharma 2005; Dauvergne 2008). Aradau points out that this categorization is further complicated when structural factors are taken into consideration raising the question: “Do women who choose to migrate in order to escape poverty make a voluntary choice?” (2008, 23).

In contrast, other migration scholars have argued that anti-trafficking discourses are used to crack down on migration and criminalize migrants (Kempadoo 2005; Kapur 2005; Sanghera 2005; Andrijasevic and Anderson 2009; Andrijasevic 2007; Sharma 2005; Dauvergne 2008; Sharma 2005; Jeffrey 2005). As Kempadoo (2005) notes, the linkage between trafficking and migration control has become explicit through the expressed concerns of western governments, that trafficking and smuggling interfere with orderly migration. Similarly, Sharma observes that the illegalization of migration takes place, in part, through the mobilization of anti-trafficking discourses which entail the criminalization of those who move people and the forced return of those who have been moved back to where they came from (2005, 89). The conflation of

migration and trafficking to justify increased border control has been criticized as “manifestly ideological” by being “less about restricting access to a territory of the nation-state than about differentiating those within it while obfuscating the source of the discrimination faced by workers, named as foreigners” (Sharma 2006, 145).

Furthermore, as a subset of scholars have argued, the application of the label ‘victim’ to those who do not see themselves as such or do not agree with it can cause significant harm by ignoring underlying reasons why people choose to migrate and by re-directing attention from labour conditions of migrant workers (Stanley 2009; Sharma 2005; Doezema 2010; Weitzer 2007; Soderlund 2005; Hua 2010, 2012; Kempadoo 2005). This literature also points out that the problems associated with such constructions of trafficking victims, as unable to think and act for themselves, are extended by the standard that this sets for who is able to qualify as a legitimate and deserving victim of trafficking (Anderson and Andrijasevic 2008; Hua 2011; Kempadoo 2005). To be seen as a true victim of trafficking, according to Anderson and Andrijasevic, one has to “pass the ‘test’ of trafficking” by being “injured, suffering and enslaved” and in need of help (2008, 143). Those who do not pass this test are often criminalized for illegal activities including entering and working illegally in a country (Gallagher 2010, 283). As Hua writes about the US, but also applicable in the Canadian context, “policing the parameters of the trafficked victim not only reveals the conditional nature of claiming human rights within the US legal framework, but also demonstrates the way the dichotomous paradigms of worthy victim/illegal immigrant and backward ‘other’/progressive US are enabled” (2012, 406). This is despite widely accepted standards and mandates that victims not be subject to criminalization (Gallagher 2010, 285). Kempadoo adds that the label of ‘trafficking victim’ is also contingent on a subject’s willingness to cooperate with police. In the absence of such cooperation, the person goes from a

trafficking victim in need of protection to an illegal migrant or criminal to be punished (Kempadoo 2005, xv). While as Gallagher points out, there's a growing acceptance of the need to separate protection and support from victim cooperation" (2010, 299), this acceptance, as my findings reveal, does not hold in practice.

This scholarship has provided critical insights into understandings around the conflation and distinctions between trafficking victims, migrants and sex workers and has contributed in meaningful ways to my own understanding of the issue and to shaping this project. However, the almost exclusive focus of trafficking literature on migration-related issues has rendered domestic trafficking, a new addition to the anti-trafficking framework of the US, Canada and Europe, nearly irrelevant (Aradau 2008). And while, it is undoubtedly important to acknowledge the impact of the anti-trafficking framework on migrants, the focus of this dissertation, based on the findings of my empirical data, is on domestic trafficking. Furthermore, existing work that does look at domestic victims focuses on the use of anti-trafficking efforts against sex trade workers and migrants (Gilles 2013; Bittle 2013; Sikka 2014; Bernstein 2007, 2010, 2012; Millar and O'Doherty 2015; Kaye 2017). In contrast, this dissertation interrogates the process of making the offence of trafficking as well as 'the victim' of trafficking and the offender.

The 'Saviour' and the 'Trafficker'

Along with the victim, scholars have also critiqued the 'savior' role that circulates in trafficking scholarship. In particular, literature has focused on the substantial rescue industry that has formed through anti-trafficking efforts and specifically through the construction of the trafficking victim as a modern-day slave in need of human rights protections (Sanghera 2005; Stanley 2009; Soderlund 2005; Doezema 2010). Scholars have pointed out that anti-trafficking efforts, which tend to receive generous state funding, have drawn many participants to put on the

‘saviour’ hat (Musto 2010; Atasu-Topcuoglu 2015; Chuang 2010; Soderlund 2005; DeShalit et al. 2014). As Stanley writes, “mimicking the ‘Saviour’ role, advocates are taught to figuratively don capes and fly in to a situation to save the ‘poor’, whether its physically, spiritually or emotionally” (2009, 12). In the context of Canada’s anti-trafficking efforts, Durisin observes that “members of privileged classes are seduced into experiencing ourselves as saviours as our governments fight terrorism and human trafficking, and because of the powerful belief that our values are right and just” (2017, 46).

Although a fair bit of work has explored the role of NGOs (Musto 2010; Ho 2005; Chew 2005; Weitzer 2007), international and state governments (Gallagher 2010; DeShalit and Roots 2016; Chuang 2014; Doezema 2007, 2010; Durisin 2017) and the media (Denton 2010; Gulati 2010; Soderlund 2005; Pajnik 2010) in anti-trafficking efforts, only a few studies have focused on front line enforcement efforts. Of those that have, the primary focus remains on police efforts (Kaye and Hastie 2015; Lester et al. 2017; Ferguson 2012) and far less on Crown attorneys, defence counsel and judges. Majority of the emerging studies that do exist focus on the US (Hua 2011; Esser et al. 2016; Farrell et al. 2016) or Europe (Meshkovska et al. 2016, Lester et al. 2017), with only one study looking at trafficking prosecutions in Canada (Miller and O’Doherty 2015).

In contrast with the attention paid to the figures of the saviour and particularly the victim of trafficking, the role of the trafficker remains largely peripheral in trafficking scholarship. As Jo Goodey notes, “it remains the case that research attention has not been focused on traffickers” (2008, 429). Even the United Nations Global Initiative to Fight Human Trafficking (U.N. Gift) admits that “for a universally condemned, but globally evident issue, surprisingly little is known about human traffickers - those who enable or partake in the trade and exploitation of individual

human beings” (2008, 2). Existing work on the perpetrators of trafficking is primarily produced by the UN Office of Drugs and Crime (UNODC), which nonetheless maintains its primary focus on the role of women, and international (INTERPOL, EUROPOL) and domestic (RCMP, CISC, OPP) policing agencies. International, but also to some degree domestic policing agencies emphasize the role of organized crime syndicates as responsible for trafficking offences. For instance, the US Department of State declared human trafficking “the fastest growing source of profits for organized criminal enterprises worldwide” (2004, 14). Mainstream trafficking scholarship mostly focuses on organized crime groups as perpetrators and tends to describe the high level of sophistication, violence and near omnipresence of organized crime groups engaged in trafficking (Binh 2006; Kara 2009; Perrin 2010).

Organized Crime and Human Trafficking

While the conceptual connection between organized crime and trafficking has informed much of the international trafficking law, policy and policing efforts, scholars have criticized the motivations behind the perceived connection and highlighted the absence of evidence to support these claims. As some scholars suggest, trafficking is linked with concerns over organized crime in order to create urgency around the issue (Sanghera 2005; Gallagher 2010; Anderson and O’Connell Davidson 2002; Weitzer 2014). This is because, unlike migration, which the state can manage through border control and immigration policies, organized crime is seen as a “very serious challenge” to the state (Aradau 2008, 26). Beare and Nylor contend that,

The mention of the words ‘organized crime’ has the power to draw the press, win votes, acquire law enforcement resources, gain public support for various legislative or enforcement crackdowns. To mention ‘organized crime’ alongside ‘illegal immigration’ is a still more potent and populist formula (as cited in Anderson and O’Connell Davidson 2002, 6).

The largely taken for granted connection between human trafficking and organized crime is demonstrated even in the title of the UN *Convention Against Transnational Organized Crime*, which addresses the problem of human trafficking. Ferguson writes that the newly formed *Trafficking Protocol (2000)* was framed as,

a new tool, an internationally sanctioned instrument for governments to use in the fight against the treat of *rapidly expanding transnational organized crime groups* that were believed to be profiting from the forced movement of, and abusive exploitation of, enslaved people across national boundaries [emphasis added] (2012, 68).

While international organizations, state agencies and anti-trafficking scholars continue to insist on the important role played by organized crime in human trafficking (RCMP 2010; INTERPOL 2016; Binh 2006; Kara 2009; Sulaimanova 2006), scholars have begun to question whether organized crime really is at the center of human trafficking concerns and what that really means (Kempadoo 2005; Sanghera 2005; Kapur 2005; Sharma 2005; Ferguson 2012; Millar and O'Doherty 2015).

The emphasis on organized crime as the main culprit carrying out human trafficking has been criticized by scholars who question the evidence to support these claims (Vance 2011; Sanghera 2005; Sharma 2005). For instance, Jyoti Sanghera has observed that “in view of the overall paucity of evidence on the issue of trafficking globally, it is nearly impossible to make a claim that trafficking is entirely or even largely a problem of organized crime” (2005, 15). Similar observations were made by Nandita Sharma who found that “despite the rhetoric of ‘Chinese triad and tongs’ being the ringleaders of trafficking rings”, migrant women she interviewed in Canada revealed that the smugglers whose services they used were “not closely linked with criminal gangs” but were mostly motivated by poverty (2005, 94). The linkages between organized crime and trafficking in the Canadian context have also challenged by Ferguson (2012) and Millar and O'Doherty (2015). Millar and O'Doherty found that “despite

various claims about organized criminal involvement in trafficking in persons in Canada, only one of the 33 cases (Domotor) involved cross-charges and convictions in relation to organized crime” (2015, 45).

A key contention in questions around the prevalence of organized crime in human trafficking focuses on the ambiguity of the meaning of organized crime (Beare 2003; Sanghera 2005; Aradau 2003; Gonzalez 2012). The RCMP defines organized crime as,

being composed of three or more persons, having as one of its main purposes a serious offence likely to result in a financial benefit. So, just about any type of illicit activity can be undertaken by organized crime groups, as long as there is money to be made. Identity theft, human trafficking, sex crimes against children, credit card fraud and counterfeit goods, just to name a few, can, and often do have links to organized crime (RCMP 2013(a)).

However, as Aradau notes, defining organized crime and its participants is a difficult task due to the multifaceted nature of criminal organizations (2008, 26). While some literature suggests that organized crime is a large scale, highly organized and profitable international business (Kara 2009; Binh 2006; Busch-Armendariz et al. 2009), others argue that it is made up of small-scale, disorganized facilitators of migration (Vance 2011; Gozdziaik 2012). Scholars who challenge the meaning and categorization of organized crime note that by expanding the definition of organized crime in the context of trafficking, the latter stream of scholarship is simultaneously expanding the meaning of human trafficking (Aradau 2008, 27; see also Weitzer 2014).

Scholarship that challenges a sole focus on organized crime but accepts the anti-trafficking framework, sees traffickers not only as organized crime syndicates, but as widely-ranging to include truck drivers, police officers, labour brokers, friends, family, romantic partners and ‘pimps’, etc. (Feingold 2005; Gozdziaik 2012; Chin and Finckenauer 2012; Busch-Armendariz et al. 2009). Such studies remain uncritical in their use of the term ‘trafficker’, employing it interchangeably with other terms, including ‘smuggler’ and ‘pimp’, thus

contributing to expanding the ‘typology’ of the trafficker, and consequently expanding the meaning of ‘trafficker’ and ‘trafficking’ (Aradau 2008). The focus of these studies also remains at the intersection of migration and trafficking, exploring the process of cross-border transportation and migrant labour.

While migration trafficking remains at the focus of trafficking literature, scholarship is now beginning to look at the ‘domestic trafficker’ and in particular the ways that those involved in the sex trade as partners or managers of sex workers are targeted by domestic trafficking laws (Vance 2011; Roots 2013; Bernstein 2010, 2012; Millar and O’Doherty 2015). Carol Vance explains this re-directed focus on the ‘domestic trafficker’ as a result of the failure on the part of law enforcement to find transnational trafficking cases (2011, 939). Despite this slowly emerging scholarship, no Canadian empirical studies have been conducted on who is criminalized; how the category of the ‘domestic trafficker’ is constructed through the efforts of legal and criminal justice actors; and what are the penal consequences for those convicted of human trafficking. In her recent work Durisin does, however, point to the observations of sex workers that anti-trafficking efforts focus primarily on the role of individual actors, including third parties involved in the sex trade and migration processes and clients, but fail to examine the violence perpetrated by state agents in carrying out anti-trafficking enforcement efforts (2017, 36). Unlike existing literature, which tends to categorize and typologies traffickers, the present study aims to acknowledge complexities, which may not fall neatly in line with existing categories and typologies and may even work to conceal them.

The broad scholarly engagement with the issue of human trafficking has provided important contributions to our understanding of the issue and provides a rich basis upon which the present study is built. Nevertheless, scholarship is limited to discussions on law and policy

mostly at the international level and maintains a focus on human rights of victims and the criminalization of offenders. There is a tendency within this scholarship to make general claims and rely on simplistic binaries, such as trafficking victim/migrant, trafficking victim/sex worker and so on. The present study, through its focus on frontline decision-making and enforcement practices, sheds important light on the role of dominant discourses in shaping and framing domestic laws and policies and on-the-ground understandings of the issue. Given the early revelation that on-the-ground anti-trafficking efforts are not limited to dominant ways of understanding the issue of trafficking, the study focuses on what other preoccupations and assumptions come into play. This dissertation makes a unique contribution founded in applied front-line criminal justice research by looking at the decision making and practices of police and legal actors in human trafficking cases. The present study avoids the temptation to make broad and generalizing claims and instead attempts an analysis that flows much more directly from local findings. These may at times be consistent with existing scholarship but also provide an opportunity to acknowledge and take seriously points of discontinuity, conflict, and tensions that more general perspectives obscure.

Conceptual Toolkit

This dissertation is guided by a number of theoretical insights offered by scholars from various disciplines including security studies, critical race studies, governmentality scholarship, feminist and socio-legal scholarship. While the issue of trafficking has been examined through a number of frameworks, most notably the moral panic theory, the complexities, nuances and departures that emerge from the present study of front-line practices, are more effectively explored through a number of conceptual tools, rather than a single theoretical framing. As such, this project borrows useful concepts from existing research to form a conceptual toolkit through

which to examine the findings of this research.

Discourse, as Michel Foucault defined it, “is a group of statements that provide a language for talking about a particular topic in a particular historical moment” (cited in Murdocca 2014, 11). As Murdocca explains, Foucault’s understanding of discursive formations, which are the social, political and historical formations, give rise to discourses that in turn produce knowledge (2014, 12). Power works through these discourses to produce society’s view of a particular issue, consequently, “there is no power relations without the correlative constitution of field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations” (Foucault 1979, 27). Knowledge, for Foucault, is operationalized through “certain technologies and strategies of application, in specific situations, historical contexts and institutional regimes” (as cited in Murdocca 2014, 13). These links between particular sites, specific and historical contexts and institutions produce what Foucault called, ‘regimes of truth’ (ibid).

Following Foucault’s approach, Aradau (2008) argues that human trafficking is a problem that is continually produced. The problematization of human trafficking, according to Aradau, refers to how human trafficking becomes an object of regulation, what elements constitute it and what ‘ordered procedures for the production, regulation, distribution, circulation, and operation of statements’ about human trafficking are given as truthful (2008, 18). As Aradau contends, problematizations “create a managed space where knowledge plays an important role for the representation of trafficking”, relying on existing forms of knowledge but also fostering new knowledge (2008, 18). Thus, the problem of trafficking can be managed if we understand what the problem is (ibid, 15). Employing Aradau’s problematization of trafficking approach, this dissertation examines how the issue is shaped and regulated discursively and

through law, policy and on-the-ground enforcement efforts.

For Aradau, knowledge of what constitutes human trafficking is created by vectoring it with knowledge produced through other issues, including migration, organized crime and sex work (2005, 15). The term ‘vectoring’, as Aradau explains, captures the transmission of elements from other issues, such as those noted above, to human trafficking. Similar arguments have also been made by other scholars, including Kamala Kempadoo who notes that trafficking is conflated with issues around organized crime, sex work, migration, drug trafficking and terrorism (2005: see also Sanghera 2005; Ditmore 2005; Zheng 2010; Dauvergne 2008; Hua 2011; O’Connell Davidson 2015; Vance 2011). Aradau contends that the process of vectoring an issue with existing concerns not only makes “visible human trafficking as an object of knowledge” but also obscures “contradictory statements in the regulation of ‘truth about human trafficking’” (2008, 3), such as for instance the need to protect victims while deporting or criminalizing those who do not meet the requirements of it. This project builds on these insights by examining how the linking of various issues with trafficking has enabled the intersection of international trafficking discourses focused on organized crime and national security with domestic trafficking discourses and concerns over sexual violence that emerged in the 1970s, sexual exploitation of children and concerns over youth in the sex trade emerging in the 1980s and 1990s. These intersecting discourses have contributed to shaping Canada’s anti-trafficking laws and policies, and the establishment of aggressive policing and prosecutorial efforts. In this project, I take up Aradau’s call for an empirically grounded examination of the issue of human trafficking and investigate empirically and analytically how the issue takes on a different dimension through on-the-ground anti-trafficking efforts, thus contributing to the formation of the ‘human trafficking matrix’, as detailed in Chapter 1. The matrix is operationalized through

Anna Pratt's concept of the 'crime-security nexus' (see Chapter 1), which enabled the reconfiguration of the logic of national security. As Pratt notes, "while in the past national security was concerned exclusively with protecting the political state to now including everything from the run-of-the-mill, largely disorganized, violent street-level criminality of youth gangs to highly organized, transnational criminal syndicates" (2014, 313). Pratt's concept of the crime-security nexus allows for an analytical avenue to explore how trafficking has been connected to issues of national security, War on Terror and organized crime, while on-the-ground anti-trafficking efforts shift the meaning of trafficking to incorporate small-scale, racialized, local criminality, primarily in the area of the sex trade. The crime-security nexus offers a fruitful analytical tool to make sense of this trend in trafficking, which aligns with what Pratt has observed in other criminal activities.

Criminality is one important way in which risk to public safety is posed, and while criminality has long interacted with immigration law to exclude undesirables, as Pratt argues, this trend has become much more prevalent in recent years through broad transitions in logics from "national purity to national security" (2005, 74). As Pratt contends, race-based exclusions justified by national purity discourses are no longer officially acceptable and have, in the post-Cold War era, become reconfigured to focus on national security, which now encompasses threats to public safety by organized crime, terrorism and even small-scale forms of criminality through their imputed connections with organized crime (*ibid*). These observations capture the developments in Canada's anti-trafficking efforts. While it is difficult to identify the ways in which human trafficking poses a threat to national security by understanding it strictly as a military threat or a threat to the state, Aradau (2008) explains that the concept of national security has undergone significant expansion to include a series of non-military threats, such as

organized crime, migration, economic threats and drug, weapon and human trafficking. At the same time, as Pratt (2005) points out, there is also an expansion of the meaning attributed to small-scale criminality allowing crimes such as domestic procuring and sexual exploitation to become linked with broader issues of organized crime, terrorism and national security. As such, the crime-security nexus provides a framework through which to understand the ways in which trafficking is posed as a national security threat through re-definition of trafficking as a domestic small-scale offence while linking it with organized crime, which in turn poses as a serious threat to the safety of Canadian people and the nation.

This emphasis on security, as Aradau points out, has also brought with it a need to manage risk. Risk discourses require a focus on the future and what it can offer, and a need to minimize its potentially harmful effects (Aradau 2008, 93). Thus, state policy objectives are often preoccupied with risk management. Whereas once the political state – whether it be a sovereign or a king - was at risk from subversive threats that challenged its power, today risk management is conducted in the name of protecting the security of the population as a whole, whether it be financial security, personal security, or security from disease and injury. This has led to what scholars call a risk society, where we have “become active today in order to prevent, alleviate, or take precautions against the crises and problems of tomorrow and the day after tomorrow” (Beck 1992, 34). International and domestic trafficking discourses are centrally concerned about the risk traffickers’ pose to women and girls fueling not only a law and order agenda but also a need to rescue and protect real and potential trafficking victims.

Yet, as Aradau contends, victims of trafficking “cannot remain pure presence; their risk identity needs to be specified for the purpose of preventing human trafficking” (2008, 98). Thus, the victim of trafficking is always walking the fine line between ‘at risk’, and ‘risky’, by on the-

one-hand being at risk of victimization, while on the other hand, constituting risky beings due to the danger of being re-trafficked and posing a future risk (Jeffrey 2005; Aradau 2003). Here I also draw on the work of sexual assault scholars, including Lise Gotell (2008, 2012), Rachel Hall (2004), Elizabeth Sheehy (2014, 2012), Melanie Randall (2010), to name a few, to explore the application of neo-liberal risk management discourses in relation to threats of being trafficked. As these scholars note, the construction of survivors of gendered violence as ‘at risk/risky’ is a product of a paternalistic myth of women’s vulnerability that formed a part of contemporary neoliberal strategies for managing crime (Gotell 2008, 2012; Hall 2004). Neoliberalism, which is “premised on the values of individualism, freedom of choice, market security and minimal state involvement in the economy”, has allowed governments to retreat from their commitment to social welfare, focusing instead on economic efficiency and international competitiveness (Comack and Baflour 2004, 40). Accordingly, as Rachel Hall contends, separating risk from danger allows a dissociation between “the practice of caring from the administration of care” (2004, 2). The materialization of risk management strategies relies on gender-specific subjectivities and what Gotell calls ‘new versions of good and bad victims’, premised on the capacity for self-management by following the rules of sexual safekeeping (Gotell 2012, 257). In this context, while trafficking discourses are overwhelmingly focused on the risk posed by traffickers to women and girls, it also evokes a neoliberal-responsibilization discourse, whereby the actions of women and girls and particularly the steps they took (or failed to take) to protect themselves become one of the basis on which their victimization comes to be examined.

Furthermore, while crime control strategies that call for increased state intervention seem contrary to neoliberal agendas that emphasize “new ethics of personal responsibility” (Bumiller 2008, 5; Simon 2007; Garland 2001; Bernstein 2012; Hannah-Moffat 2010), offenders’ actions,

like those of victims, have been increasingly understood as a result of individual choice in the face of lenient policing and penal regimes (Garland 2001,102). As a result, “rehabilitation, re-socialization and ‘correction’ were replaced with a concern for the policing and minimization of risk that offenders pose to the wider community” (Comack and Balfour 2004, 42; Garland 2001). Risk management then becomes an important neoliberal strategy that aims to quantify, assess and manage the risk associated with an offender while minimizing the risk to the community (Hannah-Moffat as cited in Comack and Balfour 2004). Increasingly harsher penalties associated with trafficking offences have developed in the context of these risk management discourses whereby longer prison sentences and deportation orders are seen as a way to reduce future risk posed by those convicted of trafficking.

Law enforcement agents play an important role in risk management. As Ericson and Haggerty argue, police officers produce and distribute knowledge on risk since policing “transforms people and their organizations into discourse...of risk surveillance and security” (1997, 48). As Pratt reminds us, discretion does not indicate a lack of governance but rather a “powerful form of governance” (2005, 53). While academic literature on the role of discretion in policing is extensive (Neocleous 2000; Weber 2013; Ericson 1981; Hameed and Monaghan, *forthcoming*), my interest in the concept is not theoretical as much as I focus on the process of decision making by police and legal actors. Loraine Gelsthorpe and Nicola Padfield rightfully point out that, “it is the day-to-day discretionary actions of police officers, prosecutors, defence lawyers, judges...which make for justice or injustice” (2003, 1). And as Mark Neocleous contends, police function cannot be understood without understanding the role of discretion within it, since it is police discretion that determines who is defined as a criminal and what is done about it (2000, 99; see also Ericson 1981; Hammed and Monaghan, *forthcoming*;

McGillivray and Comaskey 1999; Russell-Brown 2017; Henning 2017). In this way, as scholars have noted, police are central figures in producing knowledge about crime (Neocleous 2000; Chan and Chunn 2014; Brock 1998; Weber 2013; Ericson 1981; Hameed and Monaghan, *forthcoming*).

Here I specifically draw on Richard Ericson's analytical insights (1981). Ericson argues that police are at the forefront of producing definitions of crime. As he notes, police, in their day to day work make discretionary decisions which are "crucial determinants of crime production" (1981, 8). According to Ericson, police make decisions regarding which crimes to pursue, which sources to explore, what information to acquire, how to construct cases, how to investigate and so on. Yet, the way these decisions are made are not random or 'creative' as he calls it, but rather dictated by the forums within which they conduct their work, including the community, the institution of law and its constituent elements such as the courts, the police force and the culture of policing (1981, 9). Once police have decided to make "something a 'crime' and someone a 'criminal'" they must construct cases making events into crimes and people into criminals (Ericson 1981, 19).

To do so, police rely on information from citizens, victims, and accused persons. The way police do so in relation to victims, according to Ericson, does not differ in their approach to accused persons, that is – "detectives coerce, manipulate and/or negotiate with victim-complainants and informants to achieve disposition that meet police organizational criteria" (1981, 94). As such, police convince victim-complainants that "the outcome the detective decided upon was the appropriate one" (1981, 108), a process which he called 'scripting'. As Ericson observes, police at times put considerable effort into convincing reluctant victims to follow their version of events, developing justifications for why testifying against them was the

best course of action and even producing their own definition of the ‘victim’ and the ‘suspect’, conducting the investigation accordingly (Ericson 1981, 113). Interviews with police officers are therefore especially crucial due to police ability to shape crime, victims, and criminals and demonstrates the knowledge production that takes place through on-the-ground actions and decisions of criminal justice actors.

In addition to police decision-making, it is important to also investigate the decision-making of legal actors. As a number of socio-legal scholars have documented, legal actors including Crown prosecutors, defence lawyers and judges, have a powerful role in shaping crime and what constitutes a criminal and a victim through decision-making around which cases to prosecute and which legal tactics they employ in doing so (Comack and Balfour 2004; Bennett and Feldman 1981; Matoesian 1993; Smart 1989; Estrich 1987; Ehrlich 2012, 2001; Esser et al. 2016; Sheehy 2014; Davis 2017(a)). According to Peter Krug, prosecutors are key actors in the criminal justice process since their “decisions determine the course of the criminal process, and in making those decisions, they act with broad, generally unregulated discretion”, a discretion, which he contends, “has steadily expanded in recent decade” (2002, 643). The important decision-making role of the Crown is most notably seen in their ability to decide whether to prosecute the charges laid by the police, substitute the charges laid for other ones or stay the proceedings altogether (Comack and Balfour 2004, 23; Davis 2017, 2017(a); Sheehy 2014). In the context of human trafficking, this decision-making is heightened as Crowns interpret and apply these relatively new laws. Farrell et al. observe that prosecutors, when applying these new trafficking laws in the US, create their own guidelines for jury instructions due to lack of existing ones (2016, 61). As with policing, the perspective of Crown prosecutors in the context of trafficking is largely underexplored due to lack of access to these important criminal justice

participants but also due to the relative newness of the offence and the consequent lack of knowledge and experience Crowns have with it. By examining human trafficking trial transcripts and through interviews with Crown attorneys, this dissertation then provides a glimpse into Crown decision making, as it pertains to trial strategies, construction of the victim and the accused, story formations, and (cross) examination techniques.

In contrast with police and to some degree Crown attorneys, the role of defence attorneys in anti-trafficking efforts overall and in the context of Canada particularly is entirely absent in trafficking scholarship. And yet the important role of defence attorneys in criminal justice responses to issues is important to acknowledge and explore as this site of power/knowledge is crucial for understanding the formation of the human trafficking matrix. Anita Kalunta-Crumpton observes that lawyers translate legally relevant facts of a case using legal language for the purpose of claims-making and present their respective narratives of the story through questions posed to the witnesses, accused and/or complainant (as cited in Comack and Balfour 2004, 46). Within these claims-making activities, lawyers are afforded significant power to employ linguistic and rhetorical devices, including the use of coercive and controlling questions during cross-examination, interpreting evidence and the law, and deciding what information to highlight and what to dismiss – all of which play an important role in shaping the narrative and the outcome (Ehrlich 2012, 2001; Conley and O’Barr 1998; Smart 1998; Drew 1992). As such, lawyers are powerful social actors who are given significant authority and space in legal proceedings (Craig 2015; Comack and Balfour 2004; Ehrlich 2012, 2001).

The powerful claims-making activities of lawyers and the actions of police contribute in some important ways to the shaping the trafficking matrix and have had the effect of criminalizing poverty and race as anti-trafficking efforts are not applied equally but instead

target certain segments of the population with historically varied effects. Criminalization is the “institutional process through which certain acts and behaviours are selected and labelled as ‘crimes’ and through which particular individuals and groups are subsequently selectively identified and differentially police and disciplined” (Fergusson and Muncie 2008 as cited in Chan and Chunn 2014, 15). In Canada, the criminalization of poor, racialized people is taking place in the context of an eroding welfare state and discourses of individual responsibility which blame poor people of colour for their situation (Chan and Chunn 2014, 149). These discourses dismiss the differential access poor, racialized people have to privilege which can act as a buffer against social, economic and political pressures. Therefore, it should come as no surprise that prisons are filled with poor, racialized people as the solution for “capitalism’s expandable, surplus, and predominantly racialized populations” (ibid, 20). Within this context, young, poor black men are particularly vulnerable to criminalization due to prevailing myths that this group is more crime prone in comparison to other racial groups (Chan and Chunn 2014, 17; see also Wacquant 2005; Davis 2017, 2017(a); Hill Collins 2004; Henning 2017; Maynard 2017). As Wacquant writes, “throughout the urban criminal justice system, the formula ‘Young + Black + Male’ is routinely equated with probable cause, justifying the arrest and questioning, bodily search and detention of millions of African American males every year” (2005, 128). Same is seen in the Canadian context, where Wortley (2006) found that in some parts of the country black people make up around one-third of the persons killed by police despite making up only three percent of the total population (see also Maynard 2017).

This is compounded by the imagery of black men as having an overactive and promiscuous sexuality. One of the popular images of black men is that of a ‘pimp’ and a ‘hustler.’ As Patricia Hill Collins maintains, “the controlling image of the black pimp combines

all of elements of the more generic hustler, namely, engaging in illegal activity, using women for economic gain, and refusing to work” (2004, 311). The re-definition of ‘pimping’ offences as human trafficking enables this deeply racialized logic to be adopted into determinations of who is a human trafficker. Bernstein explains that, the aggressiveness with which anti-trafficking enforcement efforts have been pursued in the US have “resulted in an unprecedented police crackdown on people of colour who are involved in the street-based sexual economy” (2010, 57). Similar developments, as this dissertation will show, are taking place in the Canadian context. Furthermore, a trafficking conviction comes with increasingly harsher penalties. As Bernstein observes in the context of the US, “‘pimps’ can now be given ninety-nine-year prison sentences as ‘sex traffickers’” (2010, 57). As my research reveals, similar trends are taking place in Ontario (see Chapter 3 and 7 for discussion) where poor, young, racialized men are criminalized as human traffickers through reliance on socio-historical race and class-based logics recrafted as indicators of human trafficking. Such developments demonstrate the construction of racialized groups as outsiders within the Canadian society and rely heavily on the contrasting images of the white victim of trafficking.

Critical scholars often emphasize the shift from the ‘white slave’ to the racialized, foreign victim who is often assumed to come from a less developed country and whose victim status is earned by her innocence and naiveté when deciding to migrate to a foreign country for work. However, in the Canadian context it is the domestic victim who has become the center of anti-trafficking efforts. In particular, as noted in Chapter 1, it is the white daughter of Canada’s middle class family that is positioned as the central image of Canada’s trafficking victim and signals a “desire to protect white, heterosexual, middle and upper class, ‘respectable’ girls from both sexual predators and themselves”, fueled by expectations placed on the girls to uphold “the

idealized standard for female sexual propriety [and as such] their sexual transgressions are viewed as unexpected, noteworthy, and particularly worrisome” (Karaian, 2012: 60). Such representation of Canada’s white daughters as being ‘at risk’ of becoming victims of trafficking bares the closes resemblance to the ‘white slave’ as she is not only white, but also vulnerable due to her youth, innocence/virginity and naiveté. As Hua explains, white women’s sexual purity is important to maintain since “whiteness works to anchor sexualities as normative” (2011, 76). Importantly, as noted above, white women also represent the keepers of national boundaries and protectors of the moral order, therefore their purity is essential for the maintenance of Canada’s moral superiority.

While the need to protect the white daughters of Canadian families fuels anti-trafficking efforts and legitimates law and policy responses, it is racialized white, marginalized women and girls, often involved in the sex trade, who are most commonly represented as victims of trafficking by police and in court cases I examined. These women and girls fit into the ‘ideal victim’ category through their skin colour and youth, however, their engagement in sex work and marginalized status renders them outside of this category. As Kamala Kempadoo argues, white supremacy is not based exclusively on skin colour but rather is an ideology that “operates to maintain and defend a system of white wealth, power and privilege” and includes those who adhere to those ideologies (2015, 13). In this way, marginalized women in the sex trade seem to remain outside of this ideological group. These seeming contradictions play out in human trafficking trials in Ontario courts as Crowns aim to present the marginalized girls and women as maximally vulnerable, while defence attorneys attempt to discredit them for the very same characteristics.

Research Methods

This study investigates the frontline, on-the-ground anti-trafficking enforcement and prosecution efforts of state and non-state agents in Canada's anti-trafficking agenda. The study investigates Canada's human trafficking law and legal efforts and examines how relatively new domestic laws against trafficking have been shaped, interpreted and applied by police, Crown and defence attorneys and judges. My empirical research focuses on the province of Ontario, and therefore does not take into account the regional variations that exist across various parts of Canada. A study that explores anti-trafficking policing and legal efforts across various Canadian provinces taking into consideration different urban demographics, crime patterns and resource allocations would be a very interesting and useful contribution to this field⁹. Nevertheless, Ontario is Canada's most populated province with the highest number of trafficking charges and convictions. Furthermore, the vast majority of Canada's trafficking cases are domestic and do not vary in significant ways from province to province, And, while border towns may see more migrant trafficking cases, the focus of this study remains on domestic trafficking.

I conducted a qualitative research study using multiple methods of data collection which included court documents, trial transcripts and audio recordings (which I then transcribed), sentencing decisions and interviews with criminal justice actors. The multiple methods of data collection were employed in order to learn how human trafficking is understood in Canada's legal context and how this knowledge is formed. By examining data obtained from these different settings I was able to see how this process takes place; how it varies between settings and actors; what extra-legal information is employed to formulate this knowledge; what discourses are operating within and shaping the knowledge on trafficking, and; how the broader

⁹ I am grateful to Dr. Annalee Lepp for bringing this important observation to my attention.

discourses around human trafficking are fitting with or diverging from front-line perceptions and approaches to the issue. In order to explore my broader research questions, I asked a series of more specific questions, including: 1) what do human trafficking cases in Canada look like and what types of activities are characterized as human trafficking? 2) how do police understand trafficking and how do Crown attorneys, judges, and defence attorneys support, reject, or re-structure these definitions? 3) how do the decisions of criminal justice actors contribute to the knowledge around what constitutes human trafficking, the trafficker, and the victim? 4) how are these local practices influenced by and/or influencing broader discourses around trafficking?

To begin answering these questions I conducted extensive research on the secondary scholarship concerning trafficking. This scholarship is now vast and has been generated in a variety of fields including human rights, migration and border security, criminology, socio-legal studies and feminist perspectives. In order to examine the way in which dominant discourses, laws, policies and enforcement practices shape the prevailing understandings of trafficking, I collected a wide range of primary documentary sources during the period between 2005 and 2016. These include international and Canadian government and non-government reports, media reports, and legal documents, including House of Commons debates on various legal bills to create and amend trafficking laws, case law, court documents, and transcripts. While the government and media reports, debates and case law was collected from across Canada, my primary research, which included court informations/indictments, court transcripts, and interviews, was focused in Ontario.

In order to get a more complete understanding of the enforcement decisions in trafficking cases, including the types of charges laid alongside trafficking charges, who was charged and the outcomes, I collected court informations/indictments for 123 individuals charged with human

trafficking (sections 279.01-279.011) between 2005 (the year human trafficking was criminalized by Canada's domestic law) and June of 2016 in the province of Ontario in Canada. Because neither the Ministry of the Attorney General (MAG) for Ontario nor Canada has a centralized database of trafficking cases, the data for my case list, which included cases from 2005-2016, was collected from media and government reports, NGO and police published information. I used the case list to collect court documents, including informations and/or indictments for 123 cases documented. This information provided me with an overview of the types of charges that accompanied trafficking charges, the ages of the accused, and the outcome of the cases. I also learned that very few trafficking cases proceeded to trial. While the Ministry of Justice suggests that this is because of high evidentiary standards, this does not explain the increasing numbers of cases going to trial during the period of my research, particularly as Ontario rolled out a new province-wide anti-trafficking strategy in 2016, which included the assignment of six Crown attorneys focusing on human trafficking cases (as discussed in Chapter 1). Furthermore, this information enabled me to narrow down the cases that went to trial in order to obtain trial transcripts. As seen in Appendix B, the number of trafficking cases that end up going to trial is low compared to the number of charges laid. In addition to the low number of trafficking trials, my ability to obtain trial recordings was also limited by access issues.

The cost of trial transcripts in Ontario and other provinces across Canada is very high, which poses significant challenges to access. Fortunately, through a recently implemented MAG policy which allows members of the public to apply for access to audio recordings I was able to access several of these trials in the form of audio recordings. However, the MAG policy only allows access to trial recordings on or after 2012 depending on the location of the trial,¹⁰ which

¹⁰ This is because the digital recording system which allows trial recordings to be copied and disseminated was implemented in stages, with rollout to some courthouses taken place earlier than others.

limited the cases I was able to access. Furthermore, in order to obtain these audio recordings, I had to bring written motions and in one case a motion on notice¹¹ in front of the judge who had presided over the case. While I was granted access to recordings for eight trials, two judges declined my request providing sensitive nature of the issue and victim protection as reasons.

In total then I obtained recordings for and analyzed eight trials from Ontario: six full trials ranging from one day to 33 days (*R.v. Dagg 2015*; *R.v. Byron 2014*; *R.v. Oliver-Machado 2014*; *R.v. Greenham 2015*; *R.v. Salmon (Gregory) 2014*; *R.v. Burton 2014*), one trial where the Crown withdrew the charges after one day of trial (*R.v. Rasool 2015*), and a case that ended in a mistrial (*R.v. Beckford 2013*). I also obtained the transcript of submissions and the decision in the Ontario Court of Appeal 2015 precedent setting case *R.v. A.A.* (see Chapter 3 for discussion), and the Ontario Court of Appeal transcript for the hearing and decision of *R.v. Salmon (Courtney)*, (2015) (see Chapter 8 for discussion). Finally, I conducted a partial participant observation of one trafficking trial (*R.v. Leung 2015*). Due to the accessibility issues outlined here and in my previous and forthcoming publications (Millar et al. 2017; Roots, forthcoming), the cases analyzed in this dissertation were selected due to accessibility. In some cases, I was also able to obtain copies of court exhibits which included police interviews with the accused and complainants; defence attorney summary documents; and factums. In addition to these trial recordings and transcripts, I also examined a number of court decisions in trafficking cases across Canada, which I obtained from legal search engines CanLii and QuickLaw. Analysis of these cases provided significant insights into the way in which legal actors not only understand the law, but also how legal strategies and tactics, courtroom rituals, narrative formations, language and forms of questioning contribute to the construction of situations as human

¹¹ Motion on notice means that the request must be made in open court and on notice to the Crown attorney in charge of the case.

trafficking; how complainants are made into victims of trafficking and accused into dangerous exploiters. The analysis of these cases was greatly aided by similar examinations of courtroom processes conducted by scholars before me (Sheehy 2014; Backhouse 2008; Craig 2015; Cunliffe 2013; Umphrey 1999; Ehrlich 2012; Conley and O’Barr 1998; Matoesian 1993; Sarat 1993; Gewirtz 1996).

Trial recordings provide important insights into the way in which the meaning of human trafficking is produced in legal settings through interpretation and application of legal provisions but also through creation of particular narratives, which resonate with the broader social context. As Bell and Couture contend, deconstructing law through its application demonstrates that law is not objective but is situated in a particular social context (2000, 53). Reading human trafficking trial transcripts within a context of international and domestic trafficking discourses, the politics of trafficking and the push to combat the issue through police and prosecutorial efforts helps us to understand why certain arguments are being advanced and evidence used, but also illuminates the reasons for certain silences. As Emma Cunliffe notes, “socio-legal transcript research is largely concerned with unearthing law’s ‘untold stories’ and placing legal decisions back within the context of the legal and social disagreements from which they arise” (2013, 2; see also Merrill Umphrey 1999). Cunliffe further explains that “law’s stories are also constrained by the requirements of the adversarial legal form – witnesses are required to respond to questions rather than speaking freely” (2013, 13). These observations importantly help us understand the way in which courtroom rules and decorum play an important role in helping Crown and defence attorneys shape their perspective narratives of the story while silencing complainants, witnesses and the accused. Analysis of trial recordings enabled me to observe how carefully scripted examinations, specific use of language, courtroom rituals and power dynamics of legal actors all

played a part in shaping the story, the legal meaning of trafficking and understandings around who is a trafficker and a victim. At the same time, however, trial recordings provided insights into how these constructions were resisted and challenged by other legal actors, but also complainants, witnesses and accused persons themselves.

In addition to informations/indictments and trial recordings, I also conducted interviews with different criminal justice actors, including police in anti-trafficking policing units, Crown and defence attorneys, and judges in Ontario. I interviewed fifteen criminal justice actors who had first-hand knowledge of and experience with human trafficking cases, including four Crown attorneys, five defence attorneys and five members of various police departments with specialized human trafficking units in Southern Ontario. Although I spoke to three judges, only one of them had first-hand experience with trafficking cases and therefore only one judicial interview is being used in this study. Participants for this study were recruited through various methods. Defence attorneys with knowledge of human trafficking were identified from cases I examined and were cold-emailed inviting them to participate in the study. While defence attorneys were fairly receptive to part-taking in the study, several of them were too busy and in the end were unable to participate due to scheduling conflicts. One defence counsel I met while conducting a participant observation of a trafficking case.

While I initially used the same method of recruitment for Crown attorneys, it was not as effective in securing Crown interviews. Many of the emails sent to Crown attorneys did not receive a response. Of the Crowns that did respond, many declined to be interviewed. Some agreed initially but subsequent attempts at contact went unaddressed. Of those Crowns who agreed at the outset, some had to seek permission from superiors and most were unable to participate as a result of a policy of the Ministry of the Attorney General for Ontario that

prohibits Crown attorneys from part-taking in academic interviews on the issue of human trafficking. Three out of the four Crown attorneys I interviewed agreed to participate as a result of personal introductions.

In order to recruit police officers, I employed several methods, including submitting formal email requests to all anti-trafficking policing units in Ontario. To follow up on these requests, I called all the departments that did not respond to my email request within a specific time period. Yet, these follow-up calls did not prove to be fruitful. In one case, I spoke to anti-trafficking police officers attending a human trafficking trial about the possibility of interviewing them. While the officers were extremely enthusiastic and optimistic about this possibility at the outset, my attempts to contact them subsequently via email and phone were not successful. In the end, I was able to interview five police officers from two different anti-trafficking units in Southern Ontario. In one case, my request was approved by the Chief of Police but required that I enter into a contractual agreement with the police force.

All interviews were conducted between January and July 2016. The recorded interviews ranged from 45 min to 2.5 hours in length. Although a set of questions was provided to participants ahead of time (see Appendix D), the interviews were semi-structured to allow participants to provide information based on their own front-line experiences and to allow the emergence of unanticipated issues and questions. This approach allowed me to remain flexible and responsive to the participant's area of knowledge. For instance, while direct questions about the legal understanding of trafficking often failed to elicit much response, these questions were often answered indirectly through stories told by participants or through various other questions, allowing me to gain insights from related stories and sustained discussion.

These interviews were conducted after the court documents had been collected and analyzed. While it was my intention to conduct interviews after also analyzing audio recordings of trafficking trials, in order to base the questions on what I had learned from trials hearings, delays with obtaining data from courts forced me to conduct the interviews at the same time as working to obtain access to audio recordings and analyzing them. The purpose of the interviews was to supplement and verify the information I had obtained from other sources and learn about the ways in which the crime of trafficking is understood by front-line police and legal actors who operationalize the law and how dominant narratives and international norms shape these understandings.

The data was analyzed through manual method of coding. Although I considered the use of data analysis software, such as NVIVO, I decided that the richness of the data would be best analyzed through careful reading of it in the context of themes from existing literature, allowing me to discover patterns and inconsistencies. Using the conceptual toolkit outlined in chapters 1 and 2, I analyzed international and state government reports as well as non-government reports, court transcripts from trial recordings and additional documents, such as exhibits and factums, sentencing decisions, transcripts from my interviews, House of Commons debates and media reports.

During the 15-month research period, I also encountered a number of challenges with researching in Ontario courts. These included various structural and non-structural barriers to accessing public court documents; difficulties getting interviews particularly with Crown attorneys and judges, but also to some extent police officers; and various delays caused by organizational culture of Ontario courts. For instance, while documents contained in the criminal court file are public, the requesting party is required to provide court staff with the date of birth

of the accused or the court file number, information that is not publicly accessible, in order to locate the file. To fulfill these requirements, I received generous assistance from several former colleagues and friends from MAG who looked up file numbers and locations for cases of interest. After submitting numerous requests to court locations across Ontario, I was further challenged by long delays and misplaced requests, requiring continued follow-up and in many occasions re-filing of the request. Furthermore, while, as noted above, I was able to benefit from the new MAG access to audio policy, it had rarely, if ever, been used in court locations across Ontario, creating difficulties and delays due to staff lack of knowledge of the policy and its processes. These are only a few examples of the numerous challenges detailed in two separate publications (see Millar et al. 2017; Roots, *forthcoming*).

While I was able to gather extensive research material, as with all research projects, this study comes with certain limitations. Firstly, the primary research materials used for this study, including interviews with legal criminal justice agents, court documents, and trial audio recordings were all obtained from the province of Ontario. Although Ontario has the highest number of trafficking cases in all of Canada, similar data from other provinces may have provided interesting comparisons and/or challenged the findings of this study. Secondly, and as outlined in my publications on research challenges, barriers to accessing criminal justice agents, particularly Crown attorneys and judges for academic interviews restricted the number of criminal justice actors I was able to interview, in turn limiting my insights (Roots, *forthcoming*; Millar et al. 2017). These insights are particularly important given the central role played by legal and criminal justice actors within anti-trafficking efforts not only in Ontario but Canada more generally. Finally, while my research maintained a focus on legal and criminal justice systems, numerous other agencies and actors play an important role in anti-trafficking efforts,

including NGOs, victim-services workers, the immigration system, but also accused and complainants in trafficking cases.

Chapter 3 – Law and the Definition of Human Trafficking

International and domestic legal regimes have played an important role in fueling and shaping anti-trafficking discourses and front-line efforts. This chapter explores the Canada's anti-trafficking laws and examines the ways in which the departure of Canada's anti-trafficking laws from the *Trafficking Protocol (2000)* and specifically the almost exclusive focus on the concept of exploitation, rather than the combined process of recruitment, transportation and exploitation, has broadened the application of Canada's trafficking laws and contributed to the categorization of a variety of domestic offences as trafficking. In particular, placing a focus on the concept of exploitation has aligned trafficking with procuring offences (s. 286.3 of CCC), a development which was further supported by recent changes in Canada's sex work laws brought about by the Supreme Court decision in *R.v. Bedford (2013)*. And, while an examination of human trafficking cases in Canada suggests that offences previously dealt with under sex trade laws are now being labelled as human trafficking, the penalties for these offences are far more severe and can include immigration penalties for non-citizens convicted of these crimes. Furthermore, while evidence points to challenges among legal actors in understanding the component parts of trafficking, the alignment of trafficking offences with procuring provides legal actors with a familiar framework through which to present trafficking cases. In this chapter, then, I unpack the important role of law in Canada's anti-trafficking efforts as relevant laws are developed and interpreted in Canada by police and legal actors. In doing so, I begin to unravel the relationship between the international developments outlined in Chapter 1 and the flurry of anti-trafficking legal reforms and enforcement efforts that have taken place in Canada since 2002.

Analysis of Canada's *Criminal Code* definition of trafficking and its interpretation and

activation by legal professions and the police demonstrates the way in which the human trafficking matrix is shaped through various legal amendments that have contributed to broadening the meaning of trafficking to include conventional criminal offences, most frequently focused on the sex trade. Despite the confusion amongst criminal justice actors about the meaning of human trafficking and its component parts, there is a clear conflation between trafficking and sex work in the operationalization of trafficking laws in Canada. Indeed, Canadian courts are insisting that the criminal activities captured by the term trafficking have a common-sense meaning, an argument which is enabled by the trafficking matrix and the inclusion of other forms of criminal activity into what has become an umbrella term.

Considering the Legal Definitions of Human Trafficking

Canada was amongst the first 80 countries to ratify the *Trafficking Protocol* in 2002, enacting its first law against transnational trafficking under section 118 of the IRPA the same year. The law criminalizes cross-border trafficking and is applicable not only to criminal organizations but also to individual traffickers. Despite the emphasis of international trafficking discourses and the UN *Trafficking Protocol (2000)* on transnational trafficking, the law has seen limited use with only one successful prosecution between 2002 and 2010¹² (Ferguson 2012, 286). Canada's first criminal law against both domestic and transnational trafficking was enacted in 2005, amending the *Criminal Code* to include sections 279.01-279.04. According to section 279.01(1) of the Criminal Code:

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.

¹² Ferguson found that data on international trafficking cases was sorely lacking, in part due to lack of coordination efforts by various government agencies involved (2012, 219-225).

Since the implementation of these provisions in 2005, they have been amended four times¹³, each time expanding the definition and scope of the term ‘human trafficking’ and increasing the penalties available for the offence. Tough criminalization response to human trafficking attracted support from across the political spectrum. The increasingly punitive criminal justice reforms, which I will discuss throughout this chapter, were largely spearheaded by two Members of Parliament (MPs) Joy Smith and Maria Mourani. Joy Smith was a Conservative MP from 2004 to 2015 who made trafficking for the purpose of sexual exploitation her key priority. Smith retired from the legislature in 2015 to work at a foundation she established to combat human trafficking. Maria Mourani was a member of Bloc Quebecois until 2013, then joined the New Democratic Party (NDP) but was defeated in the 2015 election. In 2017, she was appointed as the Quebec representative in Canada’s permanent delegation to the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The Canadian Parliament and courts take the position that Canada’s anti-trafficking laws are well aligned with the UN intentions as set out in the *Trafficking Protocol (R.v. Beckford 2013; R.v. D’Souza 2016; House of Commons, March 24, 2011, Bill C-612)*. And yet, a close examination reveals a different story. The *Trafficking Protocol (2000)* defines the offence as,

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (UN 2000, 2).

The key elements of trafficking, according to the UN definition are: 1) the act; 2) the purpose, which centres on exploitation; and 3) the means, which negate any consent given at the outset (UN 2000). According to the UN, “all three listed elements must be present for a situation of

¹³ Fifth amendment is currently in front of the Parliament as Bill C-38 (see discussion below).

‘trafficking in persons’ to be recognized” (as cited in Gallagher 2010, 29).

In contrast, Canada’s anti-trafficking law differs from the *Trafficking Protocol* in three key ways: 1) it does not require the victim to be moved, cross-border or nationally. As discussed in Chapter 1, this disconnect between coerced transportation and coerced end practice contributes to the difficulties in distinguishing trafficking from other offences, while an emphasis on ‘exploitation’ as the defining feature of trafficking enables the offence to incorporate any and all activities in which exploitation has been identified; 2) Canada’s offence of human trafficking does not require the involvement of organized crime to establish the existence of trafficking. Despite this, as I discuss in Chapter 4, the presumed connection between trafficking and organized crime serves to justify the expansion of trafficking laws and enforcement efforts; and, 3) in contrast with the UN definition, Canada’s legal definition of trafficking does not require ‘the means’ component (threats, coercion, force etc.) to be established. Instead, as I discuss below, the ‘means’ component is incorporated into the determination of whether exploitation has taken place. This leaves into place only the act¹⁴ and the purpose, which is exploitation.

The extent to which these divergences change the meaning of trafficking was captured by the argument of the defence in a constitutional challenge of *R.v. Beckford (2013)*,

there is a huge chasm between the kind of conduct that is envisioned by the UN versus the kind of conduct that is captured by the Criminal Code provisions. It misses some things which perhaps is more legitimately human trafficking and captures the stuff that lacks the moral culpability that is associated with this offence. The acts in the UN Protocol are much more narrowly prescribed. What you see in the Criminal Code is that the means have been taken out, so it’s any act by whatever means provided it has a purpose or facilitates a purpose (Application Section 7 Charter Factum Descending, Dec 28, 2012).

The defence attorney goes on to note,

So, what you see in the UN Protocol is a definition of the offence which would eliminate a lot of defects in the legislation that I suggest exist. The entire genesis of the legislation was

¹⁴ The act includes recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person, or exercising control, direction or influence over the movements of a person (s. 279.01, CCC).

to put that international obligation into effect in Canada. But the legislature made a calculated decision to define it in much broader and looser terms...It is also problematic to say that the Canadian law mirrors the UN Protocol, in fact, what I see is a wide gap between the two. The Criminal Code provision is a marked departure from what the UN or international protocol is on this issue. Canadian law is considerably broader and captures behaviour that it was never intended to capture (*R.v. Beckford*, 2013, Application Section 7 Charter Factum Descending).

The disconnect between the UN definition of trafficking and the Canadian one leads one defence attorney to exclaim, “This is all political nonsense. So as far as the *Palermo Protocol* is concerned, I don’t know what you’re talking about. I don’t think the court does either” (participant 14).

In 2016, another constitutional challenge to human trafficking laws was brought in the case of *R.v. D’Souza*. As in *Beckford*, the applicant in this case also rejected the Crown’s contention that “international consensus” on the meaning of human trafficking exists. The applicant argued that there is “global uncertainty about the term ‘human trafficking’” and that trafficking related provisions of the Criminal Code “are void for vagueness” (2016, para 31). The applicant further argued that “Domestic human trafficking legislation has been, improperly, informed by international human trafficking protocols” noting that, “These topics are worlds apart” (*R.v. D’Souza* 2016, Applicant’s Factum, para 8). The courts disagree. In both cases, the judges dismissed the application to deem Canada’s human trafficking laws unconstitutional. Justice Conlan in *R.v. D’Souza (2016)* noted that the language of human trafficking legislation is “fairly straightforward” and the “words used in the impugned provisions are neither novel nor complex”, suggesting that “these statutory provisions go far beyond the minimum degree of certainty required” (*R.v. D’Souza* 2016, para 149-151). He went on to explain that the terminology embedded in the human trafficking provision,

is not unduly complicated. The words used have *common, ordinary meanings* that are generally well known to the citizenry. In the simplest language possible, ‘recruit’ means to

enlist or get someone involved. ‘Transport’ means to take from A to B. ‘Transfer’ means to hand over. ‘Receive’ means to take or accept. ‘Hold’ means to keep or maintain. ‘Conceal’ means to hide or keep secret. ‘Harbour’ means to shelter. To exercise ‘control, direction or influence over; means to effect. To ‘facilitate’ something means to make it easier. ‘Benefit’ means an advantage or gain [emphasis added] (*R.v. D’Souza* 2016, para 146).

And yet, Justice Conlan’s position that human trafficking provisions are straightforward and easy to understand is contradicted by a 2015 United Nations Office of Drugs and Crime (UNODC) study, which examined the interpretation and application of trafficking laws in domestic contexts. The study found that “important concepts contained in the [Trafficking] Protocol are not clearly understood, and therefore, are not consistently implemented and applied” by State parties (UNODC 2015, 6). This is an important finding and particularly so given the contrasting views of Canadian courts. As such, the next section will examine the component parts of the offence of human trafficking as they pertain to international and Canadian laws, including their interpretation and application by criminal justice and legal actors and the overall effect of these developments.

As set out above, the offence of human trafficking according to the UN has multiple stages: the act, the means and the purpose. In contrast, Canada’s legal definition of trafficking only has two stages: the act and the purpose. As another UNODC study entitled *Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons* found, this shortened process and the phrasing of the terms results in Canada’s trafficking laws having a wider scope (2013, 47). Precisely this, the interaction of the ‘action’ and ‘purpose’, was at the heart of the constitutional challenge in *R.v. Beckford* (2013). According to the applicant’s argument, the wide scope of *actus reus*¹⁵ combined with an unclear element of exploitation casts

¹⁵ “The Latin term *actus reus* refers to the actual act of doing the illegal thing, with no reference to the person’s mental state. In order for a person to be convicted of having committed a crime, it must be proven that he engaged in some physical act, or took action, to do so” (LegalDictionary.net).

a “net of prohibition that is so wide as to be disjunctive of its purpose and to be so difficult to ascertain its boundaries of, as to be vague” (*R.v. Beckford*; Audio of Trial, Dec 28, 2012). The applicant provides an example of a driver who transports an exploited person from point A to point B to demonstrate that the law, as it is currently worded, can capture the activities of the driver, even if they have no knowledge of exploitation (ibid).

In rejecting the argument, Justice Miller found in her decision that the specificity of the law of human trafficking is set out by the fact that ‘the act’ (recruitment, transportation, transfer, harbouring) can only be defined as human trafficking if it is committed *for the purpose of exploitation or its facilitation* (*R.v. Beckford*, Judgement, Jan 28, 2013, para 35). In other words, driving a person to a destination where they will be exploited does not in itself constitute human trafficking, unless the driver had knowledge of and/or intent to exploit. While this standard appears quite straightforward, the practical application of the law raises numerous questions, such as 1) what does one have to have knowledge of to be charged with human trafficking? For instance, if one knowingly transports a person to a location where they will be exploited but does not engage in exploitation, does that open them up to a human trafficking charge? And, 2) what level of knowledge of exploitation is sufficient to be charged with human trafficking? In her decision, Justice Miller emphasized that human trafficking is an offence that requires a high degree of *mens rea*¹⁶, therefore eliminating the possibility that innocent actions that may become a part of the trafficking process are captured by the law (2012, para 40). And yet, without ‘the means’ component, which sets other forms of exploitation apart from human trafficking, this distinction becomes fragile, capturing exploitation, including exploitive work conditions, which may have been consented to. Despite these challenges, the court in both *Beckford* and *D’Souza*

¹⁶ *Mens Rea* is a Latin word for a “guilty mind” or criminal intent in committing the act (Dictionary.Law.com)

emphasize ‘exploitation’ as the central requirement to establish the crime of human trafficking, since as both decisions point out, the wide range of conduct criminalized by trafficking laws only become so if they are carried out for the purpose of exploitation. Interestingly, and for reasons discussed in Chapter 2, trafficking laws, despite their expansiveness, are rarely applied to cases outside of the sex trade and never to point out or address broader forms of exploitation or the role of the state in creating and upholding exploitative conditions.

Understanding the Term ‘Exploitation’ in Trafficking

Although ‘exploitation’ is not explicitly defined in the *Trafficking Protocol (2000)*, the UN stipulates that it includes: “exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (UN 2000, article 3). In Canadian law, the term plays a central role in the legal meaning of human trafficking. The meaning of ‘exploitation’ became defined through Bill C-310, *The Act to amend the Criminal Code (trafficking in persons)*, passed into law in 2012. Section 279.04 of the *Criminal Code*, defines ‘exploitation’ as causing another person to,

provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service (s. 279.04 CCC).

The amendment also added a list of factors to be considered in determining whether exploitation has taken place. The legislative history of Bill C-310 shows that the amended definition of exploitation was provided in response to concerns that the previous definition was too narrow and focused exclusively on physical acts, rather than emotional and psychological harm as components of exploitation, which have been added through amendments (*R.v. D’Souza*, 2016, Respondent’s Factum, para 25). The term was further specified by the Ontario Court of Appeal in *R.v. A.A (2015)*, where a panel of judges determined that “no exploitation need actually occur

or be facilitated by the accused's conduct for an accused to be convicted of human trafficking” (2015, para 85). The Crown needs to simply prove that the accused had the *intent* to exploit. This precedent-setting decision is noteworthy as it expands the reach of human trafficking laws even further by effectively removing the requirement for exploitation to even take place while setting intent as the key requirement for conviction.

While the meaning of ‘exploitation’ in the context of trafficking has now been challenged several times in Canada’s courts, the courts maintain that the term is straightforward and commonly used (*R.v. Beckford* 2013; *R.v. D’Souza* 2016). As Justice Miller noted in her decision in *R.v. Beckford*, “the terms ‘exploiting’ and ‘exploitation’ as used in the human trafficking provisions” are not “difficult to understand or apply” (Application Decision 2013, para 41). As with the definition of human trafficking, here too the perspective of Canadian courts is contradicted by a UNODC study entitled *Issue Paper: The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol*, which found that despite efforts to clarify the meaning of the term ‘exploitation’ it remains inconsistently understood by legal professionals (2015, 11). This definitional confusion is well captured by criticism provided by an interviewed defence attorney: “how can you be a willing participant to exploitation? Then again, the question is, is it exploitation? Then again, it doesn’t even matter if it’s exploitation.....so, it gets clearer and clearer as we continue” (participant 14). Such confusion and diverging perspectives were consistently captured in my interviews with lawyers and law enforcement officers who clearly held different understandings of the term exploitation. Some Crown attorneys considered the concept to be too narrow:

The definition of exploitation is actually harder to meet in human trafficking. I never thought of it in the terms it’s set out in the Criminal Code. I didn’t think about it in that way. The definition of exploitation, the person has to believe that their safety is at risk, but if I exploit a situation or an individual, I’ve never thought of it in terms of putting their

safety at risk. It was interesting in that when I read that definition I thought it was very narrow, much more narrow than my common sense understanding of exploitation, interestingly I've never done it, looked at the definition of exploitation in the dictionary. It's a bit harder (participant 15).

Conversely, defence attorneys commonly believe the concept is too broad in its definition:

I mean you read the strict provisions of the Criminal Code, it really seems to suggest exploitation, coercion of a sort, what does that mean? *That seems to mean pretty much anything I want it to mean*, it almost sounds like extortion, like if you read of a case, an extortion case and you read extortion, it's really interesting, you know, it says anybody who makes somebody do something, ok, like with a threat, like through threats is guilty of extortion [emphasis added] (participant 8).

Some criminal justice actors, primarily police officers considered the term's broadness to be a positive factor as noted by one officer,

the fact that the means of exploitation is very broad gives us more flexibility to look at the circumstances of each case and see how it applies to human trafficking so it's good in that sense (participant 3).

In contrast, others, mainly defence attorneys thought it was problematic. As one defence attorney commented, "they [lawmakers] basically broadened this idea of exploitation to...like, they cast the net so wide, anything could be exploitation" (participant 13). Similarly, the defence attorney in *R.v. Beckford (2013)* contended, "I think that the concept of exploitation is much looser [than the objective considerations]. It is asking to determine somebody's belief as to what could happen or would happen" (Audio of Trial, Dec 28, 2012). According to the UNODC study on the concept of exploitation, this ambiguity provides legal practitioners with high levels of interpretive discretion that contributes to discrepancies in the application of law (2015, 11). The legal ambiguity and discretionary flexibility around the term have become a part of the human trafficking matrix allowing for long-standing domestic criminal offences most commonly related to the sex trade, to be categorized as trafficking.

Furthermore, in several countries including Canada, vulnerability factors such as age,

illness, gender and poverty are incorporated into their understanding of exploitation, thereby making it easier to determine that exploitation has taken place (UNODC 2013, 4). These vulnerability factors, which the UN calls ‘pre-existing vulnerabilities’, are seen by criminal justice actors as being on par with trafficker created vulnerabilities such as isolation, dependency and irregular immigration status (2013, 3). This “has the effect of bringing within the potential reach of the definition, not just recruiters, brokers, and transporters but also owners and managers, supervisors and controllers” of any place where exploitation can be seen to occur (Gallagher 2010, 30). As Gallagher explains, this “could result in the concept of trafficking being extended to situations of exploitation in which there was no preceding process” (2010, 30). In other words, incorporating pre-existing vulnerabilities into the meaning of exploitation enables a situation to be defined as trafficking solely because the accused benefitted from the actions or services of the complainant with these vulnerabilities, regardless of whether the accused recruited, coerced, seduced or in any way forced the complainant to engage in such activities or services.

‘The Consent’ Factor

The meaning of exploitation in the context of human trafficking is further complicated by several interrelated and equally unclear factors, one of which is the consent of the victim. According to the UNODC, “the lack of consent to a situation of exploitation is considered integral to the understanding of trafficking and through the operation of the means element, has been accepted as a distinct and important part of the definition of trafficking in person” (2014, 6). And while the two previous trafficking conventions were premised upon the assumption that all sex work is inherently exploitative and therefore it is not possible for women to consent to it (Doezema 2007), the *Trafficking Protocol (2000)* distinguishes between voluntary sex work and

trafficking on the very basis of consent - a development welcomed by many sex workers' rights groups¹⁷. Once again, however, the 2015 UNODC study found that legal practitioners have difficulty distinguishing human trafficking from other crimes, particularly in relation to the principle of irrelevance of consent (2015,11). Even more troubling is the finding of a 2014 UNODC study entitled *Role of Consent in the Trafficking in Persons Protocol*, according to which a significant number of practitioners believed that, "consent should not be permitted to trump fundamental human and social values, such as dignity, freedom and protection of the most vulnerable within society" (2014, 9). Yet, there was no consensus on what these fundamental human and social values were (ibid). Sex work provides a good example of how diverging values can result in widely varying interpretations of exploitation since those who see all sex work as exploitative equate sex work with trafficking, while sex workers' rights advocates distinguish between consensual sex work and trafficking. In particular, the 2014 UNODC study found that practitioners were more likely to consider a situation as exploitative if it was in the context of the sex trade and required a lower evidentiary value in comparison to other forms of exploitation (2014, 11). According to the UNODC, while criminal justice practitioners demonstrated strong support for the concept of consent, they "appear to experience genuine difficulty internalizing a concept that in some senses appears to be counter-intuitive" (2014, 9). The extent to which consent is relevant was also found to be heavily dependent on the way 'the means' element is understood and applied, even if 'the means' are not directly defined but form a part of the purpose element (UNODC 2014, 10), as is the case in Canadian law.

¹⁷ The consent factor also only applies to adult when it comes to trafficking situations, since those under the age of 18 cannot consent to exploitation. In Canadian law, trafficking in minors was criminalized in 2010, through section 279.011 of the Criminal Code, which expanded the law to criminalize trafficking of individuals under the age of 18 and increased the minimum penalty to five years' imprisonment.

‘The Means’ Factor

The Trafficking Protocol (2000) states that one cannot consent to being trafficked since ‘the means’, which includes “threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, and the giving or receiving of payments or benefits to achieve the consent of a person having control over another person” (UNODC 2013, 16-17), negate any consent given at the outset.¹⁸ Yet, consent can only be negated in situations where ‘the means’ are used. In other words, in the absence of the ‘means’ a seemingly exploitative situation cannot be categorized as human trafficking since the person is free to work in exploitive work conditions if they are not forced into it through one or several of the activities categorized as ‘the means’ (UNODC 2014, 7). Therefore, considerations around consent are heavily dependent on the presence of ‘the means’. This is applicable even when ‘the means’ are not explicitly outlined in law (ibid, 10), as is the case in Canada and most other states with anti-trafficking laws. As such, “there is considerable scope for States to develop and apply highly restrictive, exceedingly broad or even contradictory interpretations of particular means” (UNODC 2014, 10). In Canadian law, ‘the means’ are incorporated into the definition of exploitation. According to section 279.04(2) of the Criminal Code,

In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused (a) used or threatened to use force or another form of coercion; (b) used deception; or (c) abused a position of trust, power or authority.

However, as the UNODC position paper on consent points out, the less direct ‘means’ such as deception, fraud or abuse of power or position of vulnerability can refer to situations dealing

¹⁸ This criterion applies only to adults. When it comes to establishing the trafficking of minors, the ‘mean’ component does not have to be established at all, the only thing that has to be established is that the accused “exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them” (section 279.011, CCC). This, as I demonstrate in Chapter 5, has significant impacts on individuals under the age of 18, who are working in the sex trade.

with working conditions but can also extend to parent-child relationships (2013, 17). For instance, the component which outlines that “giving or receiving of payments or benefits to achieve the consent of a person having control over another person”, is also potentially applicable to employer-employee and parent-child dynamics (UNODC 2013, 18). The expansiveness of ‘the means’ component was also revealed during my interviews. The difficulties of identifying who is a victim of trafficking are captured by the comment of one police officer:

When you’re looking at human trafficking, it’s very easy to dismiss a case and say it’s not human trafficking. It’s much more difficult to identify a severe case of human trafficking because when you say human trafficking you can’t just pinpoint what your victim looks like or this is the qualities of what you’re going to have in your victim. There’s a victim continuum (participant 2).

The victim continuum, as the police officer calls it, refers to the range of trafficking victims from those who have been severely abused to those whose experiences included more subtle ‘means’ (participant 2). The extent of subtlety in some cases is captured by a comment from another interview participant who explained that the ‘means’ can include something as minuscule as a threat to tell the victim’s parents that they have been engaging in sex work (participant 9). Using such loosely defined concepts puts even schoolyard bullies at a risk of being charged with trafficking. And yet, as the UNODC found, although ‘the means’ are relevant in determining whether trafficking has taken place, according to Canadian law, it is not the decisive component (2015, 99), bringing the crux of the offence back to exploitation. Finally, as the UNODC study reveals, there is a “lack of agreement among practitioners as to whether it is sufficient to just establish the use of means, or whether it is also required to prove that the means used actually vitiated consent” (2014, 10).

The 'Fear of Safety' Component

The determination of exploitation in Canadian law is established by a two-stage process. The first is to prove the accused's intent to exploit, as discussed above, and the second is to demonstrate the reasonable expectation on the part of the complainant that if he or she did not provide the labour or service requested, their safety or the safety of their loved one would be threatened (UNODC 2013, 47). At the outset, the fear of safety requirement in Canadian law was *subjective*, requiring that the complainant admit to fearing for their safety. While utterances of consent by complainants was treated with suspicion by police and legal practitioners, it nonetheless had to be respected under the law. For instance, Canada's first convicted trafficker, Imani Nakpangi, was charged with human trafficking in 2007 after his involvement in the prostitution of two underage girls was unveiled by an undercover police operation. However, because the second complainant insisted that she had not feared for her safety, Nakpangi could only be convicted of one account of trafficking, forcing the court to acquit him of the second trafficking charge. The reluctance of complainants to admit fear and thereby testify against the accused created a problem for the successful prosecution of cases in the courts (Roots 2011, 99). Consequently, Criminal Code amendments brought about in 2010 added section 279.04, which revised the wording of the law to make the fear of safety standard an *objective* one. Based on this new standard it no longer matters whether complainants actually feared for their safety. What matters is whether it can be *reasonably* expected that a person in their situation would do so (CCC. s. 279.04). According to the Ontario Court of Appeal in *R.v. A.A. (2015)*, for there to be exploitation, "the accused's conduct must give rise to a reasonable expectation of a particular state of mind in the victim" (Appeal Decision 2015, para 70). The Parliament has consequently placed the determination of fear of safety in the hands of the courts since complainants are seen

as unable to determine their own risk levels. This is summed up by a Crown attorney:

often times it can be like a domestic violence type situation in that sense. So, they might say they're not afraid even though they're getting beat up on a somewhat regular basis. That's what AA [referring to *R.v.A.A. (2015)*] was about. There was actual violence, but she wasn't afraid that he was going to do something bad to her if she didn't do what he wanted. But the reality is from an outside observer perspective, the court said it's pretty clear that there would have been fear there. Or that that was his intention, for her to be afraid. He was achieving that through actual violence (participant 10).

This objective standard makes it far easier to charge and prosecute suspected offenders, since the Crown no longer requires the complainant's admission that they feared for their own safety or that of their family. Furthermore, the UNODC found that the concept of safety in Canada's human trafficking law has been broadly interpreted by courts and is not just limited to physical harm but also includes mental, psychological and emotional safety (2013, 47). This direction, as the Crown notes in her submissions in *R.v. A.A. (2015)*, "to interpret the term exploitation in a broad way to include threats to, not only physical but also emotional and psychological well-being, was intended by the Parliament" (Court of Appeal for Ontario, Dec 2, 2014).

In the end then, laws against human trafficking are centered around the concept of exploitation, which does not actually have to take place and is premised on the victim's fear of safety, which they do not have to feel, thus creating an apparition of sorts, the existence of which can only be established through the court's evaluation of the offender's state of mind around their *intent to exploit*. Chuang has labelled this centeredness of the concept of exploitation in the definition of human trafficking, the 'exploitation creep' and argues that is an effort to "expand previously narrow legal categories...in a strategic bid to subject a broader range of practices to a greater amount of public opprobrium" (2014, 611). Given the challenges with understanding the components that legally define human trafficking, it is unsurprising that police, Crown and

defence attorneys, but also judges and legislators vary in their understandings of what human trafficking means and how, if at all, it varies from procuring offences under section 286.3.

The Legal Fusion of Procuring and Human Trafficking

The legislative developments in the area of sex work and human trafficking have allowed procuring offences to move rather seamlessly into the terrain of trafficking. As discussed above, the values and attitudes around the conduct under consideration are important in determining the relative relevance of consent (2014, 10). In this way, negative perceptions about sex work may result in an automatic assumption that consent is lacking (UNODC 2014, 10). Because sex work is a morally condemned activity and one which, according to abolitionists, cannot be consented to, it becomes much easier to categorize related activities as exploitation, and therefore by Canadian legal standard also as human trafficking. We see further evidence of the fusion between human trafficking and procuring when we look to Canadian courts. In evaluating the meaning and intention of the term ‘exploitation’ in the context of human trafficking, the Quebec Court of Appeal in *R.v. Urizar* (2013) looked to Parliament’s intentions when creating the law. The court found that the Parliament “uses the same words as it does in connection with procuring in section 212(1)(h)¹⁹” to describe the situation in which the movements of a person are limited for the purpose of exploitation (*R.v. Urizar* 2013, para 75-76). And so, by looking at Parliamentary discussions led by MPs with abolitionist agendas to evaluate the intent behind human trafficking laws, the courts follow suit. The merging of the two offences was further aided by recent developments in Canada’s sex work laws.

In 2007 three sex workers, Terri Jean Bedford, Amy Lebovitch and Valerie Scott filed a lawsuit against the Canadian federal government claiming that Canada’s sex work laws were

¹⁹ This section has been repealed and replaced with section 286.3 of the Criminal Code.

unconstitutional. The Bedford case challenged key sections of Canada's Criminal Code: section 210 which prohibited the operation of a bawdy house; section 212(I)(j) which criminalized anyone who, "wholly or in part lives on the avails of prostitution of another person"; and, section 213(I)(j) which forbade prostitutes, their clients, or third parties from communicating for the purpose of exchanging sex for money. The plaintiffs argued that these sex work laws violated section 7 of the *Charter of Rights and Freedoms*, which permits everyone the right to life, liberty and security of the person and, therefore, that the laws were not in accordance with the principles of fundamental justice. The substantive argument was premised on the fact that the laws forced sex workers to choose between their liberty and security by risking arrest and incarceration when choosing to take steps that ensured their safety on the job. The Supreme Court of Canada struck down the three laws governing prostitution and gave the government one year to draft new laws.

In response, the (then) Conservative government introduced Bill C-36, *The Protection of Communities and Exploited Persons Act* [PCEPA], which was enacted on December 6th, 2014. The new sex work laws in sections 286.1 to 286.3 of the Criminal Code follow a Nordic Model of governing prostitution criminalizing the purchase of sexual services, rather than the sale and treats sex workers as victims to be protected rather than as criminals (Department of Justice Canada, 2015(a)). These laws have received much criticism from academics and groups supporting sex workers' rights. According to Dr. Christine Bruckert, a Professor of Criminology at the University of Ottawa, who has conducted extensive research on sex work, "although prostitution has been removed from the definition of bawdy house, as per the Supreme Court decision, individuals previously defined as keepers - owners, managers and staff - are recriminalized through the receiving financial and material benefit provision" (House of Commons, July 8, 2014, Bill C-36). Yet, as Bruckert's research has shown, sex workers rely on

the assistance of others for the “skills, assets, knowledge and labour” that they may not have (ibid). In contrast, the framers of the new sex work legislation have proceeded on the assumption that those working to assist sex workers with their business are parasitic profiteers, the same assumption that fuels Canada’s anti-trafficking laws and their enforcement. As such, the protectionist approach of the new sex work laws, which focuses on ‘pimps’ and exploiters while treating sex workers as victims to be rescued, effectively enables the targeting of the sex trade through anti-trafficking legislation, as both trafficking and sex work laws now aim to protect the victim and criminalize the exploiter.

During Parliamentary debates, supporters of anti-trafficking bills frequently relied on the discourses of human trafficking, child sexual exploitation and youth involvement in sex work, which as demonstrated in Chapter 5, are riddled with emotional appeal. For instance, arguing in support of Bill C-36, the (then) Minister of Justice and Attorney General of Canada, Peter MacKay explained that:

children, on balance when doing the calculation, can also be considered vulnerable, so the bill seeks to strike that careful balance, part of that being the provision of a tool that would allow law enforcement to ensure that children are not harmed through exposure to prostitution (House of Commons, June 11, 2014, Bill C-36).

MacKay builds on this discourse of child sexual exploitation to suggest that “prostitution, also poses risks because of its link with human trafficking, as mentioned, which is another form of sexual exploitation, as well as its link to drug-related crimes and organized criminal groups” (House of Commons, June 11, 2014, Bill C-36). As such, MacKay’s submission in support of Bill C-36 was premised on a blend of emotive and urgent discourses that harness and combine concerns around child sexual exploitation with those of human trafficking and organized crime. In her pledge to support Bill C-36, MP Joy Smith relies on similar urgency and severity surrounding human trafficking to expressed her belief that the bill is one of the most important

bills this country has ever seen “because so many innocent victims are being lured into the sex trade under human trafficking” that it has “changed the paradigms in this country about those are trafficked and those who are involved in prostitution” (House of Commons, June 11, 2014, Bill C-36). How someone can be lured *under* human trafficking and what this statement even means is entirely unclear. Smith and MacKay’s use of the trafficking discourse in this context is further troubling given that Bill C-36 was not about human trafficking but rather sex work, an observation also made by MP Françoise Boivin (NDP) (House of Commons, Oct 3, 2014, Bill C-36).

The troubling conflation between these very different issues during discussions on Bill C-36 was captured by the comment of Dr. Christine Bruckert:

yesterday and today, we heard youth prostitution, trafficking, and adult sex work being casually conflated. This is frankly surprising if not disingenuous, given that the law criminalizing the procuring, living on the avails of youth, and human trafficking was neither challenged nor struck down. It means that laws around adult prostitution are being framed in relation to very distinct and separate issues, those of youth and trafficking. All too often, in the absence of solid empirical evidence, stereotypes based on stigmatic assumptions and fueled by ideology persist, and third parties are cavalierly denounced as pimps, exploiters, and profiteers. The evidence tells us it is much more complicated (House of Commons, July 8, 2014, Bill C-36).

Despite evidence-based criticism showing the harms of such laws on sex workers and the numerous open letters opposing Bill C-36 signed by legal professionals, union groups and citizens concerned about the impact of the *PCEPA* on the safety on sex workers, resistance to the bill was not only ignored but also ridiculed by champions, such as MP Smith:

There is no reason now to do archaic thinking. There is no reason now to say, ‘I’m confused’. Quite frankly, that is a very stupid comment. It doesn’t matter who they are or on what side of the House, right now, in this country, Bill C-36 is a bill that parliamentarians from all sides of the House should embrace (House of Commons, Oct 3, 2014, Bill C-36).

In addition to labelling critics of this bill as ‘very stupid’ and ‘archaic’ in their views, MP

Smith's efforts to garner support for Bill C-36 even involved threatening other MPs:

They [MPs] should not do that [resist the Bill]. If they dare to do it, I promise I am going to make sure I will go to every city, every town, every constituency and I will let their constituency know. They can decide whether they want to elect them to the Parliament of Canada with that kind of attitude (House of Commons, Oct 3, 2014, Bill C-36).

The employment of such bullying tactics to silence dissent by Canada's lawmakers demonstrates the power of anti-trafficking discourses, whereby disagreement on the need to 'do more' is seen as a sign of moral deficiency. Moreover, courts often look to Parliamentary debates to assess the intentions of the Parliament in setting a law, therefore the use of emotionally charged speech, rather than evidence-based research sets a dangerous precedent in lawmaking.

Since the Bedford decision and subsequent legal reforms, the vast majority of human trafficking cases in Canada are focused on sexual exploitation, as opposed to, for instance, labour exploitation or organ trafficking and are accompanied by sex work related charges (Millar and O'Doherty 2015; Ferguson 2012; Kaye and Hastie 2015; Kaye 2017). According to my research, 106 out of 123 (88%) individuals whose cases I examined were charged with trafficking for the purpose of sexual exploitation and only 17 (14%) individuals with labour trafficking (See Appendix B). All but two individuals charged with labour trafficking were a part of the same case²⁰. This focus on sexual exploitation suggests that trafficking laws have been aligned with procuring laws rather than being treated as separate offences. Evidence to this end can also be seen in the statement of the (then) Chief of Police for Ontario in response to the legal developments in the Bedford decision, that the police can and will "use other laws, such as those targeting human trafficking, assault and exploitation, to deal with 'pimps' and people who sell women, men and children for the sex trade" (D'Aliesio 2013).

The linking of procuring offences with trafficking greatly expands the meaning of human

²⁰ *R.v. Domotor (2011)*

trafficking to a fairly common domestic crime the courts have seen and dealt with for decades. And even though the crime itself is unchanged, the emergence of the anti-trafficking agenda did change the urgency around it as the offence became discursively linked with transnational organized crime and threats to national security. These developments also impacted police and prosecutorial approaches to the offence as evidence suggests pro-active targeting of the sex trade using human trafficking laws. According to my research, out of 123 individuals charged with human trafficking since the enactment of Canada's domestic trafficking law in 2005, 68 people (55%) were charged following the Bedford decision (see Appendix B). To provide context for this finding, the 68 individuals were charged during a 2.5-year period between 2014 and June of 2016, in contrast with the 55 individuals charged during a 9-year period preceding the Bedford decision. This is also supported by the findings of Department of Justice Canada, which reported that the rate of human trafficking violations²¹ almost doubled between 2013 and 2014 (2016, 3).

Bill C-452

The most recent attempt to amend the human trafficking law came in the form of a Private Member's Bill C-452, *the Act to amend the Criminal Code (exploitation and trafficking in persons)*, introduced in 2012 by MP Maria Mourani. The act received Royal Assent²² shortly before the government dissolved for elections in 2015 but was re-appealed by the incoming Liberal government, as I discuss below. The act aimed at amending the human trafficking provisions of the Criminal Code, adding subsection 2 to existing section 279.01 to make living with or being in the company of an exploited person habitually a basis for a human trafficking charge. Similar, to the living on the avails provision (212(I)(j)) set aside by the Supreme Court in

²¹ It is unclear whether the term 'violations' is referring to charges laid, convictions or a different unit of measurement.

²² The Act did not go into force and was re-introduced in the Parliament as Bill C-38 on Feb 9, 2017 (see discussion below).

the Bedford decision, this provision provides cause for worry about the activities of colleagues and roommates, even if merely sharing a living or workspace, even if one has no knowledge that exploitation is taking place. Although section 286.2(3), which replaced the previous living on the avails provision comes with a number of exceptions under section 286.2(4)²³, the effectiveness of these exceptions in practice is questioned by sex workers and advocates, and at any rate cannot be applied to trafficking offences in their current state. My concerns are echoed by Senator Mobina S.B. Jaffer who noted,

all that the Crown will have to do is prove beyond a reasonable doubt that the accused lived with or was habitually in the company of an exploited person. That in itself will be enough evidence to automatically prove the remaining element, which is the intent to exploit. In other words, once it is proven that a person lives with or is habitually in the company of an exploited person, it must then be concluded that the person's intent was to exploit or facilitate exploitation of the victim (House of Commons, May 12, 2015, Bill C-452).

The two provisions are distinguished only by the use of the word 'exploitation' in the trafficking provision. And yet as discussed above, exploitation is a very widely interpreted term and encompasses a morality component that renders the application of the law highly influenced by personal, cultural and religious values. Moreover, Canada's lawmakers repeatedly express the view that sex work is inherently exploitative activity and thus erase this apparent distinction entirely. For instance, MP Mourani advocates targeting the sex trade through harsher human trafficking laws, noting that sex work "is never work, but rather exploitation" (House of

²³ Exception to section 286.2(3) of CCC comes as follows:

- (a) in the context of a legitimate living arrangement with the person from whose sexual services the benefit is derived;
- (b) as a result of a legal or moral obligation of the person from whose sexual services the benefit is derived;
- (c) in consideration for a service or good that they offer, on the same terms and conditions, to the general public; or
- (d) in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services the benefit is derived, if they did not counsel or encourage that person to provide sexual services and the benefit is proportionate to the value of the service or good.

Commons, April 29, 2013, Bill C-452). As such, the insertion of the broad ‘living on the avails’ provision set aside by the Supreme Court in the Bedford decision for its wide scope, into human trafficking law is concerning as it will broaden the application of the law even further. And, despite the importance of ‘intent’ in determining culpability in trafficking cases, as emphasized by the court in *R.v. Beckford* (2013), the charges alone are sufficiently damaging as demonstrated in chapters 5 and 7.

Another important change proposed by Bill C-452 is the establishment of the reverse burden of proof clause in human trafficking cases. This means that the accused must prove their innocence, rather than being presumed innocent. When combined with the above changes, the accused who finds themselves in a situation of living with or habitually being in the company of an exploited person, must then prove that they were not exploiting the victim. The Crown must, therefore, only prove the *actus reus* element of the offence, rather than both *actus reus* and *mens rea*. As Senator Jaffer contends, this enables the conviction of individuals in cases where reasonable doubt exists, abandoning the presumption of innocence principle central to Canada’s criminal justice system (House of Commons, May 12, 2015, Bill C-452). The purpose of this proposed change, as MP Mourani admits, is to eliminate the need for victim testimony (House of Commons, April 29, 2013, Bill C-452), which often poses the greatest hurdle for police and prosecutors in trafficking cases. While Bill C-452 received Royal Assent, it was not passed into law before the Parliament dissolved for an election in 2015. The incoming Liberal government took issue with Bill C-452, instead introducing Bill C-38, which incorporates changes proposed by Bill C-452, with the exception of the consecutive sentencing provision, which I discuss below. At the time of writing in 2018, Bill C-38 is undergoing a review by the Standing Committee on Justice and Human Rights.

Despite increasingly broader interpretations of the term human trafficking and harsher punishments, Parliamentary debates, interviews with criminal justice and legal actors as well as court cases reveal existing difficulties distinguishing procuring from human trafficking. Even MPs experience this confusion, as expressed by MP Francoise Boivin (NDP) during a House of Commons debate on Bill C-452,

I'm finding it a bit difficult to see the difference between that [human trafficking] and prostitution as we know it...I am trying to see, within your bill [C-452], a concrete nuance between procuring and internal human trafficking. I wonder whether it would be better to amalgamate sections 212 and 279 (House of Commons, April 29, 2013, Bill C-452).

In response MP Mourani notes, "I can tell you that in this bill, there is a slight distinction between domestic trafficking and prostitution, and that is the notion of transport...it is a slight distinction. That said, you are right in saying that domestic trafficking is mainly prostitution" (House of Commons, April 29, 2013, Bill C-452). In effect then, Mourani confirms the Parliament's grouping of trafficking and sex work, while her explanation of the difference between sex work and trafficking as stemming from the transportation component is curious given that transportation is not a necessary component of trafficking under Canadian law and has been given little consideration in discussions around the meaning of trafficking.

Like Parliamentarians, criminal justice and legal actors also varied in their perspectives on whether or not procuring and human trafficking are the same offences. While police and defence attorneys saw trafficking and procuring as the same offence but with a new label, Crown attorneys and judges mostly considered them to be different offences. Amongst those criminal justice actors who considered trafficking and procuring to be different, the reasons varied widely. Some relied on the concept of exploitation to draw that distinction. For example, according to the Crown in *R.v. Burton (2013)* "this element of exploitation, this element of being able to choose

to engage in behaviour without being threatened or fearing for your safety or someone else's safety. And that's the distinguisher between living on the avails and exercising control and human trafficking" (Audio of Trial, Jan 18, 2016). The defence attorney in *R.v. Byron (2014)* echoes this distinction explaining that "there is a slight distinction between 212.1(h)²⁴ and 279.011²⁵ and that would be that the purpose of 279.011 is not gain as it is in 212.1(h), but *rather exploitation*. So, although they're somewhat similar, there is an important difference, in that 212(h) is on gain and 279.011 focuses on the *exploitation*" [emphasis added] (Audio of trial, May 17, 2013). Yet, as demonstrated earlier in this chapter, the distinction between trafficking and procuring in the context of sex work becomes erased through the concept of exploitation, primarily due to the view that sex work itself is inherently exploitative.

Several other points of distinction between trafficking and procuring emerged, all from the perspective of Crown attorneys and emphasizing the increased seriousness of trafficking in contrast with procuring offences. For instance, the Crown in *R.v. Byron (2014)* argued that the component that distinguishes trafficking from the "regular pimp-prostitute relationship is this: there are greater risks to victims today than there ever have been and greater motivations to the trafficker, due in large part to technology" and the ability of traffickers to recruit their victims from across distance²⁶ (*R.v. Byron*, Audio of Trial, Dec 13, 2013). Similarly, the Crown attorney in *R.v. Dagg (2015)* narrowed the difference between trafficking and procuring to the degree of offence severity, expressing the view that procuring offence is a less severe offence than human

²⁴ The repealed section states that, "for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally" (s. 212.1(h), CCC).

²⁵ "Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence" (s. 279.011, CCC).

²⁶ The same quote is also used in Chapter 5.

trafficking (*R.v. Dagg*, Audio of Trial, April 13, 2015). The increased severity of trafficking was also emphasized by a Crown attorney I interviewed, who also added a focus on transportation and exploitation explaining that human trafficking “goes beyond just being a ‘pimp’; it’s exploiting the person, it’s threatening the person, it’s moving the person from place to place²⁷. The criteria to get a conviction on human trafficking are significantly harder to provide than the procuring and material benefits” (participant 15). While Crown attorneys generally took the position that human trafficking is a more serious offence compared to procuring, one Crown attorney believed the opposite to be true:

pimping is just like almost a more extreme form of trafficking because there’s often...judges lead me to believe that they’re looking for some...to establish exercise of control...pimping provisions actually are more onerous than trafficking provisions. Trafficking in my reading requires an exploitation or coercion (participant 8).

In contrast to Crown attorney and lawmakers who primarily saw procuring and trafficking as different, albeit for different reasons, police officers and defence attorneys mainly saw the two activities as essentially the same. As one police officer contended, “pimping and trafficking? They are the same thing, just a different word. In the media, pimping is considered cool” (participant 4). Another officer expresses his disregard for the legal distinction: “to me, they’re [‘pimping’ and trafficking] are the same thing. In law, it’s not the same thing” (participant 2). This disregard for the legal distinction was also seen in the reply of another member of an anti-trafficking police force who explained that “it’s black and white, the law is very clear, human

²⁷ Interestingly, despite the fact that transportation is not a necessary component of a trafficking offence, in the majority of the cases I examined any form of travel by the complainant was emphasized by the Crown, whether that be between cities to meet the accused (*R.v. Byron, 2014; R.v. Burton, 2013; R.v. Rasool, 2015; R.v. Salmon(Gregory), 2014*), for the purpose of meeting clients (*R.v. Oliver-Machado 2014; R.v. Greenham, 2015; R.v. Dagg 2015*) or relocating together with the accused (*R.v. Salmon (Gregory), 2014*).

trafficking is one thing, prostitution is totally different”, but in practice “I think it’s the same thing” (participant 1).

In contrast to police officers who saw a legal distinction but not a practical one, defence counsel saw no difference between the two offences and believed that trafficking laws have come to replace procuring laws:

I don’t think there is a difference. In my mind, they’re just charging everybody with human trafficking now. Receiving a material benefit, living off the avails, so much of that conduct is captured under the umbrella term of human trafficking as well. Human trafficking is just a step up (participant 10).

According to another defence attorney, “Human trafficking and ‘pimping’ – same thing. Section 212 dealt with the pimps, 212 has now been repealed. Gone. Everything has shifted onto 279.

The reason the human trafficking legislation was established was for ‘pimps’” (participant 14).

One criminal justice actor summed it up as follows:

what they do is, they’re taking classic pimping cases...and they’re using this section...I’ve never seen a case that is the classic human trafficking situation. We all know it’s going on. We all know it’s happening. For whatever reason, they don’t seem to be capturing the bad people and prosecuting them....so we’re getting the old-fashioned pimping cases....which is just the classical cases dressed up in this new language (participant 9).

Court decisions reveal a similar fusion of trafficking and procuring offences by judges. For instance, in the decision of *R.v. (Gregory) Salmon (2014)* the judge stated: “at the end of the day I find you not guilty of counts 1, 2 [human trafficking charges], which are the most serious of the offences, what I’m calling the *pimping counts*” [emphasis added] (Audio of Trial, June 27, 2014). The judges reference to human trafficking provisions as ‘pimping counts’ demonstrates a conflation between the two offences but also shows the increased severity with which trafficking offences are seen. This fusion of the two offences is further illustrated in *R.v. D’Souza (2016)*, where the Crown refers to the case of *R.v. McPherson (2011)* “as an interesting and telling

illustration of the commonality to which the domestic human trafficking and prostitution themes have become commonplace and understandable within the justice system” (Respondent’s Factum: para 46). In the pre-Bedford case of *R.v. McPherson (2011)*, Justice Baltman refused the Crown’s request to introduce an expert²⁸ on human trafficking finding that,

prostitution, living off the avails thereof, and human trafficking...are common human experiences. The tendency of men to prey on young women who are vulnerable or needy; the use of violence by men against women in domestic relationships and the reasons why many women cannot easily extricate themselves from abusive relationships are not complicated technical issues but themes which juries and judges encounter on a daily basis in Canadian courts (*R.v. McPherson 2011*, para 22)

In effect, then, Justice Baltman’s decision demonstrates the effect of the human trafficking matrix whereby not only are components of sex work intersecting with trafficking but also those of domestic violence. The courts in *R.v. McPherson (2011)*, *R.v. D’Souza (2016)* and *R.v. Beckford (2013)* all found that human trafficking is a straightforward and easily understood offence – a view that is enabled by the human trafficking matrix and the folding of ordinary domestic crime and legal precedents established through other offences into legal characteristics of trafficking.

Legal Consequences of Human Trafficking Convictions

With the alignment of Canada’s sex trade laws with human trafficking also came increased penalties for procuring offences, bringing them in line with the tougher penalties for trafficking offences. For instance, while the previous penalty for procuring offences under s. 212(1) of the Criminal Code was a maximum of 10 years’ imprisonment, Bill C-36 increased the penalties for procuring offences to a maximum of 14 years’ imprisonment under the new section

²⁸ The expert in question was Benjamin Perrin is a Professor of Law at the University of British Columbia and an author of a book entitled *Invisible Chains: Canada’s Underground World of Human Trafficking (2010)*. He is a well-known anti-sex work advocate criticized for his biased research, which he claims as ‘evidence-based research’ (see Chapter 9 for discussion). In his rejection of the Crown’s request, Justice Baltman noted Mr. Perrin’s advocacy as being a part of the reason it would be inappropriate to deem him an expert witness.

286.3 of the Criminal Code. These penalties aligned with ones for trafficking offences, which carry:

A maximum penalty of life imprisonment and a mandatory minimum penalty of 5 years where the offence involved kidnapping, aggravated assault, aggravated sexual assault or death, and a maximum penalty of 14 years and a mandatory minimum penalty of 4 years in all other cases (Department of Justice Canada 2016).

If the victim is under the age of 18 the offence carries,

A maximum penalty of life imprisonment and a mandatory minimum penalty of 6 years where the offence involved kidnapping, aggravated assault, aggravated sexual assault or death, and a maximum penalty of 14 years and a mandatory minimum penalty of 5 years in all other cases (Department of Justice Canada 2016).

These increases were justified by the powerful child protectionist discourses demonstrated in Chapter 5, which leave little room for disagreement, as reflected in MP Smith's comments: "I just cannot understand why anybody wouldn't support mandatory minimums for traffickers of children 18 years and under" (House of Commons, June 1, 2009, Bill C-268); "the trafficking of children is not a Conservative, Liberal, Bloc or NDP issue. It is not a partisan issue. I have worked diligently to gain support from all parties for this bill" (House of Commons, Feb 27, 2009, Bill C-268). According to MP Smith, "Mandatory minimums will give hope to the families who have had children who were taken" (House of Commons, Feb 27, 2009, Bill C-268), reinforced by a comment by Dianne L. Watts that mandatory minimum penalties for child trafficking offences will "help set standards of behaviour in keeping with our society's values of respect toward vulnerable children. And children are the future of Canada" (House of Commons, June 1, 2009, Bill C-268). While the focus of debates on Bill C-268 remained on the protection of Canada's children, the effects of crime-security nexus continued to prevail through simultaneous, albeit less frequent, reminders that trafficking is a transnational criminal activity and one that yields significant profit for organized crime groups. As MP Smith said,

to further aggravate the problem, this type of criminal conduct is not something that just happens occasionally or on the margins of society. Rather it is widespread, as evidenced by the global revenues garnered by it, which are estimated to amount to as much as \$10 billion U.S. per year. This puts human trafficking within the three top money makers for organized crime (House of Commons, Nov 26, 2013, Bill C-268).

The effects of such reminders of the broader national security threats posed by human trafficking through links to organized crime group cannot be underestimated as they contribute to an understanding of trafficking as a more serious criminal activity than procuring, as seen above.

In 2015, another attempt was made to increase the penalties associated with human trafficking through Bill C-452. In addition to the changes outlined above, the bill also attempted to revise the sentencing guidelines for trafficking-related convictions whereby sentences imposed for human trafficking convictions would be served “consecutively to any other punishment imposed on the person for an offence arising out of the same event or series of events and to any other sentence to which the person is subject at the time the sentence is imposed” (proposed section 279.05). Under the *Criminal Code of Canada*, all sentences imposed are to be served concurrently, unless otherwise ordered by a judge or if legislation requires that they be served consecutively for cases involving firearms, criminal organizations or terrorism (Public Safety and Emergency Preparedness Canada 2005), or serial murderers (Canadian Resource Center for Victims of Crime 2012). Evidently, the crimes punished through consecutive sentencing in Canada are considered the most severe, demonstrating the perceived severity of human trafficking offences.

As Parliamentary debates reveal, legislators’ support for concurrent sentencing in human trafficking cases rose out of frustration over judicial discretion in sentencing. Conservative MP Kyle Seebach expresses this as follows,

Judges have the option [to pose concurrent sentences] but they haven’t exercised it. If we, as Parliament, want to show our condemnation of this type of behaviour, we have to move

the goalposts. The way you move the goal posts and the way you get judges out of that sentencing rut, where they continue to put forth a concurrent sentence, is to change legislation (House of Commons, May 1, 2013, Bill C-452).

When questioned about the effectiveness of concurrent sentencing, MP Seeback replied,

My view, quite frankly is that there are two types of deterrence. One is general deterrence: you make the sentence so strong that people say, ‘Oh gee, maybe I don’t want to do that’. The other aspect of it, and this is the one that I believe in, is specific deterrence, so if a person committed this offence [trafficking] against six or eight or ten girls under the age of 18, they’re going to be put away for a minimum sentence of 48 or so years. My view is that that person has been deterred because they’re now in jail (House of Commons, May 1, 2013, Bill C-452).

This view that individuals convicted of human trafficking should be locked away for over five decades at a minimum is particularly troubling when considering that most people convicted of trafficking offences in Ontario are poor, young, black men independently involved in domestic ‘pimping’ activities. Fortunately, the current Liberal government does not support implementing consecutive sentences for human trafficking offences. Given the already existing mandatory minimum sentences, the current government found that this would be a violation of section 12 of the *Canadian Charter of Rights and Freedoms*, which protects individuals from cruel and unusual punishment. As discussed above, on Feb 9, 2017, the new Liberal Minister of Justice and Attorney General of Canada tabled Bill C-38, which amends former Bill C-452 by taking out consecutive sentencing but keeping in place the rest of Bill C-38. In response, Conservative lawmakers used emotive rhetoric and discourses of child sexual exploitation (as detailed in Chapter 5) and slavery to argue for tougher sentences as captured in the response of Conservative MP Arnold Wiersen to Bill C-38:

Bill C-452 received royal assent in June 2015. Then the Liberal government came into power and has since blocked Bill C-452 from coming into force. Why? It is because the Liberals do not like the idea that sex traffickers might face consecutive sentences. *They feel it is too harsh to expect that a child trafficker should serve a long sentence for exploiting a minor in sex slavery* [emphasis added] (House of Commons, Dec 11, 2017, Bill C-38).

This is despite the fact that penalties for sexual offences committed against children and youth were already amplified in 2015 through Bill C-26, *An Act to amend the Criminal Code, the Canada Evidence Act and the Sex Offender Information Registration Act, to enact the High Risk Child Sex Offender Database Act and to make consequential amendments to other Acts*. The new law brought about a number of changes that would increase punishments for those convicted of child sexual offences, including the imposition of consecutive sentences in cases where there are two or more victims (Library of Parliament 2014).

As such and despite the Liberal government's successful diversion of the consecutive sentencing law in human trafficking cases, convictions for trafficking offences nonetheless come with significant sentences. That sentences have increased over the past few years is captured by the court's discussion of sentencing ranges in human trafficking cases in *R.v. A.E (2018)*:

It would appear that prior to 2014, the range was probably two or three years at the bottom end to six or seven years at the top end, depending of course on the aggravating and mitigating circumstances of the case. Since 2014, the floor has been elevated and I would say, provisionally, that the usual range appears now to be roughly four to eight years, again depending on the aggravating and mitigating circumstances present (*R. v. A.E. 2018*).

We can also see the high sentences in individual case examinations. For instance, as discussed in Chapter 4, the accused in *R.v. Byron (2014)* received a significant sentence of six years' incarceration (less time served but without the extra credit of 1.5 time served) and numerous conditions (*R.v. Byron*, Audio of Trial, Feb 13, 2014). Kailey Oliver-Machado (2014), who was 15 years old at the time of her offences, was sentenced to 6.5 years in an adult prison. In handing out this sentence the judge noted,

If Ms. Oliver-Machado would have been an adult, I would have considered a sentence in the range of 10 -12 years given the number of victims and their age. Given the defendant's age and the mitigating factors expressed and giving effect to the principle of restraint the sentence of 6.5 years as proposed by a Crown is appropriate (*R.v. Oliver-Machado*, Nov 4, 2014).

The most notable example of harsh sentencing in trafficking cases comes through *R.v. Moazami* (2015) where the British Columbia Supreme Court sentenced the accused to 23 years' imprisonment. The sentence was calculated by attributing both concurrent and consecutive sentences ranging from one to three years in the case of each of the 11 complainants, totalling 48 years and six months in jail. The judge justified this approach by noting that:

Mr. Moazami's total sentence should not be calculated by imposing the sentences with respect to offences against some or all of the complainants concurrently. To do so would be the equivalent of giving Mr. Moazami a reduced sentence because he inflicted harm on many young girls rather than only one or two (*R.v. Moazami* 2015, para 137).

In the end, the judge found that,

a sentence of 23 years' incarceration is the minimum necessary to achieve the fundamental objectives of sentencing on the facts of this case. Denunciation and deterrence are the most important principles of sentencing in light of the nature of the offences against children (*R.v. Moazami* 2015, para 143).

It is important to note the court's reference to the protection of children, which will be discussed in Chapter 5, has served as a justification for the expansion of legal and on-the-ground anti-trafficking efforts.

Interestingly, in *R.v. Finestone* (2017), the court found that the mandatory minimum sentence of five years for child trafficking cases is unconstitutional under section 52 of the Constitution Act. According to the judge in this case:

When I consider the broad range of conduct captured by this section, even taking into account the heightened *mens rea*, many reasonable hypotheticals can be constructed where a 5-year sentence would be grossly disproportionate to the fit sentence. As such, in my view, section 279.011(b) violates section 12 of the Charter (*R.v. Finestone* 2017, para 87).

And, although the Ontario court did not have the jurisdiction to deem mandatory minimums unconstitutional, the judge in this case determined that, "having found the law unconstitutional," she did not "need not apply the minimum sentence" (*R.v. Finestone* 2017, para 89). As such, the

judge posed a sentence of four years, rather than the five years required by the mandatory minimum for child sex trafficking under section 279.011 of the Criminal Code. Furthermore, the court rejected the Crown's request for Order under section 161²⁹ finding that, based on the evidence, the accused did not pose an ongoing risk to children. What is noteworthy in this case and what might, in part, explain the differential treatment of this accused is that unlike most people convicted of trafficking offences, the accused in this case, while a young racialized man, was brought up in a middle-class white adoptive family. Nevertheless, the relatively lenient treatment seen in the case of Finestone is not commonplace for those convicted of trafficking.

In addition to the long sentences, those charged with trafficking offences are also subject to other possible consequences, including a lifetime DNA order, registration with the sex offender registry (if the trafficking is for the purpose of sexual exploitation), long-term and/or dangerous offender designation and Order under section 161, which places significant restrictions on the activities of the convicted individual after their release from prison. These possible consequences leave no doubt as to the severity with which human trafficking is treated. This is further exemplified in the Crown's attempt in *R.v. Burton (2013)* to have the offence of

²⁹ **161 (1)** When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730 of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from

- (a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre;
- (a.1) being within two kilometres, or any other distance specified in the order, of any dwelling-house where the victim identified in the order ordinarily resides or of any other place specified in the order;
- (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;
- (c) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or
- (d) using the Internet or other digital networks, unless the offender does so in accordance with conditions set by the court.

human trafficking declared a personal injury offence. According to section 752 of the Criminal Code, a personal injury offence is defined as “conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person.” The Crown’s argument that human trafficking should be deemed a personal injury offence was premised on its association with sex work and the “inherent violence in prostitution” (*R.v. Burton*, Audio of Trial: Oct 30, 2015).³⁰ Although the court did not deem the offence of human trafficking itself a personal injury offence, it did find that the high threshold of a personal injury offence was met in the specific case of Tyrone Burton.

A finding that a personal injury offence has occurred opens the possibility of a Dangerous Offender Application. Under section 753(1) of the Criminal Code, a person can be deemed a dangerous offender if “the offender constitutes a threat to the life, safety or physical or mental well-being of other persons based on a pattern of repetitive behaviour”. Dangerous Offender designations are rare in Canada and can accompany an indeterminate sentence³¹. After the abolishment of capital punishment in 1976, indeterminate sentence has been considered the most severe penalty in Canada (Brode 2008, 107). The constitutionality of indeterminate sentencing was recently challenged in *R.v. Boutilier (2017)* for being overly broad. The Supreme Court of British Columbia dismissed the argument and found that indeterminate sentencing does not violate the *Canadian Charter of Rights and Freedoms* since the decisions are made based on individual circumstances of the accused.

In addition to criminal penalties, non-citizens of Canada convicted of trafficking are also subject to a possible deportation order. Consequently, those with precarious citizenship status

³⁰ The historical and contemporary ways in which sexual norms are governed by notions of dangerousness will be discussed in more detail in subsequent chapters.

³¹ In case of dangerous offender designations, courts can impose an “indeterminate detention, a determinate sentence plus a long-term supervision order, or simply a determinate sentence” (Public Safety Canada 2009, 3).

convicted of trafficking are subject to ‘double punishment’ through deportation (Pratt 2012, 275). This double punishment is enabled by the ‘serious criminal’ category implemented into the IRPA in 2001 (ibid, 280). According to s. 36(1)(a) of the IRPA, ‘serious criminality’ is defined as an offence punishable by a minimum term of 10 years or a sentence of 6 months or more in prison (ibid, 282). The passing of the *Faster Removal of Foreign Criminal Act* in 2013, which focused on speeding up the deportation of non-citizens convicted of a crime, made “increasingly small-scale offences as ‘deportable’”. This loosened the definition of ‘serious criminality’ to mean any offence with a six month prison sentence (in contrast with a two year prison sentence prior to 2013) which includes crimes such as shoplifting, dangerous driving and causing a public disturbance (Maynard 2017, 173; Pratt 2014). Human trafficking, as an offence that carries with it a maximum penalty of 14 years’ imprisonment, falls under the category of a ‘serious offence’, enabling the deportation of those convicted of it. While non-citizens convicted of transnational trafficking are subject to automatic deportation through section 37(1)(b) of the IRPA, those convicted of domestic trafficking are subject to a mandatory minimum of four years in prison, therefore making them subject to the same deportation order without the possibility of appeal.

These serious penalties and the on-the-ground application of trafficking laws to ordinary domestic primarily procuring offences led one defence attorney to note:

to me, that’s what I don’t like about the human trafficking provision. Most of all I just feel like it’s overly broad. They captured too much different conduct. With such a nasty name attached to it right. Like you get convicted of human trafficking, it’s modern-day slavery. It’s got this horrible connotation to it and the reality is even within the context of the definition, right...like it could just be the person who is, say, managing the house for the prostitute that’s being trafficked by another pimp..... I don’t think they should call of that human trafficking, I don’t think that it’s fair. I think it paints it with a broad brush. I think that we’re really demonizing people (participant 10).

Indeed, one criminal justice actors argued that “the human trafficking laws are overreaching and they’re not doing what they were made for” (participant 12). This sentiment was echoed by

another defence attorney: “they just need to be careful that they’re not casting too wide a net” (participant 11).

Conclusion

As this chapter has demonstrated, Canada’s trafficking laws, which developed out of the UN *Trafficking Protocol (2000)* diverge from it in some important ways. In particular, through a number of legislative amendments, Canada’s definition of trafficking has come to focus on the concept of exploitation, making the application of the law easier, particularly in contrast with the combined process of recruitment, transportation and exploitation, set out by the UN *Trafficking Protocol (2000)*. These legal amendments have taken place in parallel with developments in Canada’s sex work laws which brought the two criminal offences into alignment. The result has been the application of trafficking laws to procuring offences, which in many ways undermines the advances made by the *Trafficking Protocol (2000)* in recognizing the legitimacy of sex work as work. However, despite opinions of Canadian courts that trafficking laws are straightforward and easy to understand, legal actors are struggling to carve out a meaningful difference and vary in their perspectives on whether or not trafficking is at all different from procuring offences and if so, how. Although police and defence attorneys mainly see the two offences as being the same, Crown attorneys, for the most part, agree that human trafficking is a more serious offence than procuring. And while this was not intently expressed, the increased seriousness, as I demonstrate in subsequent chapters, stems from the intersection of the issue with child exploitation, transnational organized crime, and national security risks within the trafficking matrix. This increased seriousness is also shown by the fact that for those who plead guilty or are found guilty of trafficking the penalties are far more severe than they had been for the previous procuring offence. While I cannot speculate on the causality of these developments, it is pertinent to note

that they align with the anti-trafficking efforts in the US, a country which, as discussed in Chapter 1, has aligned trafficking with sex work in their own legal definition of the term, advocates for abolishment of the sex trade and is responsible for assessing the anti-trafficking efforts of individual countries around the world.

Chapter 4 –International Trafficking and the Crime-Security Nexus

Not only are there problems with the definition of human trafficking as detailed in the previous chapter, but also the definitional harms associated with trafficking. One set of harms involves threats that transcend international boundaries, including transnational organized crime, War on Terror and national security. Another set of harms includes personal harms to Canadians involving issues around sexual violence, child sexual exploitation and sex work, which I will discuss in more detail in Chapter 5. In this chapter, I will identify the discourses that provide a foundation for the harms that are global in nature and explore the ways in which they have been taken up in the Canadian context by law-makers, legal actors and the police.

According to Claudia Aradau (2008), one of the key issues of policing human trafficking is identifying exactly what threat it poses to the state. To decipher this, she argues, we would need to first understand what national security is, what it does and what it allows in terms of protecting it (Aradau, 2008, 40). As Aradau contends, the concept of national security has undergone significant expansion, going from strictly military threats to the state to include a series of non-military threats, such as organized crime, migration, economic threats and drug, weapon and human trafficking. At the same time, Pratt (2005) explains, there is also an expansion of the meaning attributed to small scale criminality allowing crimes such as domestic procuring and sexual exploitation to become linked with broader issues of organized crime, terrorism and national security. These changes, captured in Pratt's concept of the crime-security nexus, have had a profound impact on the developments in the area of human trafficking. This chapter, then, traces the emergence of the crime-security nexus in the context of human trafficking by exploring how discursive linkages between trafficking and humanitarianism, securitization and criminalization are formulated at various sites, including political debates,

international and domestic government reports, by criminal justice and legal actors, the media and in the courtroom.

The Problem of International Trafficking

Human trafficking is widely represented at the level of international law and to some degree national policy as a pressing transnational crime problem that poses a significant threat to both international and national security and human rights norms. This is seen first and foremost in the fact that the *UN Trafficking Protocol (2000)* is embedded within the *Convention against Transnational Organized Crime*. In Canada, the evocation of the international framework can be seen particularly frequently in the early stages of Canada's anti-trafficking debates and efforts. For instance, during a debate on Bill C-49 in 2005, the former Member of Parliament, Vic Toews³², noted that "trafficking is clearly a global problem that does not respect borders" (House of Commons, September 26, 2005, Bill C-49). Another such example emerges from MP Joy Smith's comment during discussions on Bill C-310, which aimed to criminalize trafficking by Canadian citizens outside of Canada: "the very nature of human trafficking requires an international focus" as "the crime of human trafficking often transgresses international boundaries" (House of Commons, Oct 25, 2011, Bill C-310). Smith went on to note that Parliamentarians "must resolve to eradicating all forms of this slavery, both in Canada and abroad" (ibid).

Despite these statements, the vast majority of the focus of Parliamentary debates, particularly in more recent years, is on domestic trafficking. Attempts have even been made to shift attention from international to more of a domestic focus. For instance, in a House of

³² Toews was appointed as a judge to the Manitoba Queen's Bench in 2014; he served as a Minister of Public Safety under the Conservative Government from 2010 – 2013, as a Minister of Justice from 2006-2007 and was a Conservative Member of Parliament from 2000-2013.

Commons debate on Bill C-452, MP Mourani noted that, “Contrary to what one might think, this sort of thing [trafficking] does not happen only in developing countries...unfortunately, it is a rather significant problem in Canada” (House of Commons, Jan 29, 2013, C-452). Similarly, during a debate on the creation a provincial task force to combat human trafficking in Ontario, MPP Laurie Scott stated,

many people think of human trafficking as a faraway problem, one that conjures up images of desperate young women brought to Canada under false pretenses...but they are misinformed about its scope and pervasiveness in our great province and country. While you may think human trafficking does not affect us, it does (Legislative Assembly of Ontario, May 14, 2015, Private Member’s Motion).

And while international trafficking discourses remain powerful, Canada’s anti-trafficking laws, policies and on-the-ground police and prosecution efforts have certainly taken on a domestic focus as demonstrated in the overwhelming number of domestic trafficking cases, in contrast with international ones. Of the 123 cases of human trafficking I analyzed in Ontario, only 17 of 123 (14%) accused were charged with trafficking of foreign victims across national borders for the purpose of labour exploitation. All but two of the individuals charged in this case belonged to the same two families. This is also supported by the City of Toronto (2013) Executive Committee report on trafficking, which based on data from 2010 found that “over 90% of cases involved domestic human trafficking, and less than 10% involved people being brought into Canada from another country” (2013, 4).

Interestingly, as revealed during House of Commons debates and in my interviews, politicians and legal and criminal justice actors overwhelmingly believe that the prevalence of international trafficking is a myth and that trafficking is actually a domestic phenomenon. For instance, in a debate on Bill C-452, federal government liaison officer for the Salvation Army in Canada, Michael Maidment noted, “human trafficking is a domestic issue...Yet the *myth* that

trafficking is exclusively an international issue persists among many Canadians. Accurately describing human trafficking as a domestic issue will aid in correcting this long-term myth” [emphasis added] (Justice Committee on Human Rights, May 6, 2013, Bill C-452). My interviews revealed a similar emphasis on transnational trafficking as a myth. As one police officer noted,

The *myth* is that these girls come across in containers from these third world countries, they get to Canada and they’re spread out throughout Canada and they’re trafficked. Whereas I can tell you that 98-99% of the girls that we get are born and raised in Canada. It doesn’t mean that it doesn’t happen that girls come here from other countries. We haven’t seen very much of it. All the girls that we have are domestic [emphasis added] (participant 1).

In addition to understanding transnational trafficking as not a prevalent issue in Canada, these statements further reveal a strong current of racialization and Canadian superiority whereby even ‘our’ human trafficking is different and less terrible. Not only because trafficking victims in Canada do not “come across in containers” from third world countries but also because they are being exploited at home. As one Crown attorney contends,

It’s clearly more than just migration related human trafficking and I think it’s clear from the Criminal Code provisions that it turns primarily on the exploitation element associated with it, so I think it certainly can be domestic and often is domestic and so I think in the general public there is a misconception that this is about, it’s akin to what’s going on in Europe (participant 7).

The Crown’s comment that the general public’s understanding of trafficking as “akin to what’s going on in Europe” is also suggestive of a ‘more terrible’ form of trafficking that exists elsewhere. The ‘us’ versus ‘them’ sentiments underlying the division between transnational and domestic trafficking are also seen in the comments of a defence counsel,

Well it’s funny because I know obviously when people hear human trafficking they think of people being, you know, girls being sold in Russia and being brought to another country for sexual slavery....but that’s not typically what we see in Canadian courts. We’re seeing, typically, it’s prostitution, girls being forced into prostitution (participant 11).

Indeed, House of Commons debates on trafficking reveal underlying sentiments of Canada's moral superiority in contrast with the rest of the world. According to MP Paul MacKlin:

the whole idea and concept of human trafficking and its results is something that is so abhorrent to us as a society and so against everything that we as Canadians believe in, I believe it is important that the legislation be adopted as quickly as possible to assist our officials in being able to bring about enforcement, prosecution and sentencing of these individuals (House of Commons, Sept 26, 2005, Bill C-49).

A similar sentiment is expressed by MP Mobina Jaffer: "Every time this issue [human trafficking] has come before us, I have spoken about the fundamental values of human dignity that we as Canadians hold close to our identity" (House of Commons, May 12, 2015, Bill C-452). This sense of moral superiority is curious given that the majority of Canada's anti-trafficking focus is on domestic trafficking and in particular on procuring for the purpose of sexual exploitation.

This sense of moral superiority is also seen in the treatment of trafficking cases. We can first look at the case of *R.v. Dagg (2015)*, a 23 year old man who was arrested for trafficking a 32 year old woman. Dagg was charged with human trafficking and questioned by two police officers. The officers' question to the accused as to why human trafficking charges are "more sensitive" than other charges elucidated the following exchange:

Accused: Because it's a person's body and it's sex and uh...

Officer: Yeah.

Accused: Uh, free will and...

Officer: Yeah. It's against a person's free will.

Accused: I understand that.

Officer: See, *this country prides itself on something called free will.*

Accused: Free will, yeah.

Officer: Free (inaudible)

Accused: And I understand that.

Officer: And *you two come here and cut apart everything that we stand for.*

Accused: Yeah.

Officer: In this country, buddy, I come from a country where there's no freedom...[emphasis added] (*R.v.Dagg*, 2015; Police interview, part 6: date unknown).

The interaction between the officers and the accused then shows a prevailing sense of moral superiority attributed to Canada in contrast with others. And while the accused in this case was a Canadian resident, he was nonetheless a racialized man and therefore ‘othered’ as someone who comes to Canada and harms people (see Chapter 7 for further discussion).

Another notable case on this end is that of Kolompar and Domotor families, whose members were found to have formed a criminal organization and facilitate the migration of other Hungarians to Canada for work in their construction business. Court evidence revealed that upon arrival, the workers’ passports were withheld and they were forced to work long hours at construction sites without pay. When not working, the employees were confined to the family’s home basement and fed once a day with scraps. The family also forced the labourers to apply for social assistance, which they subsequently kept for themselves. The former Public Safety Minister Steven Blaney, in announcing the deportation of the Hungarian traffickers, released the names of nine of the individuals convicted of what he called ‘the most heinous of crimes’. In a speech marking this deportation, Blaney noted that “the federal government wants the world to know the names of Hamilton human traffickers they’ve deported to send a message that Canada will not tolerate modern day slavery” (O’Reilly 2014). Blaney stated: “We are sending a clear signal that there is no room in Canada for those who are committing the heinous and despicable crime of human trafficking” (Carter 2014). Blaney’s deportation announcement which simultaneously refers to human trafficking as modern day slavery and a “heinous and despicable crime” effectively captures the way the crime-security nexus operates within the human trafficking framework by intersecting humanitarian concerns with crime, public safety and national security. Furthermore, the humanitarian framework within which anti-trafficking efforts are embedded serves the purpose of placing Canada above others in its human rights

considerations – a moral leader of sorts (see also Jeffrey 2005). As Jeffrey explains, Canada’s identity as a morally superior nation tasked with solving “many of the world’s problems” is carefully upheld by constructing human trafficking and similar issues as an “innate object beyond the government’s control, which it is then forced to confront” (2005, 39). Justice Glithero, in his judgement of the case of *R.v. Domotor* (2012) noted,

...this country has a long and strong tradition of respecting human rights and dignity, and a strong tradition of providing assistance to those who require it, and a strong tradition of being welcoming to people from other lands. As Canadians we are proud of these values that are central to our being and when our values are abused, flagrantly, as they were by these three individuals, we are offended and intolerant to those who behave in this fashion. Modern day slavery is disgusting to us and it offends our core values (*R.v. Domotor* 2012).

Justice Glithero’s judgment and Blaney’s announcement thus served as a “grand performance of the sovereign authority of the Canadian nation-state to coercively control its borders in the name of protecting the public and nation from the crime-security threats posed by dangerous outsiders” (Pratt 2005, 276), both in and outside the borders. And so, while Parliamentarians and legal and criminal justice actors expressed views of international trafficking as not really happening in Canada, discourses of international trafficking, particularly when exemplified through an actual case, tap into deeply ingrained sentiments of the moral superiority of Canadians in contrast with lesser ‘others’ and therefore, despite their seeming irrelevance, serve an important purpose within the trafficking matrix.

Human Rights and Modern Day Slavery

The Kolompar and Domotor case highlights, amongst other things, the prevalence of the human rights framework commonly evoked in discussions of human trafficking by equating it with modern day slavery (O’Connell Davidson 2015; Kempadoo 2005; Chuang 2014). The use of slave imagery is a powerful tool. As Kempadoo notes, the term ‘slavery’ brings forth images

of the worst known treatment of humans associated with cross-Atlantic slave trade of African people (2005, xix). This linkage, also employed during the ‘white slavery’ panics at the turn of the twentieth century, evokes images of suffering and horror that require immediate intervention. Importantly, as Chuang argues, the term slavery is slowly replacing trafficking. This is demonstrated by the views of the former US President Barack Obama and former Secretary of State Hillary Clinton, both of whom deem the term ‘slavery’ as more accurately able to capture the issue (Chuang 2014, 623). Equating trafficking with slavery also opens the possibility of replacing trafficking with the legal concept of ‘exploitation’, which has far more applicability— a shift Chuang refers to as ‘exploitation creep’ (2014, 611). The concern with focusing on the term ‘exploitation’ in the context of Canada’s human trafficking laws was detailed in Chapter 3.

International government reports also demonstrate the shift from the term trafficking to modern day slavery. According to the UNODC report entitled *Global Report on Trafficking in Persons*, this is because: “the term trafficking in persons can be misleading: it places emphasis on the transaction aspects of a crime that is more accurately described as enslavement” (2009, 6). The report quotes the former US President Barak Obama:

Today we continue the long journey towards an America and a world, where liberty and equality are not reserved for some but extended to all. Across the globe, including right here at home, millions of men, women and children are victims of *human trafficking and modern day slavery*. We remain committed to abolishing slavery in all its forms and draw strength and resolve from generations past” [emphasis added] (UNODC 2009, 4).

At times, the term ‘modern slavery’ even replaces ‘human trafficking’ in official reports. This is exemplified by the US Department of State report entitled *Trafficking in Persons* from 2016 which states: “United States is committed to working with our international partners to tackle the root causes and consequences of modern slavery and to exchange ideas and innovative practices, but much work remains” (2016, 2). These representation of human trafficking as modern slavery

powerfully invokes a human rights framework that has been used to mobilize support for tough criminalization reforms, such as those pursued by the former Bush administration in 2002 when the US became the self-appointed guardian and evaluator of international anti-trafficking efforts (Soderlund 2005; see Chapter 1).

In the Canadian context, the conflation of human trafficking and slavery is found in formal reports on trafficking and in the mandates of law enforcement agencies. This is captured in an RCMP report which describes human trafficking as “a form of modern day slavery and a violation of human rights” (2010, 3). The modern day slavery reference is also frequently invoked during Parliamentary debates. Examples of this include, MP Joy Smith’s comment that, “Human trafficking is nothing short of modern day slavery” (House of Commons, Oct 25, 2011, Bill C-310) and MP Mobina Jaffer’s insistence that “We can all agree that human trafficking is the modern term for slavery....human trafficking and slavery are one and the same” (House of Commons, May 12, 2015, Bill C-452). These are only two among many such examples in House of Commons debates. The equation of trafficking with slavery then provides powerful support for the humanitarian framework and helps to further the trafficking agenda. As Bunting and Quirk point out, the anti-trafficking and slavery cause has received widespread support from a variety of political spectrums creating the impression that these issues are “non-ideological and removed from ‘normal’ politics” (2017, 19). Far from this, Bunting and Quirk argue that anti-trafficking and slavery are causes that have become used in self-serving, superficial and sensational ways to advance agendas that are location and issue specific (2017, 28). In line with this, in Canada, we see the modern day slavery and trafficking rhetoric being used to support an anti-sex work agenda and justify aggressive criminalization and even deportation for non-citizens who violate these laws.

Human Trafficking and Organized Crime

Despite the continued cloaking of trafficking within human rights frameworks, the focus of international anti-trafficking agendas has been on organized crime. This was achieved by making the *Trafficking Protocol (2000)* a part of *the Convention against Transnational Organized Crime (2000)*, which explicitly links organized crime and human trafficking at the international level. The new emphasis on transnational organized crime as one of the key threats posed by human trafficking unveils the operationalization of the crime-security nexus through the intersecting need to secure borders and criminalize the accused, while simultaneously emphasizing the need to protect victims of trafficking.

According to John Ferguson, the *Trafficking Protocol (2000)*, which is governed by *The Convention against Transnational Organized Crime*,

was presented to the international community as a new tool, an internationally sanctioned instrument for governments to use in their fight against the threat of rapidly expanding transnational organized crime groups that were believed to be profiting from the forced movement of, and abusive exploitation of, enslaved people across national boundaries (2012, 68).

The linking of trafficking with organized crime has shaped the official mandates of a wide range of international organizations, including not only the UN, but also transnational policing agencies such as FRONTEX, the European Border and Coast Guard Agency, the European Union's law enforcement agency, EUROPOL and the International Criminal Police Organization (INTERPOL). In 2016, the UNODC emphasized that the intent of human trafficking campaigns is to raise awareness about transnational organized crime, a priority shared by the INTERPOL, which affirmed that "trafficking in human beings is a multi-billion-dollar form of *international organized crime, constituting modern-day slavery*" [emphasis added] (2016). These concerns over wealth accumulated by transnational organized crime groups through human trafficking

activities enables trafficking to be constructed as an economic and ultimately national security threat.

Like their international counterparts, Canadian policing organizations, police officers and Parliamentarians expressed similar concerns over the involvement of organized crime in human trafficking and the threats posed by organized crime to Canada's economic and therefore national security. For instance, according to the 2016 RCMP *Human Trafficking in Canada a Threat Assessment*:

many human trafficking suspects have been linked to other organized criminal activities, such as conspiracy to commit murder, credit card fraud, mortgage fraud, immigration fraud, and organized prostitution, in Canada or abroad (RCMP 2016(a)).

Ontario Association of Chiefs of Police takes a similar position noting that Ontario is a “home to organized crime groups who profit from the huge global market in trafficking human beings, and to its victims” (n/d, 22).

This formation of human trafficking as a form of organized crime threatening the economic security of Canada is also reinforced by Parliamentary debates around trafficking law. For instance, during a debate on Bill C-310, MP Fin Donnelly (NDP) described traffickers as “often highly sophisticated, multinational criminal organizations that are experts at trading humans, just as they would weapons, drugs or firearms” (House of Commons, Dec 12, 2011, Bill C-310). In particular, there is a frequent emphasis on the profits made by organized crime rings. MP Irwin Cotler (Liberal) comments on the profitability of trafficking, stating: “we know that this grotesque trade in human life generates upwards of \$15 billion a year. We know that trafficking is so profitable that it is the world's fastest growing international crime” (House of Commons, April 27, 2012, Bill C-310). Similarly, MP Mourani explains that for Canadian street gangs, “one girl can bring in around \$280,000 per year. Twenty girls earn \$6.552 million a year

and 40 girls \$13.104 million” (House of Commons, March 24, 2011, Bill C-612). The financial motivation for organized crime groups to prioritize human trafficking activities is also reflected in the comment of a police officer I interviewed:

Some of them [‘pimps’] are associated with gangs where they realize, ‘hey instead of doing this criminal activity I can do this where I can make money’ (participant 4).

Indeed, some officers went to great lengths to demonstrate the connection of organized crime to human trafficking:

My background was heavily organized crime based at the time, so bringing that into these types of investigations...At the time, the vice guys were taking down massage parlours, body houses, and all the girls were being charged. They were charging the girls working in the massage parlours, girls were being charged with prostitution offences and they weren’t having any success arresting convicting pimps, they hadn’t laid a single human trafficking charge. So, I came and started seeing how they did things and applied my experience and realized that intelligence wise we were lacking intelligence to what was really happening (participant 2).

The officer’s suggestion that his experience with organized crime enabled him to make the necessary changes in the organization’s anti-trafficking efforts to successfully identify, arrest and charge suspected human traffickers, shows the extent to which organized crime is seen as an important component of trafficking by police officers. Estimating the extent of organized crime involvement in trafficking activities at 85-90%, another officer explained that:

You have the one-offs. Guys that are entrepreneurs, who think they can make money doing it. The majority of the guys that we deal with are gang members (participant 1).

As I discuss in Chapter 8, anti-trafficking police play an important role in shaping the meaning of human trafficking on-the ground. Consequently, the position of the police, which rests upon and promotes a view of human trafficking and organized crime as closely and dangerously linked, contributes significantly to substantiating this link.

And, yet this connection is not as well established as these representations suggest (see Kapur 2005; Kempadoo 2005; Bruckert and Parent 2004; Roots 2013; Aradau 2008; Miller and

O'Doherty 2015; Feingold 2005; Sanghera 2005). The purported linkages between organized crime and trafficking are also poorly supported by any empirical evidence in Canada as studies show that most accused in trafficking cases have no confirmed connections to criminal organizations (Millar and O'Doherty 2015; Millar et al. 2017; Roots 2013; Ferguson 2012). My own research also challenges the linkage between organized crime and human trafficking in the Canadian context, whereby only one case (*R.v. Domotor* 2012) involved what was defined as an international criminal organization and consisted of 15 accused (out of 123 accused examined in this study), all members of two related families. Only one case, that of Kailey Oliver-Machado (2014), was seen as involving a domestic criminal organization (which I discuss in more detail below). Instead, the vast majority of human trafficking cases in Canada deal with low-level domestic, largely racialized, poor and not terribly well organized or sophisticated offenders (see also Millar and O'Doherty 2015; Millar et al 2017; Ferguson 2012).

And yet, the lack of empirical support does not erase organized crime from the equation. Instead, as Pratt (2014) explains, organized crime has become loosely defined and includes violent street crimes, gun crimes and prostitution by smaller, decentralized criminal groups. Thus, by drawing on the concept of the crime-security nexus, we can see how this transformed understanding of organized crime has enabled the characterization of human trafficking as a form of organized crime, despite the lack of evidence. In particular, this fluid understanding of organized crime has led to the adaptation of the word 'street gang' alongside or in place of the term 'organized crime'. The threats posed by 'street gangs', who may or may not be well organized, are seen as existing on a continuum of organized crime. The fluidity of the two terms is captured by a comment of one Crown attorney who describes those involved in trafficking activities as:

either officially gang-related or there's a group, like, they're [the women are] passed on from one to another sometimes. Even though it may not be like the Crips or the Bloods, in some cases it is, but a group of individuals who are involved in it together and passing girls among each other, so officially and unofficially gangs, I guess (participant 15).

The use of the term 'street gangs' can also be seen at the level of law-enforcement in their overriding efforts to connect organized crime with human trafficking. For instance, according to information provided by Criminal Intelligence Services Canada (CISC) to the Standing Committee of Justice and Human Rights, "trafficking is done through organized crime networks.....street gangs facilitate the recruitment, control, movement and exploitation of Canadian-born females in the domestic sex trade" (2012, 11). The link between small-scale criminality and transnational organized crime syndicates is also drawn by the RCMP:

The involvement of transnational organized crime groups in human trafficking is part of a growing global trend. Human trafficking generates huge profits for criminal organizations, which often have operations extending from the source to the destination countries. These transnational crime networks also utilize *smaller, decentralized criminal* groups that may specialize in recruiting, transporting or harbouring victims [emphasis added] (RCMP 2014).

While the RCMP sees 'street gangs' as the middle-man between victims and transnational organized crime groups, Canada's Department of Safety and Emergency Preparedness, acknowledges that "Not all organized crime is equivalent in terms of seriousness or complexity," and deems human trafficking to be among the "large-scale activities relating to terrorist activity, drug cartels, corporate fraud" (Public Safety Canada, 2017).

The relationship between organized crime and 'street gangs' is equally as unclearly understood by Parliamentarians. For instance, in debates over Bill C-452, MP Mourani argued that 'street gangs' have become central in human trafficking efforts in Canada, yet during the during the same debate she diminished the role of 'street gangs' suggesting that "there's a lot of talk about street gangs, but transnational criminal organizations are very involved in human

trafficking, whether it be international or national” (House of Commons, April 29, 2013, Bill C-452). Furthermore, in an earlier debate on Bill C-452, Mourani argued that “although this odious trade is dominated by organized crime, street gangs have become new players in recent years” (House of Commons, Jan 29, 2013, Bill C-452), contradicting herself yet another time by referencing the historically active role of ‘street gangs’ in the 1980s and 1990s (House of Commons, April 29, 2013, Bill C-452). The fluid and interchangeable use of the terms ‘street gang’ and organized crime demonstrate the continued references to organized crime in loosely defined ways, enabling it to take on new forms.

The use of the term ‘street gangs’, particularly in association with the sex trade is not new and has been traced to the 1980s and 1990s panics around youth in the sex trade (Brock 1998; Smith 2000; Jeffrey and MacDonald 2006). During that time, the police maintained that organized crime was controlling the sex trade, thus also lumping sex trade with drug trafficking and other criminal activities (Brock 1998, 52). As Brock observes, in Nova Scotia, the danger to young sex workers in the 1980s and 1990s was traced to black ‘pimps’ operating out of Dartmouth, a small town in Nova Scotia (1998, 125; Jeffrey and MacDonald 2006; Smith 2000). Evidence to the continuation of this is captured by newspaper titles such as “Notoriously violent N.S. gang recruiting women, girls and pimping them out in Ontario: police” (*National Post*, July 27, 2016), “North Preston’s Fine gang funnels girls to Ontario for prostitution” (Allen and McIvor, Oct 8, 2014), and “North Preston’s Finest: sex trafficking from Halifax to Toronto” (*CBC News*, Jan 8, 2015), all describing the lengthy and violent history of North Preston’s Finest in running prostitution rings across Canada. While the narrative of the criminal organization North Preston’s Finest, as they are now called, as running prostitution rings across Canada

continues, in its contemporary form there is an unprecedented connection to national security and its simultaneous operation alongside discourses of criminalization.

The crafting of cases in courts is also heavily shaped by the effects of the crime-security nexus and in particular, the pre-occupations of Crowns on this question of ‘gang’ membership. For evidence of this, we can look to the case of *R.v. Byron (2014)*, where the complainant travelled from Windsor to Toronto to meet the accused and was found in court to have been forced into the sex trade by the accused. The Crown, in this case, advanced the argument that “Byron [the accused] was within a network akin to a criminal organization.....Mr. Byron was running a sophisticated organization that was exploiting a young person sexually” (Audio of Trial, Dec 13, 2013). Despite the Crown’s attempts, the judge rejected the organized crime connection finding that, “there was no evidence to suggest that he was operating as a part of an organized crime syndicate in human trafficking” (*R.v. Byron*, Audio of Trial, Feb 13, 2014). Nonetheless, the Crown’s attempts at creating a connection to sophistication and organization are noteworthy as they have the ability to invoke the powerful crime-security nexus and justify lengthy jail sentences and other criminal justice and even immigration sanctions (see Chapter 3 and 7). Byron, for instance, received a lengthy sentence of six years’ incarceration, along with a number of conditions which stipulated that he must register himself with the sex offender registry and comply with the *Sex Offender Registration Act* for a period of 20 years, mandatory weapons prohibition for 10 years and a mandatory DNA order (*R.v. Byron*, Audio of Trial, Feb 13, 2014).

A similar organized crime connection is evoked in the case of *R.v. Burton (2013)*. In this case, the accused became the ‘pimp’ of two women who were engaging in occasional sex work. Suggestions that the accused, a black man with a Jamaican background, was a ‘gangster’ were

made numerous times throughout the trial. For instance, the Crown insinuated ‘gang’ connections by drawing out second-hand witness testimony in attempts to illicit a connection between the accused and organized crime:

Crown: Was there any indication from [the complainant] about any affiliations he had?
Witness: Yes, that may have come from [one of the complainants], but they believe that he was a *Crips gang member*
Crown: Why did they believe that?
Witness: They weren’t allowed to wear red because that was the *opposing gang member’s colour* [emphasis added] (*R.v. Burton*, Audio of Trial, Dec 16, 2013).

The stereotyped suggestion of ‘gang’ colours, coupled with a backward baseball cap, was further enhanced by the image of the accused wearing a shiny diamond pinky ring,

Crown: Was there anything about the ring that made it look a certain way?
Complainant: It was sparkly I guess, had diamonds on it.
Crown: You remember what finger he wore it on?
Complainant: His pinky (*R.v. Burton*, Audio of Trial, Jan 29, 2014).

The desired characterization of the accused as a ‘gangster’ was formulated through the visualization of the accused as a stereotypical black ‘pimp’, wearing a backward baseball cap, ‘gang’ colours and a diamond pinky ring.

In another instance in the same case, ‘gang membership’ was presumed from the accused’s loose clothing and backward hat:

Crown: Can you describe what the gentleman looked like that you observed with [the complainant]?
Witness: The person was medium build, dressed in loose clothing, I think he had a backwards hat on, he was dressed like a gangster right out of a movie.
Crown: So, he was wearing a hat backwards?
Witness: Yeah, normal *gangster like garb* [emphasis added] (*R.v. Burton*, Audio of Trial, Dec 17, 2013).

These paltry attempts by the Crown to create an organized crime connection based on the colour of clothing the complainants were prohibited from wearing, and a witnesses’ subjective interpretation that the accused was wearing “normal gangster garb”, demonstrate the extensive

efforts made to associate human trafficking with organized crime. The cultural stereotype not only paints a readily accessible and widely familiar picture of a racialized street level ‘gang banger’ but also propels the courtroom construction of a ‘gang member’ into the realm of a national security threat through the effects of the crime security nexus, thus increasing the dangerousness of the offence.

Furthermore, in a highly-publicized case, Kailey Oliver-Machado, who was 15 years old at the time of her arrest, was labelled a human trafficking ‘ringleader’ for her part in forcing other underage girls into sex work. Oliver-Machado and two of her accomplices were found to have lured their peers to parties and outings with the intent of carrying out their criminal activities. According to the Crown, the accused

was essentially the *ringleader* of the enterprise and that was a *criminal enterprise* that sought to capitalize on the innocence of other young girls through violence and exploitation in a common pursuit of instant financial gain. I also argued that while there were three co-accused, it appeared to be the collective impression of almost all of the victims who testified that Ms. Oliver-Machado was, in fact, the *ringleader* [emphasis added] (*R.v. Oliver-Machado*, Audio of Trial, Sept 30, 2014).

The crimes of Oliver-Machado and her co-accused were presented by the Crown as a form of organized criminality since they appeared to be well-planned and ‘organized’: she had a list of ‘johns’ numbers, access to ‘underground taxis’ and the participation of two other teenagers. Using the language of organized crime, the prosecution carefully and systematically represented the (then) 16 year old Kailey as a leader of a criminal organization. The Crown argued that the accused’s acts “were well planned, well organized, pre-meditated and executed with a degree of precision much to the detriment of her intended victims” (*R.v. Oliver-Machado*, Audio of Trial, Sept 30, 2014).

Although the efforts of legal professionals in creating organized crime connections are rather weak, the link between independent third parties operating in the sex trade and organized

crime is operationalized through the discursive effects of the crime-security nexus. In the court cases examined, this was achieved through several methods, including on-lookers evaluation of the accused's clothing as 'gangster', their association with other 'pimps' despite lack of any cooperation between them, and the well-organized nature of the activities carried out by a 15 year old girl.

Linking Trafficking with Terrorism

In addition to linking human trafficking with organized crime, efforts are also being made to associate trafficking with the War on Terror. In the US, the past fifteen years has seen the proliferation of law and policy measures designed to act upon terrorism and organized crime threats posed by the crime of human trafficking. On December 16, 2002, the (then) US President George W. Bush signed the National Security Directive 22, which specifically linked human trafficking to terrorism and public health (Rizer and Glaser 2011, 70). Soderland argues that combining War on Terror with human trafficking was a strategic move by the former US president George Bush in response to international criticisms of the Iraq occupation (see also Aradau 2008). According to Soderland, Bush drew on historically and institutionally embedded rhetoric to move “effortlessly from the war on terrorism to the evils of global sex trafficking”, symbolically linking the US to “the broader moral agenda embodied by the new ‘War Against Trafficking’” (2005, 77). Further examples of this linkage are seen in the 2004 *Intelligence Reform and Terrorism Prevention Act*, which led to the establishment of the Human Smuggling and Trafficking Center to study human trafficking, smuggling and “criminal support of underground terrorist travel”. And, the *Trafficking Victims Protection Reauthorization Act* of 2005 developed an interagency task force to study the relationship between trafficking in persons and terrorism (Rizer and Glaser 2011, 70).

International efforts to link War on Terror with human trafficking are evident as early as 2004 when the UNODC wrote,

with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly.....and *Calls upon* all States to recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity, as provided therein [emphasis original] (2004, 3).

The speed and strength gained by this link between the War on Terror and trafficking at the international level is revealed through the UN Security Council's meeting held in December of 2015, the expressed purpose of which was to demonstrate the connection between human trafficking and terrorism - a connection which Yuri Fedotov, the Executive Director of UNODC calls "crime-terrorism-conflict nexus" (UNODC 2015(a)). In a meeting held the following year, in December of 2016, the Security Council adopted Decision 2331, which provided international recognition to the "connection between human trafficking, sexual violence, terrorism and other transnational organized criminal activities" (OSCE 2017, 42). Fedotov maintained that "human trafficking during armed conflict...could be part of the strategic objectives and ideologies of certain terrorist groups" and affirmed that "victims of trafficking and sexual violence should be categorized as victims of terrorism" (UNODC 2015(a)). This position was supported by Ban Ki-Moon, the Secretary General of the United Nations, who during the same meeting held that terrorist organizations use "trafficking and sexual violence as a weapon of terror and an important source of revenue" (UNODC 2015(a)). The Special Representative of the Secretary General on Sexual Violence in Conflict, Ainab Hawa Bangura called the use of sexual violence and trafficking new tactic of terrorism and called for a re-thinking of responses to these issues (ibid). These recent actions by the UN Security Council demonstrate the strength of this

association between trafficking and terrorism at the international level. Yet, the political appeal of anti-trafficking and anti-terrorism policies is once again made evident by the fact that Resolution 2331 was introduced and spearheaded by Spain, a non-permanent member of the UN Security Council whose term on the council was up for re-election at the end of 2016.

Organization for Security and Cooperation in Europe (OSCE) provides another example of the way in which links between trafficking and terrorism are created at the level of international policy. On February 20, 2018, the organization held a meeting “designed to draw the attention of anti-trafficking experts across the United Kingdom to the increasingly widespread phenomenon of deceptive and forced recruitment of adults and children across the OSCE region for terrorism-related exploitative practices” (2018). Indeed, the association of trafficking with terrorism and therefore with threats to national security has seen increased prevalence in recent years. Such policy discussions and the international level of linking trafficking with terrorism have also had an effect at the domestic level.

In the Canadian context, the effects of the crime-security nexus and the reconfiguration of organized crime as a threat to national security was most notable with the 2002 enactment of the IRPA. According to Pratt, the IRPA was first drafted in response to perceived Canadian national security threats posed by organized criminal networks (2005, 3). In the aftermath of 9/11, IRPA worked to supplement the focus on organized crime with the threat of terrorism and was promoted as an important part of Canada’s much-needed anti-terrorist, national security law (Pratt 2005, 3). US criticism of Canada’s porous borders and lenient immigration policies following 9/11 led the government to bring in “sweeping new legislation targeting the terrorist threat within” (Pratt 2005, 3; Oxman-Martinez et al. 2005). *The Anti-Terrorism Act* “dramatically expanded the powers of law enforcement and national security agents to target,

monitor, arrest, and detain without warrant Canadian citizens on the basis of suspicions relating to terrorist activity” (Pratt 2005, 3). Thus, the IRPA and the *Anti-Terrorism Act* “were promoted as Canada’s hard-hitting, two-prolonged contributions to the post-September 11th ‘War against Terrorism’” (Pratt 2005, 4).

The discursive combination of the War on Terror with human trafficking was enabled by the specter of organized crime and threats to national security, along with the representation of a mutual enemy in the form of a ‘dangerous foreigner’, both inside and outside the borders, and had a profound effect by giving the War on Terror a human face. As Kempadoo explains,

the breadth and scope of the war [on terror] remain undefined and ambiguous. It would include a situation where, if terrorism was defined as a transnational crime, then by merely committing the crime of seeking illegal movement and illegal entry these people could be defined as terrorists (2005, 34).

According to Kempadoo, “this simple equation” leads to “disjuncture between reality of the illegal migrant and the issue of terrorism” (2005, 34), and equally between terrorism and trafficking. Kapur adds that, “the War on Terror has acquired a supernatural life and existence outside of the international legal order, while simultaneously being pursued in and through the processes and institutions of the international regime” (ibid, 33).

At the same time as the War on Terror maintains its global face, it, like trafficking, simultaneously expands into the domestic terrain. In the context of Canada’s anti-trafficking discussions at levels of law, policy, discourse and the frontlines, this has not taken place directly but instead was erected through the spectre of organized crime and other related dynamics that contribute to the blurring of international and domestic fears about terrorism. Monaghan argues that in Canada discourses of radicalization and violent extremism have led to the transformation of the War on Terror becoming increasingly focused on activities and individuals within Canada (2014, 489). The expansive threat environment means that the War on Terror,

can comprise threats based domestically or abroad. It can include direct violence or the support of violence. It can include participation in extremist activities or providing forms of material support for violence abroad. It can be applied to direct violence against civilians or activities that can be understood by authorities as threatening ‘Canadian interests’. It can include events that have happened, would have happened, or events that may happen (Monaghan 2014, 489).

This expansion of the War on Terror and the entrance of its discourses into the domestic sphere relies in part on the powerful influence of concerns over national security threats. The construction of trafficking as an organized crime threat to national security borrows considerable influence from the War on Terror and constitutes what Young (2003) has referred to as ‘the security state’.

As explained by Young, the security state contains external and internal factors and is constructed in response to the outside threat while simultaneously being positioned as the protector whose task it is to find and eliminate the threat within (2003, 225). As Young notes, “there is always the danger that among us are agents who have an interest in disturbing our peace, violating our persons and property, and allowing outsiders to invade our communities and institutions” (2003, 225). The need to protect the security state is supported by anxieties about society as constantly under a threat (ibid). And so, rather than providing limits on the possible abuses of unchecked sovereign powers, human rights have provided a way for Western states to re-entrench in security states (Denike 2008). In this context, state officials become the protectors enabling a rise in the logic of masculinist protection (Young 2003, 224), so prevalent in anti-trafficking efforts. In the context of cross-border trafficking, with its saviours and victims, the gendered construction of this logic clearly resonates more strongly. The protector must then shield the people from the harms associated with organized crime, the War on Terror and illegal migration threatening Canada’s national security, from both inside and outside the state.

In addition to discursive linkages, in more recent years, we have also begun to see the explicit linking of trafficking with terrorism in Canada. Although the majority of trafficking cases deal with domestic procuring offences (see Appendix B), the links are constructed through suggestions that trafficking and exploitation of Canadian girls and women at the domestic level provides a source of funding for international terrorist organizations, such as ISIS. This is exemplified by the partnership established in 2015-2016 between the RCMP and the Financial Transactions and Reporting Analysis Centre of Canada (FINTRAC), an organization which works to “establish links between individuals and groups in Canada and abroad who engage in money laundering and support terrorism” (FINTRAC 2016, 1). According to FINTRAC, it

joined police and national security partners in a unique public-private partnership with the major banks in order to help combat human trafficking and the laundering of the proceeds derived from this activity. In the three months since Project Protect was launched, the Centre’s disclosures to police regarding money laundering related to human trafficking increased significantly (2016, 13).

In fact, as Luc Beaudry, the Assistant Director of Collaboration, Development and Research, at FINTRAC, explained at the House of Commons Finance Committee review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the effectiveness of Canada’s anti-terrorism approach is most notably demonstrated by Project Protect, an initiative where Canadian financial institutions track money laundering associated with human trafficking and alert FINTRAC of any financial transactions, patterns and activities that raise suspicion around money laundering in relation to trafficking. According to Beaudry, “To put a human face on this initiative, it has led directly to dozens of young Canadian women being rescued from the most deplorable conditions imaginable over the past year” (Government of Canada, 2018). Beaudry’s remarks capture the crime-security nexus almost too well through expansive connections being

drawn between domestic exploitation of Canadian women and girls in the sex trade and international terrorist activities.

Conclusion

While Canada's anti-trafficking efforts emerge out of the UN *Trafficking Protocol (2000)* and the *Convention against Organized Crime* within which it is embedded, there is a prevailing belief by Canadian Parliamentarians and criminal justice and legal actors that international trafficking is not as common as people believe it to be. And while Canada's human trafficking cases and anti-trafficking efforts are primarily directed towards domestic trafficking, this chapter has demonstrated the importance of acknowledging the role played by the powerful international discourses that link human trafficking with organized crime, terrorism and national security threats as well as the humanitarian discourses that justify the targeting of the sex trade as an effort to save Canadian women and girls from traffickers, organized crime syndicates and terrorists. Beyond this, these discursive constructions also uphold and reinforce Canada's position as a human rights protecting country and as Leslie Ann Jeffrey contends, allow for "the externalization of the problem, so that Canada retains its self-identification as a good, helpful nation" – even as its sex-trade, and I would add human trafficking policies and laws, constitute a significant part of the problem (2005, 33). Finally, tracing the emergence of the crime-security nexus in the context of human trafficking, this chapter demonstrated the ways in which harms defined as international in scope have become linked with domestic small-scale criminality through re-conceptualization of concepts of organized crime and national security.

Chapter 5 –The Making of Domestic Trafficking

In addition to the harms that transcend international boundaries, human trafficking is also seen as having harmful consequences for individuals living in Canada. The concern over these harms is fueled by domestic trafficking discourses produced through various current and historical issues, including the sexual violence agenda that emerged in the 1970s, concerns over sexual exploitation of children and the historical precedent set by the 1980s and 1990s concerns over youth involvement in the sex trade. At the center of these domestic trafficking discourses is the victim of trafficking. In contrast with international laws, policies and reports, which most commonly characterize victims as foreign (mainly) women and girls transported across state boundaries, Canada's domestic trafficking discourses rely primarily on two dominant narratives: 1) the daughter of Canadian middle-class families, 'the girl-next-door', and 2) the marginalized victim with a focus on the Indigenous girl or woman. This chapter explores the ways that these two victim narratives are shaped at the level of popular and political discourses and on the frontlines of law enforcement and prosecution in Canada. While in many ways the domestic trafficking victim narratives have much in common with the ways that victims of sexual and gender violence have historically been constructed, the shadow cast by the crime-security nexus has had some significant and novel effects. In particular, the intersection of individual harms adopted from pre-existing domestic issues with harms, defined as transcending transnational boundaries within the human trafficking matrix, have enabled perceptions of increased urgency and expanded threats by traffickers against the Canadian public and especially women and girls. These developments, as I detail in this chapter, have resulted in a number of troubling consequences, particularly for marginalized women and girls in the sex trade.

The Sexual Violence Agenda and 'The Girl Next Door'

Canada's domestic trafficking discourses have developed in the context of two related but separate agendas: the feminist agenda against sexual violence arising in the 1970s and the 1980s and 1990s moralized panics over child sexual exploitation through sex work. These two separate but related concerns have come to be closely connected (along with other concerns) under the umbrella term 'trafficking' as captured by the title of the United Nations' *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000)* which came into effect in 2002. The sexual violence movement brought into the public realm issues previously hidden behind closed doors, including domestic violence, sexual assault and more recently human trafficking for the purpose of sexual exploitation, highlighting the harms associated with these behaviours (Bumiller 2008; Suchland 2015). The entry of the state into the sexual violence agenda, however, "had far-reaching effects for the exercise of symbolic, coercive, and administrative power over both men as perpetrators and women as victims" (Bumiller 2008, 7). First, it resulted in the dissemination of fears over 'sexual terror' and 'women in danger', producing broader fears around the epidemic of sexual abuse and the threat of sex criminals (ibid). And, second, the merging of state and feminist efforts against sexual violence resulted in the placement of the issue onto a crime control agenda and the subsequent expansion of relevant legislation, which did not always serve feminist goals (Bumiller 2008). International and now domestic concerns over human trafficking are a part of an expansion of western feminists' focus on the sexual violence agenda (Bumiller 2008, 14; Suchland 2015; Chuang 2014; Bernstein 2012). As Suchland (2015) has pointed out, the insertion of sexual violence agenda within the anti-trafficking framework has resulted in a simplified analysis of the issue, moving away from economic and structural inequalities to a focus on the individual victim

of trafficking. As such, image of the victim is central to the sexual violence agenda including the issue of trafficking.

Campaigns against trafficking are premised on sensationalist and racialized images of trafficking victims as young, innocent, naïve and duped white women (Doezema 2010; Andrijasevic 2007; Hua 2010, 2012). The status of the ‘victim’ is constructed through their helplessness either due to “physical stature, infantile thought process, and/or cultural culpability” (Hua 2010: 44). As a result, many anti-trafficking efforts infantilize women deemed as lacking the ability to reason (ibid). Julietta Hua explains that the category of the trafficking victim is produced in the context of historical “process of policing and producing the boundaries of citizenship-process that are informed by and help shape racial meanings and gender/sexual norms” (2010, 29). The migrant victim of trafficking, a category which remains the focus of the anti-trafficking framework, is constructed through an emphasis on their racial, ethnical and cultural Otherness and need for rescue by white men. As Hua observes, when attention is turned to domestic trafficking the focus remains on “underage girls and runaways who are usually white and come from conventional middle class backgrounds” (Hua 2010, 51). Indeed, in Canada, the ‘ideal victim’ of trafficking is represented by the image of the daughter of a middle-class family, the ‘girl next door’, ‘your daughter’ who is lured and sexually exploited against her will. Her whiteness is largely taken for granted and her ‘exploitability’ is rendered by her sexual purity translated through her youth and naiveté. As Elya Durisin contends, ‘whiteness’ in this context “refers to specific expression of whiteness within neoliberal globalization” which signifies belonging within capitalist modernity while poorer and working classes that are not constructed as neoliberal bourgeois subjects are seen to contain attributes both antithetical and threatening to the middle class” (2017, 54). The construction of white daughters of Canada’s middle class

families as possible trafficking victims is exemplified in an RCMP report on human trafficking, which warns that, “females with relatively stable backgrounds are increasingly becoming victims. In recent years, there have been more victims that come from reasonably stable homes, are enrolled in educational institutions, and/or have established employment” (2013, 14).

The emphasis on middle-class girls as victims of trafficking is also prevalent in Parliamentary debates on trafficking. Take, for instance MP Joy Smith’s comment, “what we’re finding now is that this can happen to any girl, whether they are from middle-class Canada, whether they are from another country, or whether they’re aboriginal – this can happen to any vulnerable girl” (House of Commons, May 1, 2013, Bill C-452). Similarly, Conservative MPP Laurie Scott uses stories she heard to expand the threat:

I’ve heard stories of girls being targeted at the mall food court, the parking lot at their high school or a house party they attended with friends. This is in stark contrast to how many people perceive human trafficking and it shows that while at-risk individuals do face the greatest threat of being trafficked, human trafficking is a scourge that can affect anyone, no matter their background or socio-economic status (Legislative Assembly of Ontario, May 14, 2015, Private Member’s Motion).

This recognition that the dangers of trafficking even lurk in ‘our communities’ and the shocking insight that privilege and affluence offer no protection against the trafficking of vulnerable female victims is also confirmed by a police officer I interviewed,

this is the girl next door, your niece, your granddaughter, your neighbour... There’s [sic] girls like that, everywhere. I mean everywhere. It’s not just, you know people think that it’s girls that are low-income areas and yeah, there is a big part of that, the vulnerability there, yes. But we’ve had victims where, the parents are doctors, lawyers, police officers, teachers, so this doesn’t discriminate on the people that are the most vulnerable, it discriminates everywhere. It doesn’t matter right, because at the end of the day if the girl is vulnerable, and her parents are doctors, so what? If someone is paying attention to her, she’s going to gravitate towards that person. We’ve had victims that come from very affluent parents and neighbourhoods and get caught up in this (participant 1).

And so, the victim “can be anyone” (participant 4). The perceived threat is summed up succinctly by an officer quoted in the *Toronto Sun*: “Think it couldn’t happen to your daughter?”

(Brown, Dec 12, 2016). This emphasis on the ever-present threat, as Kristin Bumiller notes, exaggerates the possibility of victimization for all women (2008, 17). The power of the ‘girl next door’ narrative even resulted in the introduction of Bill C-17, *The Saving the Girl Next Door Act*³³ (2016) in the Legislative Assembly of Ontario, by MPP Laurie Scott. The Bill aimed to make four changes: 1) make February 22 a human trafficking awareness day in Canada; 2) expand existing laws to allow courts to file a protection order against an accused trafficker; 3) allow victims to sue their traffickers for damages, and; 4) expand the definition of ‘sex offence’ under Christopher’s Law (Legislative Assembly of Ontario, Oct 6, 2016, Bill C-17).

In addition to the class, race and gender implications, the youthful image of ‘the girl next door’ as the victim of trafficking also evokes the powerful discourse of child protectionism. Because, as Walsh observes, we tend to “view children through the lens of innocence”, virginity and sacredness, the law must do everything in its power to protect that innocence (2010, 50). And, while there are wide developmental variations between children of different ages, legally, the term ‘child’ is universalized to include anyone under the age of eighteen. According to the *UN Convention on the Rights of the Child* (1989), a child is “every human being below the age of 18, unless under the law applicable to the child, majority is attained earlier”. This general categorization collapses important distinctions between children and young people such that 18-year-olds can be treated as having the same capacity as 12-year-olds (Brock 1998, 103). Furthermore, the term ‘child’ is a contested category, which shifts and transforms based on context (Bell and Couture 2000, 48). The result, according to Dauda, “is an essentialized concept of childhood that encompasses a variety of experiences from infancy to adolescence, or youth, and is often universalized and globalized; at the same time, it marginalizes and silences the

³³ The Bill has been with the Standing Committee on Justice Policy since Oct 6, 2016.

actual experience of childhood” (2010, 228).

Nowhere is the need to protect childhood expressed more clearly than in relation to sexuality (Foucault as cited in Robinson 2012, 260). As Robinson notes, sexuality is seen as the terrain of adulthood and is seen as a crucial boundary that distinguishes adulthood from childhood (2012, 261). Since the maturity required to make a free choice and provide informed consent are not fully developed in children, they are particularly vulnerable to exploitation (Brock 1998, 103). Consequently, the age of consent laws were implemented to save children from sex (Robinson 2012, 260). Canada’s age of consent law in relation to consensual sex changed in 2007 increasing the age at which one can consent to sex from 14 years (which it had been since 1890) to 16 years (Dauda 2010(a)). The decision to raise the age of consent law is rooted in the assumption that although sexuality in a child is latent, it can materialize through an external cause and once it is activated, it can become rather dangerous. Childhood sexuality is a complicated thing as it is “not only endangered and needing protection against external dangers but also is dangerous and needing control as it is a threat to the broader social order” (Dauda 2010, 1168).

Prematurely activated sexuality is often portrayed as leading to youth engagement in sex work based on the assumption that sexuality awakened too early will lead to downfall. As such, intervention is seen as not only necessary and urgent but also time sensitive, since failure to interfere in time can lead to the ‘loss’ of another child. As the former Minister of Justice and the Attorney General of Canada, Peter MacKay warns: “many people that enter prostitution did so when they were merely children” (House of Commons, June 11, 2014, Bill C-36), suggesting that once you’re in it will be impossible to leave. According to MP Isabelle Morin “we must not forget that almost 50% of victims [of trafficking] are minors” (House of Commons, Nov 26,

2013, Bill C-452)³⁴. An even higher estimate of youth in the sex trade is provided by a police officer I interviewed: “the girls that we deal with, first, most of them are very young” and further that “I can honestly say that 60-70% of the girls we deal with are under the age of eighteen” (participant 1). In contrast, only 36 of 123 (29%) of the individuals charged with human trafficking in Ontario during the time of analysis were also charged with procuring of and/or trafficking of a person under 18, suggesting that the issue may be slightly less prevalent than what is being presented. Furthermore, aside from knowing that the victims were under the age of 18, we still do not know their exact age, which can be important as outlined in the discussion above. Julie Kay found similar emphasis on child trafficking in Manitoba, noting that an emphasis on child trafficking elicited a response and interventions unlike those afforded to adult victims, particularly if these victims were Indigenous (2017, 96).

Concerns in the 2000s about child exploitation and the contemporary focus on trafficking were preceded by a moralized panic around youth involvement in the sex trade that emerged in the 1980s and 1990s. Both sets of concerns were embedded in similar discourses about the sexual abuse and exploitation of children and youth (Bittle 2013, 279; Brock 1998; Jeffrey and McDonald 2006). In the 1980s, the Special Committee on Sexual Offences Against Children and Youths, also known as the Badgley Committee, was tasked by the Canadian government to address the issue of “non-consensual sexual relations involving women and children” (Brock 1998, 101). According to Brock, the work of this committee contributed to the reconceptualization of youth prostitution as a form of child sexual abuse (1998, 117). The committee’s work also resulted in the expansion of legislation governing youth in the sex trade premised on the notion that any sexual activity involving youth is dangerous since “childhood is

³⁴ Mourani’s statement does not coincide with data from Statistics Canada (2016), which reports that 25% of Canada’s victims of trafficking are under the age of 18.

a period of sexual innocence” (Brock 1998, 103). What followed was a moralized panic around youth involvement in the sex trade that led to the targeting of the trade in an effort to ‘save’ young women.

Contemporary focus on the trafficking of youth is framed particularly around the need to protect ‘our’ or the ‘Canadian’ child, carrying an undertone of Canada’s nation-building and efforts to draw boundaries of belonging not unlike the treatment of those accused and convicted of human trafficking as seen in Chapter 4. As Durisin (2017) notes, trafficking discourses provide sites within which notions of Canadian civilization and moral superiority premised on national values of responsibility, caring, and compassion are reinforced. In this instance, the care, compassion and responsibility inherent to Canadians is directed towards the rescue of Canada’s own children. For instance, in lobbying support for Bill C-268, MP Smith stressed that “These are *our Canadian* children” [emphasis added] (House of Commons, Feb 27, 2009, Bill C-268). MP Mourani in her speech used similar language explaining that “*our children* are recruited at a very young age. *Our girls* are exposed to certain images...” [emphasis added] (House of Commons, April 29, 2013, Bill C-452). At another time, Mourani justified the need for more law through her own desire to “live in a country where *our daughters* are not treated like objects to be bought and sold....I urge all my colleagues, men and women alike, to think very seriously about the kind of society we want *our children* to grow up in” [emphasis added] (House of Commons, Nov 26, 2013, Bill C-452).

The shocking revelation that trafficking is happening in Canada so prevalent in domestic trafficking discourses was also seen during the ‘white slavery’ panics as Canadian social reform organization in 1911 noted the following: “when we first sounded the alarm in regard to this traffic many would not believe that such a diabolical evil really existed in Canada, but we have

been able to establish....the fact that it is carried out in Canada” describing it as an “awful traffic in procuring *the daughters of our goodly homes* [emphasis added]” (Valverde 2008, 89). This statement from 1911 mirrors that of MP Françoise Boivin over a century later almost too closely: “we have to realize that this [trafficking] is happening in *our communities*. It may be happening in a street not far from *our homes*. It is scary but it does happen” [emphasis added] (House of Commons, Jan 29, 2013, Bill C-452). These strategies demonstrate the ways in which Canada’s lawmakers, rather than relying on evidence-based research, depend instead on familiar frameworks of sexual violence and child sexual exploitation as well as historical precedents set by the 1980s and 1990s panics over youth in the sex trade and turn of the twentieth century ‘white slavery’ panics, to shape and pass human trafficking laws.

These concerns become even more urgent when violence is added to the equation. Women and girls’ victimization at the hands of ‘pimps’ draws on a particularly disturbing image of violence and brutality exhibited against the innocent and vulnerable. As Kristin Bumiller observes, the sexual violence agenda is reinforced through stories of ‘sadistic violence’ exhibited against women and sensationalized by the media (2008, 8). Human trafficking is a continuation of this agenda; therefore, it comes as no surprise that similar strategies are used to portray the issue of trafficking. For instance, a sex-trafficking series published by the *Toronto Star* in 2015 describes victims as “beaten, branded with their pimp’s name, and bought and sold across Ontario”, having “a grisly red scar wrapping around her right ankle from an attack last year that severed her Achilles tendon and left her foot ‘just hanging there’”, being burned with cigarettes, “beaten black and blue, starved” until they service a certain number of men and having guns put against their heads or shoved inside their mouths (Carville (d), Dec 13, 2015). According to a different article from the same series in the *Toronto Star*, “some of the girls are beaten by pimps,

whipped with coat hangers heated up on a stove, punched, choked, burned and forced to sleep naked at the foot of the bed like dogs” (Carville (c), Dec 12, 2015). Similarly, an article in the *Toronto Sun* quotes a police officer as saying, “One pimp in a recent case decided to increase a girl’s dependency on him by slashing her achilles’ tendon. When he realized there would be repercussions, he took her downstairs and left her by a dumpster, like a pile of garbage” (Brown, Dec 12, 2016).

These narrative constructions are also echoed by Parliamentarians. For instance, as MP Mourani describes it, “these girls are raped. They are gang-raped. They are tortured and their family is threatened...They are so terrorized that they do not even have to be forced to do so” (House of Commons, April 29, 2013, Bill C-452). She goes on to note, “they take these girls by force and stick them in apartments. They do not even know where they are and groups of men rape them. This is what they call a gangbang” (House of Commons, April 29, 2013, Bill C-452). MPP Laurie Scott describes victims of trafficking as “being used and degraded over and over again. You’re being raped every day for service that is provided to men. So, the long-term damage that is happening to these women is very crucial” (Legislative Assembly of Ontario, May 14, 2015, Private Member’s Motion). Scott goes on to cite a report by the Alliance Against Modern Slavery, which reported in 2014 that “96.5% of victims experience some form of violence” (Legislative Assembly of Ontario, May 14, 2015, Private Member’s Motion). Of course, the effects of constructing the trafficking victims as young and innocent, juxtaposed with violence and sexual exploitation are powerful (Doezema 2010; Suchland 2015; Andrijasevic 2007). Yet, it is pertinent to remember that these images are largely race, class, gender and age-dependent as Canada’s anti-trafficking campaigns and media representations often depict victims of trafficking through images of young, white and pretty women, ‘the girl next door’. As such,

these images are made even more urgent by the whiteness of the young, middle-class victim and the blackness of the trafficker, as demonstrated later in this chapter and Chapter 7. More than that, as Durisin notes, “associating human trafficking with cultural values that condone violence against women”, enables the construction of such violence as “external and inferior to beliefs held by Canadian national subjects who regard men and women as equal” (2017, 149), therefore contributing to Canada’s national identity as morally superior.

Marginalized and Indigenous Victim of Trafficking

Alongside the ‘girl next door’ imagery, as revealed in House of Commons debates and Canadian government reports, is the marginalized and particularly Indigenous victim of trafficking. While the marginalized woman or girl does not fit the ‘ideal victim’ of trafficking cast as she is not class privileged or innocent/virginal, the need for her rescue stems from her ignorance and naiveté and often youth. For instance, during a debate in the Ontario Legislature on the creation of a provincial task force to combat human trafficking, NDP MPP Peggy Sattler highlighted the gender, race and class-based factors operating within the marginalized domestic trafficking victim discourses:

women are more likely to be vulnerable to trafficking because they are more likely to be poor. Poverty is one of the greatest risk factors of trafficking, and that’s particularly the case for immigrant and First Nations women. Another risk factor is low education (Legislative Assembly of Ontario, May 14, 2015, Private Member’s Motion).

Similarly, the (then) Minister of Justice and Attorney General of Canada, Peter MacKay proclaimed that victims of trafficking are “often the most marginalized and victimized of our citizens, vulnerable Canadians, often aboriginal, new Canadians” (House of Commons, June 11, 2014, Bill C-36). These factors also emerged in a 2007 report of the Standing Committee on the Status of Women - a key report in shifting attentions from international to domestic trafficking. The report stated that “trafficking victims are often the poorest, most disadvantaged groups in

society” and emphasized Aboriginal women’s vulnerability to becoming victims of trafficking due to poverty (2007, 9: see also International Centre for Criminal Law Reform & Criminal Justice Policy 2010; United States Department of Justice and Government of Canada 2006; Canadian Women’s Foundation and Taskforce on Trafficking of Women and Girls in Canada 2014; RCMP 2013).

While the House of Commons debates and trafficking reports repeatedly mention marginalizing factors, including poverty and Indigeneity as creating vulnerabilities to victimization, the root causes of these issues are entirely ignored. For Indigenous women, these root causes are embedded in Canadian colonial history and include the legacy and inter-generational effects of residential schools, poverty, history of physical and sexual abuse, homelessness, race and gender-based discrimination, lack of education and migration (Native Women’s Association 2014, 12). These factors, especially when combined with rural/remote living conditions “further enhance the vulnerabilities of Aboriginal women and girls when they migrate to cities” (Native Women’s Association 2014, 12). Moreover, while the disproportionate levels of violence committed against Indigenous women has been well documented (Native Women’s Association 2014, 2009; Amnesty International 2014; McGillivray and Comaskey 1996), the lack of action to address this by the Canadian state has recently even come to the attention of international human rights organizations and has been documented by the UN Committee on the Elimination of Discrimination against Women (2015).

In the context of this, as Sarah Hunt (2017) contends, when Indigenous organizations mobilize human trafficking discourses, it is in a desperate attempt to bring attention to the high levels of violence against Indigenous women otherwise ignored. Yet, placing violence against Indigenous women within a trafficking framework silences discussions around how to better

address violence in Indigenous communities and especially against Indigenous women and girls (Hunt 2015; see also Kaye 2017). Instead of finding solutions to the issue at hand, the trafficking framework reproduces colonial relations by constructing Indigenous women and girls as dependent on the colonial government and in need of saving (ibid). As Hunt points out, incorporating violence against Indigenous women into the discourse of trafficking does nothing to improve their rights and safety. Instead, it further entrenches Indigenous people as victims of interpersonal and legal violence and reinforces “power relations that represent Indigenous women as dependent on the colonial government and law to be ‘saved’ and ‘protected’ from physical and sexual violence” (Hunt 2015, 26, 2013, 2010; Kaye 2017). This is because, as scholars have well established, violence against racialized women and in particular Indigenous women is largely normalized (Sheehy 2012; Backhouse 2008; Lindberg et al. 2012; Razack 1998; McGillivray and Comack 1999; Comack and Balfour 2004; Lee 1996; Fontaine 2006).

These views are animated by the fact the while the image of the Indigenous victim of trafficking is well formed in domestic trafficking discourses, it is not grounded in empirical findings. As Millar and O’Doherty’s study of trafficking cases in Canada found, such racialization of the trafficking victim is unfounded (2015, 48). Millar and O’Doherty note that while Indigeneity of the victim is a vulnerability factor that is raised by the Crown in cases where the victim or the accused is Indigenous, they found no references made to the Indigeneity of the victim in any of the cases they examined, therefore leading them to conclude that the frequent suggestion that victims of trafficking are Indigenous women and girls is largely unfounded. My own study supports the findings made by Millar and O’Doherty as none of the trials examined made mention of the victim (or the accused) as Indigenous. Although I cannot say with certainty that Indigenous women and girls are never or even frequently identified as

victims of trafficking since the trial transcripts I examined represented a relatively small sample of trafficking cases and were focused in Ontario, the observations from the cases I did examine and combined with Millar and O’Doherty’s findings of the same, speak volumes about who qualifies as a victim of trafficking. As Hunt notes, Indigenous sex workers oscillate between invisibility as victims of violence and hypervisibility as deviant bodies (2013, 88). Consequently, although Indigenous women are overrepresented in the sex trade, they fail to qualify as victims of violence since “Indigenous women are seen as less than human, as unworthy of response”, and any violence carried out against them is seen as normal and seen as being a part of their everyday existence within Indigenous spaces (Hunt 2013, 88).

Vulnerability Factors

In contrast with government and police reports which uphold the imagery of the Indigenous trafficking victim, interviews with police officers in anti-trafficking units did not emphasize Indigeneity. Instead, for police officers, the focus was on various other marginalizing factors, including youth, mental illness, substance abuse, history of sexual and physical violence and troubled family situations and parental neglect. For instance, according to one police officer victims of trafficking often have experiences with “mental illness, substance abuse, drug or alcohol. Precarious physical or sexual violence” (participant 2). In line with this, another officer explains that,

it’s usually people that, from my experience, there’s some sort of insecurity, insecurities or some sort of brokenness in their life, whether it’s been their own abuse, sexual abuse, physical abuse, sometimes their parents neglected them, grown up in certain environments that may involve drugs, lack of parents (participant 4).

A 2013 RCMP report on trafficking confirmed these factors as vulnerabilities but framed mental illness as possibly increasing risky behaviour:

Some victims have drug and, to a lesser extent, alcohol dependencies. Traffickers take

advantage of addicted individuals by using drugs and alcohol to build trust with their victims, facilitate their sexual services, control them, and ensure their compliance..... A few victims have mental health disorders and other disabilities that may hinder judgment, increase risk-taking behaviour, and limit the ability to understand traffickers' intentions or exploitive situations (2013, 15).

Another officer added that: "99% of the people we deal with are females. That's how I'm going to relate it to - but the girls that we deal with - first most of them are very young. They have mental health problems, drug addictions; they've been in the game so long that they're broken" (participant 1). Amongst other things, unsurprisingly, is the emphasis on involvement in sex work as a vulnerability factor. This also comes through in an RCMP report which suggests that "the two groups most vulnerable to traffickers are individuals who are underage and/or are engaged in dancing and/or prostitution" (2013, 14). The RCMP further notes, "Approximately 50 percent of victims were already dancing and/or prostituting before they met their traffickers. Females within this group are more easily recruited and controlled since they are already engaged in these activities" (2013, 15). Consequently, while the women are seen as being 'at risk', they are simultaneously constructed as creating 'risk', therefore seemingly also being attributed a level of blame. The contrasting ways in which certain behaviour is at times deemed as 'risk-taking' and other times as being 'at risk', enables the police to decide between applying a criminal or victim label.

In addition to these factors, interviews with police officers revealed an emphasis on troubled family backgrounds and low self-esteem as factors that make women and girls vulnerable to being trafficked:

Victims tend to be very, very vulnerable, often addicted to either alcohol or drugs. They tend to have very low self-esteem. Self-esteem issues often because of nasty backgrounds, you know, they may have been CAS [Children's Aid Society] wards. They might have been – *they're looking for any sort of attention that will kind of appeal to them* [emphasis added] (participant 9).

The adaptation of low self-esteem as a vulnerability to being trafficked demonstrates the extent to which the possible danger factor is expanded, given the prevalence of this issue among women and girls from all walks of life. The vulnerability factors underlined by police officers fall under what the UN has defined as ‘pre-existing vulnerabilities’ (see Chapter 3 for discussion).

Focusing on these pre-existing vulnerabilities expands the number of people upon whom the trafficking victim label can be bestowed, particularly in contrast to the situation-dependent vulnerabilities created by the trafficking situation/trafficker, such as language barrier, unfamiliarity with culture or surroundings, removal of travel documents and so on (see Chapter 3 for discussion). While these vulnerability factors are used to expand the net of possible victims, they can also be used to lay blame, criminalize and undermine the credibility of the (mainly) women and girls. Professor Christine Bruckert, who spoke at a House of Commons debate on Bill C-36 described such approaches as,

a part of a larger discourse that draws on stigmatic assumptions to discredit and delegitimize sex workers as youths, as mentally ill, as drug addicted, or as simply unable to make the right choices. Then, paternalistically if somewhat illogically, frames criminal justice intervention as a reasonable pathway to salvation... This legal paternalism hinges on the assumption that no reasonable person would wish to engage in sex work. As such, it reifies a profoundly judgmental image of sex workers working with or for third parties as deluded, incompetent social actors and bestows upon them a disempowering identity of hyper-vulnerable victims (House of Commons, July 8, 2014, Bill C-36).

And so, we see the vulnerability factors, while constructed as a way to identify victims of trafficking, being simultaneously used to target the sex trade by the police and to discredit sex workers’ rejection of the victim label.

Responsibilization of the ‘Girl Next Door’

Despite her privileged position as deserving of protection and although not usually criminalized, even ‘the girl next door’ walks the fine line between responsibility and

victimization. We see this reflected in the way pre-existing³⁵ vulnerabilities are employed in juxtaposing ways to create ‘the girl next door’ as vulnerable to trafficking while also responsabilizing her. As mentioned above, lack of self-esteem is seen as one factor contributing to the vulnerability of ‘the girl next door’. According to one police officer: “some of these girls have low self-esteem, they meet this guy that tells them you’re beautiful and they fall into it. It’s not necessarily something at home. It’s just something that they’re seeking and this person is showing them attention” (participant 4). Lack of self-esteem alone is then seen as sufficient to make someone vulnerable to trafficking. Vulnerability created by lack of self-esteem is also emphasized by MPP Laurie Scott’s statement that the victim is “the girl next door. She’s the pretty and popular girl who hopes no one ever finds out that deep down inside she doesn’t feel pretty at all” (Legislative Assembly of Ontario, May 14, 2015, Private Member’s Motion).

Emphasis on poor self-esteem is accompanied by the prevailing assumption that sexting and other forms of online sexual expression are forms of attention seeking behaviour and reflect poor self-esteem on the part of the girl or woman (Hasinoff 2015, 90). According to Hasinoff, girls who sext are depicted as having self-esteem that is so dismal that they “accidentally or immorally turn to sex for attention” (2015, 90). For instance, as one police officer specifies,

There’s an awkward stage in life, especially for a girl, you know 12,13, 14, 15, where sometimes they don’t like the way they look, or people say things to them and they don’t have that support from family sometimes. So, they get on Facebook and say, I don’t look great today or I don’t feel that great. I’m too fat (participant 1).

³⁵ In Chapter 3, I discussed a study by the United Nations Office of Drugs and Crime (UNODC) which found that, criminal justice practitioners fail to distinguish between pre-existing vulnerability factors such as age, gender, poverty and illness, and created vulnerabilities created by trafficking such as isolation, precarious legal status or dependency (see Chapter 3 for discussion) (2013, 3). This lack of distinction, according to the UNODC, has enabled victims’ pre-existing vulnerability to be considered together with other ‘means’, including deceit, threats and so on, to determine whether exploitation took place (2013, 4). In other words, being poor and young is seen as an equally relevant vulnerability to being isolated and transported across state boundaries by traffickers, having no legal status or language skills. In what follows, I explore how police and legal actors use these pre-existing vulnerabilities in order to fit various situations and people into the victim of trafficking narrative.

In effect, having self-esteem, then, is seen as a form of armour “against malicious young men who are on the prowl for fragile girls to exploit” (Hasinoff 2015, 90).

The perception of low self-esteem as a vulnerability factor for trafficking is compounded with ideas that contemporary western society is hypersexualized, thereby increasing the visibility and commercialization of sex in western cultures (Karaian 2014, 292). This hypersexualization is seen as fueling trafficking and is captured by the comment of one police officer:

I think that everything has been so sexualized in our world, like whether it's through social media or whether it's videos on TV whether it's movies, TV shows, sex just sort of seems to sell, right? *And I think that it becomes a lot easier to become sexy over social media stuff because you have that barrier over reality*, it's distorted we talked about that. So, she was saying high school kids are even recruiting each other; one victim that I have right now, she thought it would be really cool. She was like I was really excited to do it at first because she thought she was going to be independent [emphasis added] (participant 5).

The moralized sexualization panic fueled by the media, rooted in perceptions of the sexual excesses of girls, makes “hyper-visible the figure of the over- and/or inappropriately sexualized girl” (Renold and Ringrose 2011, 403). In the context of human trafficking, this hypersexualization is seen by the RCMP as a causal factor:

constantly exposed to the hyper-sexualization of females through the entertainment industry (e.g. television, movies, celebrities), magazines, and the music business (e.g. music videos, song lyrics, images portrayed by musicians). In addition, society often falsely portrays pimps and the idea of pimping as acceptable and desirable. Female youths may become desensitized to the realities and *potential dangers of dressing and portraying themselves* in a certain way and associating with individuals who overtly advertise large sums of money, lavish assets, or act as pimps [emphasis added] (2013, 25).

The responsabilization and even victim-blaming demonstrated by the RCMP's statement above has been well documented by scholars examining legal responses to sexual assault (Comack and Balfour 2004; Sheehy 2012; Gotell 2002, 2008). In the neo-liberal context, the ‘ideal’ victim of sexual violence is no longer sexually pure and innocent but has proven herself capable of making

responsible choices and can therefore be characterized as rational, reasonable and responsible (Comack and Peter 2005, 298 as cited in Karaian 2014, 288; Gotell 2002, 2008).

Clearly, as Gotell notes, risk technologies are inherently gendered in that being safe becomes a ‘technology of the soul’ whereby the constant awareness of the risk of male violence becomes a part of the feminine identity (2008, 878). She goes on to suggest that while women’s fear of male violence and the expectations of risk avoidance are not new, they are more intense today and are “constituted as performative of respectable femininity” (Gotell 2008, 878). The new ‘ideal victim’, according to Gotell, is a “responsible, security conscious, crime-preventing subject who acts to minimize her own sexual risk. She is a ‘(re)action-hero’, with ‘expert awareness of her own vulnerabilities’” (2008, 879). Despite this responsabilization of middle-class girls, their youth, self-esteem issues and the hypersexuality of the contemporary western culture are seen as combining to increase their vulnerability. These concerns become even more frightening through perceptions that the threat can enter the living rooms of ordinary Canadians through the internet. As journalist Julian Sher cautions, “online child abuse is a crime that can reach out and touch anyone” (2008, 3).

The Totalizing Threat of the Internet

The threat of child sexual exploitation, which has become a part of the human trafficking matrix, is represented as ubiquitous and especially urgent due to advancements in technology and especially the internet and social media. As Hasinoff writes, the advice given to parents since the mid-1990s was to restrict and monitor their teens’ interactions with technology (2015, 71). The changes that took place in the Canadian age of consent laws in 2008, according to Dauda, were rooted in particular concerns over online sexual predators among authorities and conservative groups (2010(b), 234). These concerns were expressed through “hyperbolic language that

denoted a crisis of enormous proportions although there was little evidence to back it up” (Dauda 2010(b), 237). The underlying supposition is that the online predator not only victimizes the child but threatens the entire familial space. Current panics around trafficking are fueled by similar perceived threats of online spaces as facilitating trafficking. This is captured in the comment of one criminal justice actor:

First of all, the internet, which kind of is the unspoken tool for crime, it drives, in my estimation, it drives a whole lot of the business around human trafficking, child pornography, terrorism, you name it. So, if you have interest, for example, in young beautiful girls, you can go on the internet and you can find anything you want and you can buy it on the internet (participant 9).

The argument that predators are using online spaces to recruit girls and women to exploit was also used by the prosecution in *R.v. Byron (2013)*. As the Crown noted, there are “greater risks to victims today than there ever have been and greater motivations to traffickers, due in large part to technology” which enables traffickers to recruit their victims from across distance (*R.v. Byron*, Audio of Trial: Dec 13, 2013). The same Crown went on to warn that, “it’s not what’s near you, it’s anywhere” (ibid).

The infinite online space poses a challenge to what Rose and Valverde call ‘spatialization’ - that is the legal constitution of ‘governable spaces’ where the criminal activity occurs (1998, 549). Indeed, the unruly infinite online space makes trafficking seem even more dangerous, due to the intangible and omnipresent nature of the threat. This perception is captured by the argument of the Crown in *R.v. Byron (2013)*, that in order to lure the victim, the accused had “reached even further through the internet somewhere far, far away” (Audio of Trial: Dec 13, 2013). The Crown went on to note that, “it is easier today using technology to have a greater reach. And because of that, the risk to the victim is larger. A person like [the complainant] can be targeted from a distance” (*R.v. Byron*, Audio of Trial: Dec 13, 2013), demonstrating the perception of infinite access through the internet.

The RCMP (2014(a)), enabled by the crime-security nexus, went further to argue that child sexual exploitation and human trafficking are cyber-crimes that represent a threat to national security due to their transnational virtual presence. And while fears over transnational crimes are held intact, in part, through a focus on the online operation of trafficking activities, there are simultaneous beliefs of immediate harms to individuals as online predators are living amongst us. For instance, MP Smith notes,

During my time as a member of the Manitoba legislature, I became acutely aware of the danger of predators luring children over the Internet. At that time, less than a decade ago, the Canadian public was oblivious to the fact that numbers of innocent children were being lured over the Internet and sexually exploited. It was shocking because many of the predators were local citizens in our neighbourhoods, and communities were unaware of what was happening. It was a new type of crime at that time (House of Commons, Dec 8, 2006, Bill C-22).

The sense of urgency around the danger posed by online predators to children and youth led to the development of the Contribution Program to Combat Child Sexual Exploitation and Human Trafficking (CPCCEHT) by Public Safety Canada in 2009. The CPCCEHT

provides funding towards eligible projects and/or initiatives that support public education and awareness, research, and targeted initiatives, such as the development and/or delivery of training and conferences to advance knowledge in the area of child sexual exploitation, particularly on the Internet and human trafficking (Public Safety Canada 2015(a)).

Furthermore, in 2018, the Liberal Federal government promised to allocate increased funds to the Canadian Center for Child Protection in the amount of \$4.1 million (CND) over five years and \$857,000 annually thereafter (Bronskill, Feb 7, 2018).

The simultaneously operating discourses of the trafficker as operating on an international scale and domestically in our communities reveals Didier Bigo's concept of the 'Mobius Ribbon' which captures the way that "the border between internal and external security can hardly be detected" (2000, 323). Bigo notes the rise of internal security, which covers a wide range of fears and insecurities and expands the geographical scope of policing activities previously contained

within the national territory (2000, 334). And while my research indicates that anti-trafficking policing in Canada is focused on domestic ‘pimping’ activities, the borderless terrain of internet activity nonetheless allows for expansion of the perceived threat posed by traffickers to range from members of our community to transnational organized crime syndicates operating remotely through claims that the ‘unknown’ scope of trafficking means that like an iceberg, the issue is much larger than we can see.

Contrary to the image of victims as kidnapped by traffickers, as conveyed in Hollywood movies such as *Taken* (2008), domestic traffickers are widely represented as ‘luring’ girls online (see Chapter 7 for discussion on recruitment). According to the judge in *R.v. Oliver-Machado* (2014), “Its alleged that the defendant used the internet to *lure* young and unsuspecting women into a web of organized crime” [emphasis added] (Audio of Trial: Oct 29, 2013). The language of ‘luring’ has a historical precedent in ‘white slavery’ panics where the victim was seen as duped into slavery (Doezema 2010). In the contemporary context, the language of ‘luring’ negotiates the ever-present tension between the innocent victim who is ‘lured’ by a predator and the neoliberal responsible and independent manager of risks, who ought to always be on guard of lurking dangers and take steps to protect herself. As one police officer observed:

Some of my girls they’ve been on Facebook, they would have a picture and the guy would say ‘hey you look pretty’ and then start a conversation and then be like ‘hey let’s meet up’; I’ve had a couple of girls that have been lured that way and all these different sites like Snapchat and Instagram; they’re open so anyone can go on and that’s how it starts...we call that grooming (participant 4).

In this common scenario, the victim is deemed to have failed to protect herself by first, posting a picture of herself; second, by engaging in a conversation with a stranger online; and third, by going to meet the predator. Such sentiments harbour underlying concerns over the access that women and girls have to public spaces through online technologies and, in turn, the access that

the public is allowed to women and girls (Hasinoff 2015, 80). At the same time as there is a focus on the risks posed to women and girls and the need to be responsible, online luring is also constructed as an ultimate threat that allows perpetrators to build the trust of their victims without ever seeing them face to face, therefore penetrating the protective cloak of even the most risk-averse woman or girl. As one officer suggested, a focus on technology and particularly social media is “fundamental” to anti-trafficking efforts since “pimps are recruiting on social media, they’re finding victims on social media” (participant 2). It was also an argument accepted by the judge in *R.v. Oliver-Machado (2014)*,

The communications [which led to trafficking] occurred via a computer system. These communications fostered a relationship of trust and served to groom [the victim] with a view to advancing the defendant’s ultimate goal to procure [the victim] into prostitution in order for the defendant to make money (Audio of Trial: Oct 29, 2013).

The constant threat posed by online predators then creates a need to be vigilant and responsible in ones’ internet activities. As the judge further noted,

Sadly, in this era of social media and the use of the internet, the online ads for sexual services continually victimize those who have been forced into prostitution against their will because it’s impossible to remove those images from the internet. This is particularly tragic when the individual is a minor (*R.v. Oliver-Machado*, Audio of Trial: Sept 30, 2014).

Warnings and responsabilization strategies that protect women and girls from becoming victims of online luring and subsequently trafficking are targeted at middle-class (read: white) girls and their families since sexual innocence and its protection are attributes of ‘the girl next door’.

Construction of Families in Trafficking Cases

Parliamentary debates on legislative reforms that focus on child sexual exploitation and abuse, including changes to the age of consent law, reveal that the responsibility for the sexual regulation of adolescent girls is placed, at least partly, on middle-class parents (Dauda 2010, 237). Although, as Dauda observes, Parliamentarians in debates on the age of consent law in

2007 expressed a sense of sympathy for busy parents, they nonetheless emphasized the need for parents to ensure their daughters were protected from outside influences (Dauda 2010(b), 237). This is because, as Chenier observes, “the family is the main instrument of modern technologies of power in the biopolitical state, an attack against a (white) child is an attack against the entire social body” (2010, 41). Yet, this trust is primarily afforded to middle class families, while marginalized families are deemed as morally corrupt and already overly sexualized, and therefore unable to protect the innocence of the child.

Like complainants in trafficking cases, their families are also at times represented as typically middle-class, while at other times as troubled, mainly single parent families, with absent fathers and riddled with alcohol and drug use, physical violence and neglect - a perfect recipe of indicators that makes for low self-esteem and vulnerability to exploitation. In particular, the surge of attention in popular culture and psychology paid to the impact of absent fathers on child development over the last couple of decades is widely echoed by criminal justice actors in the domain of trafficking enforcement. According to one police officer: “with juveniles we’re seeing single parent homes, we’re seeing a lack of positive real male role model. We’re seeing an intersection with child protection services such as CAS [Children’s Aid Society]” (participant 2). The absence of the father figure is often singled out as a primary source of vulnerability to exploitation. As another police officer explains,

I’m going to stick to my guns and I think there’s a father figure component. I hazard to say that sometimes the people who have the best rapport with these young girls are the males and the reason why I hazard to make this point is because they probably had that father figure or that male figure voided in their life, so a lot of times they have that, like even me I have a couple of girls that I have strong relationships that I call every now and then see how they’re doing, when I hear some of the social agencies working with them try to rehab them, they always refer to me as ‘Daddy [name]’ (participant 3).

Interestingly, the absence of and desire for a father figure is also used as a way to get through to suspected victims: “there are some good officers that are older and they can connect like a father figure, the girls will connect to that” (participant 2).

While the absence of the father is seen as a key contributor to a troubled child and childhood, underlying this emphasis on the absent father is a strong current of mother-blaming. For instance, in *R.v. Beckford (2013)*, the Crown asks the complainant’s mother, “while living in [city] with your children, was there any other parent in the home?” She replies, “no, I was a single mom” (Audio of Trial: Jan 26, 2013). The question is posed outside a context that necessitates this information, as it was the first question asked at the start of the day and was followed by an unrelated question. The established fact that the complainant’s father was absent, sets the scene for subsequent cross-examination by the defence attorney that takes brutal aim at the mother’s parenting skills:

Defence: You indicated that on 17 August you received a phone call from [the complainant] and you indicated that you were angry and you acted impulsively, correct?

Witness: I’m confused at the question. It was a phone call. There was no act involved.

Defence: You acted impulsively, you gave the phone to your son.

Witness: It wasn’t impulsive, I didn’t want to talk to her.

Defence: Then you’d agree with me that when you acted impulsively you regretted it, you should have stayed on the phone and listened to your daughter, correct?

Witness: No.

Defence: You would have preferred to listen to your daughter because afterwards you received information from your son that she might be in trouble, correct?

Witness: Yes, but she would not have said anything to me at the time.

Defence: So, I just want to appreciate what you are saying. On August 17, you get that phone call that says, ‘I love you mommy’, and you told the jury that when she said that, you knew something was wrong because she doesn’t normally say that. I’m saying you acted impulsively in that despite having the relationship that you say you are having with your daughter that hearing those words did not trigger that you should stay on the phone and find out what was happening, you impulsively give the phone to your son, correct?

Witness: It was not an impulse I gave it to him because I didn’t want to speak with her (*R.v. Beckford*, Audio of Trial: Jan 26, 2013).

The message underlying this questioning is of a neglectful mother, who simply failed in her duty

to protect by refusing to speak to her daughter when she needed her most. The mother's decision-making was further brought into question by the defence in the following exchange:

Defence: That day you were provided with another number where your daughter called from and this was the number that you did a reverse lookup for and once you had an idea of where your daughter was, you didn't communicate that to the police?

Witness: Absolutely not.

Defence: The decision you made instead was to go with [daughter's boyfriend] and your son's girlfriend down to Niagara Falls yourself?

Witness: Yes.

Defence: And, your son's girlfriend was 17 or 18 at the time, correct? (*R.v. Beckford*, Audio of Trial: Jan 25, 2013).

The inference in the line of questioning is that the mother's decision not to call the police and instead travel to where she believed her daughter was being held captive put at risk, not only her daughter and herself, but also her son's young girlfriend, whom she decided to take with her. In doing so, the defence painted a picture of an impulsive, irresponsible and therefore 'bad mother'. The construction of mothers as 'bad mothers' is often class and race-specific and has been well documented historically (Sangster 2001; Adams 1997; Valverde 2008) and in the contemporary context (Little 1994, 2003; Boyd 2006; Ladd-Taylor and Umansky 1998). As Susan Boyd notes, neo-liberal discourses frame poor women as immoral, promiscuous, dishonest and a drain on state's resources due to their unwillingness to work. Mothers in those circumstances are constructed as posing a danger to their children and the nation's health (2006, 141).

The narrative of a 'bad mother' is also employed by defence counsel in *R.v. Oliver Machado* (2014)³⁶, and yet, in this case, it is complicated³⁶ by the approach of the Crown and the judge. For instance, the defence paints the mother of one complainant as a 'bad mother' for getting upset at her daughter after finding out she had been trafficked:

³⁶ Although in most trafficking cases analyzed, complainants' mothers were not discussed nor did they testify, in *R.v. Oliver-Machado* (2014), complainants' mothers played an important role. This may have been due to the young age of the complainants or perhaps because the complainants fit the category of the 'ideal victim' being young, innocent and naïve.

Defence: And, I expect that we may hear evidence that a couple of days after your daughter's return on the early morning hours on May 31, you are very upset.

Witness: Not with her.

Defence: You weren't yelling at her?

Witness: No, she was upset.

Defence: You weren't telling her that everything was her fault?

Witness: No! (*R.v. Oliver-Machado*, Audio of Trial: April 26, 2013).

The defence attorney's intention was clearly to suggest that the complainant's mother had failed in her duty to explore her daughter's physical and mental state, instead, scolding her for breaking the rules. Interestingly, in this case, the judge not only disagreed with the suggestions of the defence attorney but also found that the mother had, "reacted as a good mother would and even went further to retrieve her daughter's belongings" (*R.v. Oliver-Machado*, Audio of Trial: Jan 29, 2014).

The strategy of the defence was similar with respect to the mother of another complainant in the same case:

Defence: I take it that when [complainant] came home on Sunday night, you made it clear to her that she was in trouble?

Witness: She was in trouble. She was going to school the next day.

Defence: You made it obvious?

Witness: She knew. I was angry.

Defence: Next morning you get up and get ready. You made it clear that she was to get up and get ready?

Witness: Yes (*R.v. Oliver-Machado*, Audio of Trial: Sept 17, 2013).

The defence attorney's line of questioning is suggestive of a mother who was not only unaware of the suffering her daughter underwent, but added to it by taking out her own anger at her daughter. In contrast, while the Crown attorney's examination did elicit information about her status as a single mother, it also brought forth information about her positive employment status, her responsible parenting rules, such as her need to speak to the parent(s) if her daughter was to sleep over somewhere, and her parental instinct that something was not right about this situation (*R.v. Oliver-Machado*, Audio of Trial: Sept 17, 2013). And so, although the defence made

attempts to portray the complainants' mothers as 'bad mothers' and the Crown did highlight their 'single parent' status, this was counteracted by the Crown and judges' emphasis on their good parenting and responsible lives. The forgiveness shown towards the complainants' mothers for their 'single parent' status can be attributed to the fact that the complainants were well-aligned with the category of the 'ideal victim', a position which elicits sympathy and protection. Moreover, any shortcomings of the mothers of these 'ideal victims' paled in comparison to the mother of the accused, whose daughter, as constructed at the trial, was a human trafficker.

The judge summarized the circumstances of Kailey Oliver-Machado as follows:

Ms. Oliver-Machado was the fourth daughter of six girls born to her mother. She was raised in a highly dysfunctional home. Ms. Oliver-Machado's mother was a drug addict, an exotic dancer and a prostitute. [Name] her father abused alcohol and drugs and was convicted of partner assault on the defendant's mother. [Name of father] was complicit in his spouse's prostitution as it brought income into the home. Ms. Oliver-Machado's parents separated when she was 14 years old. She maintains a supportive relationship with her father (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014).

And while the accused's father was a poor role model due to his drug and alcohol abuse, promoting her mother's engagement in sex work activities and assaulting her, the gravity of his behaviour was diminished by the supportive relationship he had with his daughter. This was particularly so when placed alongside her mother's behaviour, which the judge described as follows:

Ms. Oliver-Machado's mother has failed her throughout her life. She was a poor role model. She has failed to participate to any degree with school and other things and has failed to make use of any resources offered at school and at other points in time which may have assisted her daughter. She failed to cooperate during the preparation of the pre-sentence report. She did not follow through with the requests made to her by [the psychiatrist] during the preparation of the section 34 assessment. Finally, she was notably absent during the greater majority of the days spent in this court. The CAS [Children's Aid Society] was involved with the family on numerous occasions, although the children remained in the home (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014).

Thus, it was the mother's behaviour far more than the fathers that became the court's focus, demonstrating the behavioural expectations placed on mothers generally and the attribution of the 'neglectful' and 'bad' mother label on poor mothers. The mother of the accused in the case of Oliver-Machado was unequivocally deemed as a 'bad mother' not only because of her involvement in the sex trade and drug use but also her neglectful behaviour in failing to consult with the court-appointed doctor and lack of attendance at her daughter's trial. The depiction of Kailey's mother is shaped by discourses of unfit motherhood, which, in accordance with the neoliberal framework, focus on the personal decisions of the women rather than structural conditions that limit their choices. Furthermore, while the construction of mothers in trafficking cases varied dependent on who was doing the constructing and the motivation behind it, complainants' fathers received relatively little attention.

Rejection of Victim Label

The shaping of the trafficking victim is further complicated by women and girls' rejection of the victim identify. Indeed, as trafficking scholars have noted, the victim label is often applied even if the alleged victims themselves do not identify with this label (Soderlund 2005; Hua 2010, 2012; Bittle 2013). Yet, instead of accepting the decision of the suspected victim, criminal justice actors make sense of this refusal in a variety of ways that deny the labelled victim's own assessments and choices. For example, one defence attorney referenced a lack of understanding explaining that, "so many women in these circumstances don't necessarily view themselves as victims, or don't understand that they're being compelled to do it" (participant 10). According to the defence attorney's suggestion, the criminal justice and legal actors are better able to decipher the mind-set, feelings and circumstances of the labelled victim than the labelled victims themselves. A Crown attorney similarly believed that suspected victims

reject the label in a desperate attempt to maintain some semblance of control where none exists: “I don’t think a lot of complainants want to see themselves as victims, so they say I chose to do this... they are trying to keep some control in their lives” (participant 7). A deeply misguided desire for love and affection was seen by one police officer as another reason that these women and girls are unable to recognize their victimization:

a lot of these girls think ‘this is my boyfriend’, they don’t realize they are being exploited and being taken advantage of, and based on the information they give us we make the determination ‘yeah, in fact, they are being trafficked and exploited’ (participant 4).

Even when it is recognized that the woman or girl may be engaged in the sex trade as a result of a rather rational and consensual decision to support herself financially, this decision does not easily unsettle the victim label. This is captured by the observations of one police officer who adds that, “we also get victims...they’re making a lot of money. So, it’s hard to convince them to say, ‘hey, you know what, don’t do this’” (participant 4). It is particularly telling that although the interview participant acknowledged suspected victims’ motivation to engage in sex work as financial, their victimization was to be determined not by them, but by the police officers assessing the situation. Agency is further recognized in a comment made by another criminal justice actor that “typically what we’re seeing is....girls who have an unhappy home life and this is their way out” (participant 11). Yet, even with this recognition of women and girls’ agency to remove themselves from a potentially harmful home life, they are labelled as victims. This belief is rooted in perspectives that see all sex work as exploitative and therefore all sex workers as victims. The paternalizing and infantilizing position that all sex workers are victims to be helped enables an effortless transition from consenting sex worker to a victim of trafficking.

The presence of pre-existing vulnerabilities, such as marginalized background and young age, amongst other things, leads criminal justice actors to conclude that the girl or woman’s

reluctance to identify as a victim is a result of her inability to recognize it. Based on this view, girls and women are seen as engaging in the sex trade “because they don’t know any better” (participant 1) or according to an investigative officer in *R.v. Byron*, “if she’s crazy and she wanted to do this [engage in sex work]” (*R.v. Byron*, Audio of Trial: May 16, 2013). Criminal justice actors go to great lengths to convince women and girls that they are indeed victims of trafficking. Interviews with criminal justice actors and an analysis of trafficking trial proceedings reveal that the girls and women who are brought into the criminal justice system as victims must not only be perceived by the authorities to be victims, but are also pressured and scripted by police in order that they will stand up in court and perform as a victim. In many cases, this means that they must first be convinced that they *are* a victim. As summed up by one officer, “if you have a victim who says she is consenting, you’re not going to get a conviction. You need him or her to say they were taken against their will” (participant 9).

Police Pressure and Scripting of Complainant Narratives

As previously noted, Canada’s anti-trafficking efforts are largely measured by the number of trafficking convictions. This adds to the pressures on police to convince the labelled victim that she is indeed a victim and should testify against her trafficker in order to secure a conviction. Other pressures for police include competition for funding, justifying the existence of specialized human trafficking units and competition with other anti-trafficking units for greater numbers of arrests (see Chapter 8 for discussion). Thus, the pressure to get ‘the girl to testify’ in order to get a conviction is substantial. As summed up succinctly by one police officer, “these girls are the crux of our investigation. Without that girl testifying, we’re screwed. If they don’t come and testify, we’re never going to get a conviction” (participant 1). Yet, getting cooperation from those labelled as victims is difficult. According to one criminal justice actor, “We know

this is going on, it seems to be awfully difficult for the police to somehow investigate, get the witnesses, and get a prosecution. Cause [sic] the witnesses are so often damaged goods, damaged people, damaged young women” (participant 9). In line with this, police officers saw the difficulty with obtaining trafficking convictions as stemming from unreliable witnesses:

You have victims, you go into a bank you have bank tellers. In retail stores, you have the ‘ma and pa’ people. People that are stable citizens, you talk to them, they give you a good statement, they come to court when you ask them to come to court. They get up on the stand and they’re able to testify in a coherent way. With this, the victims we have.....they’re so broken that...from the time we get a hold of them, from the time we take that statement to a court process that takes two and a half to three years - is very very hard (participant 1).

Given these circumstances, police go to great lengths in order to ensure the cooperation and eventual testimony of the labelled victim. According to Richard Ericson (1981), police interactions with what he calls ‘victim-complainants’ are not any different from their approach with suspects, namely they “coerce, manipulate and/or negotiate with victim-complainants...to achieve dispositions that meet police organizational criteria in a comparable manner to the way they coerce, manipulate and/or negotiate with suspects and accused persons” (1981, 94). The influence exhibited on the complainants by police was captured by the comment of one defence attorney in reference to a case he dealt with: “I know things were said to those girls [complainants], I know because the girls would say to my client what they had been told [by the police]” (participant 14). Another defence attorney describes the scripting of the suspected victim’s narrative that took place in one of her cases: “Right in the interview with the police, it’s him scripting her towards this: ‘Do you feel exploited? Did he take your money?’ Well, I shared it, yeah sometimes, he would take it, I wouldn’t be there’, I would call that scripting” (participant 12).

As Ericson notes, once there is a possibility of apprehending a suspect, the task of the

detective is then “one of convincing the victim-complainant that the outcome the detective decided upon was the appropriate one” (1981, 109). For instance, according to one police officer, to get a complainant to admit to being victimized,

it takes some probing because they don't realize it....because a lot of times some of these girls think this is my boyfriend, I'm not being trafficked. It's difficult to get a statement, so that's the first stage, to get a statement. And, if you do get a statement then to actually keep them on board, and then with some of them, you have to find treatment. They're going through difficulties, they don't have anyone so we have to keep them on board, and the whole court process, which can take three years, some of them disappear (participant 4).

Moreover, as Ericson found in the case of a complainant who insisted on a different outcome, “the detective had to do considerable work to ensure that they could legitimate the outcome they wanted to the victim-complainant and in their written police-organizational account” (Ericson 1981, 110). The trick, according to Ericson, is to make the complainant want what the detective wanted, “to ensure that the victim-complainant's ‘wish’ was at the detectives’ command” (1981, 110). Interviews with law enforcement officials revealed that police have to do a lot of work daily in order to keep complainants in agreement to testify. The commitment, as one police officer put it, is that “police talk to victims daily – otherwise, we lose them” (participant 1). These women and girls then, are walking the very fine line between the “‘good woman’ who is protected in exchange for loyalty and submission and the ‘bad woman’ who refuses protection by claiming the right to run her own life” (Young 2008, 227).

Police insistence that the girls and women are in fact victims of trafficking despite their rejection of the victim label is also evident in legal cases. For instance, an exchange between the defence attorney and the police officer in charge of the *R.v. Burton (2013)* case reveals that the complainant contacted the police to discuss a sexual assault committed against her by another man, with no intention of making a statement against the accused:

Defence: Let's talk about [the complainant]. You'd agree with me that from the very beginning December 2012, when you first interviewed [the complainant], it was clear that she did not want to be there speaking to the police, correct?

Officer: Correct.

Defence: And, as you've indicated in the examination-in-chief, it was clear that she was more anxious to speak about a sexual assault that had occurred against her over a three day period at the hands of a customer, correct?

Officer: Yes.

Defence: She did not want to speak about Mr. Burton in any way shape or form?

Officer: Correct (Audio of Trial: December 16, 2013).

Later in the same cross-examination, it also became evident that the complainant saw her statement as an exaggeration of the truth,

Defence: One of the things she [the complainant] also said on June 18 was that she exaggerated her statement, right?

Officer: Correct.

Defence: One of the things she also said during these conversations was, she felt that she was being threatened by both police and the Crown, correct?

Officer: Correct, but then *we stopped her*. The Crown told her, no one is threatening her. She apologized and said she didn't mean the word threaten. *She felt like, when she came in to give the statement to myself and my partner that day, that all she wanted to do was talk about the client who sexually assaulted her but yet, somehow, we got on questions about her pimp and now she is here and that's what she said that day* [emphasis added] (*R.v. Burton*, Audio of Trial: Dec 16, 2013).

As such, the complainant's attempts to communicate to the court that she had exaggerated the story in response to police and Crown pressure was silenced by insistence on the part of the Crown and the investigating officer that she was not being threatened. The silencing of the complainant and her retraction of the word 'threatened' must be read in the context of significant power differential between the complainant and the criminal justice actors, whereby the complainant's retraction of her statement may result in criminal consequences for her. Furthermore, these trial transcripts reveal police interest in directing the stories of sex workers to convey control and exploitation, sometimes under threats of criminalization and/or against explicit protests of the complainant that they were in fact *not* controlled or victimized.

Police scripting of complainants' stories and the application of pressure to accept the victim label under threats of criminalization is almost too clearly demonstrated in the case of *R.v. Johnson* (2011). In this case the complainant,

agreed that the interviewer, Constable Watson told her from the outset and persistently, that he believed she was being pimped and victimized. She knew from the officer that he was still deciding what to do about the charges on which she had been arrested. [The complainant] agreed in her testimony that she relayed to the officer that there were no pimps involved and that she was in no danger (*R.v. Johnson*, 2011, para 28).

The complainant further stated in her sworn statement "I've never had a pimp or whatever" and "I've never had to give anybody my money, that's all I know. I've never been pimped" (*R.v. Johnson*, 2011, para 29). The pressure placed on the complainant through threats of criminalization was also noted by the judge in this case: "[the complainant] agreed that at the time of her December 2008 interview she feared getting more time in custody - - jail gave her nightmares (*R.v. Johnson*, 2011, para 32). The defence counsel also pointed out inconsistencies between "her accounts, and her commitment to a version of events during a pressured interview casting her a 'victim', when she was in jeopardy of being criminally charged" (*ibid*, para 110). The judge agreed with the defence attorney finding that "a real prospect of witness contamination exists given the nature of the police interviewing" (*ibid*, para 97). That the Crown decided to pursue trafficking charges despite insistence by the complainant that she had never had a 'pimp' and did not feel threatened also demonstrates that Crowns are motivated to pursue charges of human trafficking (see Chapter 6 for discussion).

Another example of scripting is provided in the case of *R.v. (Courtney) Salmon* (2013), where the police similarly directed the complainant towards a version of events that would substantiate a trafficking charge. This is seen in the police interview with the complainant:

Officer: Well you have to understand he's putting on an act, right? He doesn't care about you....um he wants you to go and make money. He likes you when you make money.

Complainant: Yeah, exactly.

Officer: If you're in his face or even in his area you're pissing him off cause [sic] you should be making money.

Complainant: Yeah.

Officer: You shouldn't be here you should be over there.

Complainant: Yeah.

Officer: But he has to pretend he likes you and call you 'babe, I love you', and all that stuff to keep you on the side, right?

Complainant: Yeah.

Officer: So, I don't know if it's bipolar as much as it's all about the money, right?

Complainant: True.

Officer: Sorry, what were you saying? Go on.

Complainant: How else would I describe him. He's a very good actor (*R.v. (Courtney) Salmon 2013*, police interview with the complainant, Audio Recording, Court of Appeal).

The extent to which the complainant was directed toward a particular version of events was pointed out by the defence council during a cross-examination of the complainant:

Defence: So, through your time with speaking to the police officers, and understanding that this was sort of a team of officers who investigate this kind of offence, you learned all about sort of the way this kind of human trafficking, prostitution stuff works, right?

Complainant: Correct.

Defence: And, obviously, the officers, when they were speaking to you when you went to the station and interviewed you, were very much of the perspective that this is what had happened to you?

Complainant: Correct.

Defence: And, this is what they were telling you, that they believed, that you had been manipulated and influenced?

Complainant: Correct.

Defence: And, this is where – when you said yesterday that you thought – you believed that an injustice had happened to you, do you recall saying that yesterday at the beginning of your evidence?

Complainant: Correct.

Defence: That from what the police officer said to you and explaining this idea about human trafficking and being influenced and manipulated, this is where you're talking about you feel like an injustice was done to you, right?

Complainant: Correct (*R.v. (Courtney) Salmon 2013*, Trial transcript, p. 386-287).

As the above cross-examination then suggests, the complainant had come to believe that she had been manipulated and trafficked through suggestions of the same by investigating officers. This form of scripting was criticized by the defence counsel in the case, who argued that:

it's certainly my position that a lot of things were suggested to this witness in her video

statement that she ended up going along with and agreeing with...I think it's incumbent and really essential that the witness give her evidence here herself as opposed to relying on a videotape that in my submission has a lot of issues with respect to how the officer handled the questioning of the witness and I think it's important that we hear her evidence from her herself (*R.v. (Courtney) Salmon*, Trial transcript, p. 235).

Rather than letting the complainant tell her own story, the anti-trafficking police, as the evidence in this case suggests, sculpt their stories in ways that meet the legal requirements for a human trafficking conviction.

The case of *R.v. Dagg (2015)* provides yet another example of the way complainants are pressured by police to take on the victim label and tell a particular version of events. In this case, the complainant told a story of being victimized by the accused only after she was caught stealing and threatened with jail time. According to the defence,

[The complainant] had a great motive to exaggerate—and even lie about—the events that may or may not have happened as she testified that she only opened up to the officer when she was caught red-handed stealing at the LCBO [Liquor Control Board of Ontario]. According to [the complainant's] testimony, she was 'jonesing'³⁷ and didn't want to go to jail—because she 'didn't want to go into DT (tremors)', and it is only when the officer told her 'Give me one reason why I shouldn't arrest you' that she decided to open up (Trial Exhibit).

Although the police were successful in getting the complainant to accept the victim label, in this case, the label was removed by the judge based on the complainant's age and drug addiction, the latter of which is also viewed as a vulnerability factor in trafficking cases. As the judge notes,

this is not a situation where....they are not taking a young person and getting them hooked on drugs in order to have at them. That is not this case at all. I mean she herself is a professed addict to the point where she can never get enough.....She's a 35-year-old woman at this point. This is not a teenager (*R.v. Dagg*, Audio of Trial: April 13, 2015).

Thus, the removal of the youth component and her added drug addiction leaves her outside the possibility of protection as she comes to embody the 'risky woman' who, as Gotell puts it, "avoids personal responsibility for sexual safety and who 'chooses' to engage in high-risk

³⁷ 'Jonesing' is a term used to describe drug withdrawal symptoms.

lifestyle” (2008, 867). Interestingly then, while the police use pre-existing vulnerabilities to widen the scope of who can be defined as a victim of trafficking, in some cases, the ‘ideal victim’ image continues to influence decisions around who is a ‘proper’ victim of trafficking.

It is also interesting to note that in the majority of the cases analyzed, the complainants were in a position of vulnerability with the police, having either outstanding arrest warrants, previous and extensive criminal records or admission of activities that could result in arrest and incarceration. This was also the case in *R.v. Byron (2013)*, as emphasized in the cross-examination of the investigating officer:

Defence: You also know at that point in time that there’s a warrant out for her [complainant’s] arrest.

Officer: I do have in my notes that when we went to the police station I did advise her that at that point that she was not under arrest but that she would have to deal with her outstanding warrant, which was out of Windsor.

Defence: How did you find out that she had an outstanding warrant?

Officer: I don’t have any notes or recollection as to how I found out.

Defence: Did you find out that there was a warrant prior to entering the room [the hotel room where the complainant was found]?

Officer: No, I found out through my interaction with [the complainant].

Defence: Once you find out that there is a warrant for her arrest, why don’t you arrest her?

Officer: Because if a 17 year old female is being prostituted, in my profession, I would feel that that would supersede dealing with a warrant. I didn’t feel that she was a flight risk at that point and being 17 years old and being forced to have sex with several men, far supersedes a warrant (*R.v. Byron*, Audio of Trial: May 6, 2013).

We can surmise that the complainants’ narrative of control and exploitation may have resulted from threats of arrest and incarceration held over her head by the police. This is despite her status as a minor and the subsequent protection that should be afforded her based on the police officer’s own emphasis on the need to protect youth.

As one defence attorney explains it, complainants may agree to go along with police proposed version of events due to fear of being charged,

The cops were pretending to be clients, then going in [to the hotel room] and then

suddenly like saying, I'm a cop, are you ok, and what not. And of course, here's a complainant who's 17 or 18 years old, who has this cop there, potentially thinks she's about to get busted, will pretty much say anything she needs to say to save her own skin (participant 13).

Yet, as the same defence attorney notes, this pressure to testify as a victim under the threat of criminalization poses a challenge for many sex workers who do not want to get a reputation of being a "rat" (participant 13).

Pressure to accept the trafficking victim label can also come from other sources, including parents or the involvement of the Children's Aid Society (CAS) for those who have children. This is summed up by a comment of one defence attorney:

Well often, you know, you see things like the mothers or their fathers being there, you know, and you get a feeling that these people [complainants] are having to testify to make their parents happy, or they're going to get kicked out, or they might lose their child. For example, I've seen many cases where you think that they're testifying and they have to say these things otherwise the CAS is going to get involved or the CAS is going to do something. So, for sure, it's definitely, you never know what the entire truth is (participant 11).

In the face of the many pressures on police to arrest and prosecute traffickers (see discussion in Chapters 3 and 8) the 'ideal victim' as represented by youth, innocence and naiveté is replaced at the front-lines of anti-trafficking efforts by anyone who is willing to admit to or can be convinced to claim victimization. While the targeting and criminalization of sex work through anti-trafficking efforts has been well documented by now (Bruckert and Law 2013; Bernstein 2012, 2012(a), 2010; Hua 2011; Anderson and Andrijasevic 2008; DeShalit and Roots 2016; Roots 2013; Millar and O'Doherty 2015), far less attention has been paid to the girls and women who are charged with trafficking offences as a part of this protectionist undertaking.

When police scripting and application of the 'victim' label with the secured testimony of the complainant fails, we see front-line police efforts directed towards, what the police have labelled as the 'bottom bitches'. As the police explain it, these are women and girls involved in

the sex trade who have earned the trust of the ‘pimp’/trafficker and are relieved of their duties of servicing clients. Instead, they take on more leading roles, recruiting girls and women for the ‘pimp’/trafficker and directing operations in their absence. As one police officer explains:

It’s so often where you see the girl in the industry, they call them ‘bottom bitches’. It’s not a very favourable term, but she’s kind of like the extension. She’ll find the girls for him, maybe self-serving cause [sic] she doesn’t want to work anymore, so maybe if I find him, three girls, I don’t have to work and then I can be a manager and she kind of goes up the pyramid (Participant 3)

The ‘bottom bitch’, as they are called, is a narrative that rarely makes it to the public forum. The criminalization of the sex worker and/or the ‘bottom bitch’ was previously carried out under the procuring legislation (s. 212(1) a,b,d,e,h), (van der Meulen 2010, 230). Now it is also done through trafficking laws, a shift, which has far greater consequences due to the operationalization of the crime-security nexus.

The police treatment of these girls and women as ‘victims’ if they are willing to testify and criminals if they refuse is captured by the following officer’s comment: “So, this guy [the ‘pimp’] has now created this girl, who we know has committed a crime, but we also know she is probably acting under duress to a certain extent, so how do we manage that?” (participant 3).

The very fine line between victim and criminal in the context of trafficking, which Bittle calls a “disturbing hypocrisy” (2013, 290), is often used by police to pressure women and girls in these difficult positions to testify against their ‘pimp’/boyfriend/manager under the threat of criminal charges:

We have some cases where we’ve acknowledged the fact that they’re acting in this capacity and they’re under duress. So, what we try to do, is try to get them to say listen, you’ve been charged with this offence we still have to charge them with a criminal offence, because down the road, and that’s the tricky balance right, so we charge them for their part in the offence but in many cases a lot of them accept it, we give them an opportunity to provide a statement about how they were victimized by the person who’s also been charged. What we do is when we weigh all of those factors depending on what they have to say, we will withdraw the charges against her (participant 3).

This application of trafficking laws in this way demonstrates the risk/risky tension whereby, on the one hand, these laws aim to protect women from ‘pimps’, while the ‘fallen women’ are seen as putting other women at risk through their actions and are therefore subject to criminalization (Doe 2013, 189). Consequently, underneath this veil of protectionism is the threat of criminalization. Drawing on the argument of Bittle, I suggest that police treatment of youth as both victims and criminals operates on a historical continuum, where “official responses to youth prostitution oscillated between treating young prostitutes as fallen women who require punishment and as victims in need of sympathy and protection”, often blurring the two (2013, 281).

While these dynamics of protection and coercion have a long history in Canada, the intersection of procuring offences with transnational harms associated through the human trafficking matrix have resulted in far greater repercussions for those criminalized and labelled a ‘human traffickers’. For example, Vanessa Cachia was charged with human trafficking in the midst of a police raid by York Regional Police. Human trafficking charges were withdrawn by the Crown immediately after the preliminary hearing and later so were the rest of the charges as the judge noted that “there was simply no evidence to go to trial” (as cited in Mandel, Sept 17, 2013). Despite this, as a *Toronto Sun* article explains, being charged with such high-profile crimes in the public eye has had a profoundly negative impact on her life:

Her mug shot is all over the internet. She has been the subject of two arrests and two press releases put out by the Drugs and Vice unit of York Regional Police [YRP]. CTV’s W5 was invited to film her takedown as a part of YRP’s efforts to showcase their heroic efforts against the sex trade....she spent 10 days in jail, five of them in solitary confinement when the police and the Crown opposed her bail (Mandel, Sept 17, 2013).

According to Cachia’s lawyer, “this was supposed to be their [York Regional Police] first big bust and it was all smoke and mirrors...they really did ruin this girl’s name” (as cited in Mandel

Sept 17, 2013). She went on to note that the police would not drop her charges since “she wouldn’t ‘roll’ on” her boyfriend (ibid). This case demonstrates almost too well the ease with which the serious charges of human trafficking are laid and the damaging repercussion it can have on the lives of those caught up in it, even if not convicted. The protectionist discourses embedded in the UN *Trafficking Protocol (2000)* and *Canada’s National Action Plan to Combat Human Trafficking (2012)*, which form the foundation of these actions by authorities are seemingly then having a very different effect on the ground, as the burden to save victims and prosecute offenders leads police to pressure women and girls into claiming victimization and to charge those who are unwilling to cooperate. This finding is not exclusive to Canada. As Farrell et al. found in the context of the US, “securing or, even more problematically, coercing a victim’s cooperation through arrest or threat of an arrest is a primary driver of state-level human trafficking prosecution” (2016, 63).

Conclusion

As this chapter demonstrates, alongside trafficking discourses which focus on international harms, there runs a parallel Canadian trafficking discourse, held up by two dominant and deeply racialized constructions of trafficking victims: ‘the (white) girl next door’ and the marginalized and particularly Indigenous victim of trafficking. Canada’s victim of trafficking as ‘the girl next door’ stands at the center of anti-trafficking efforts, not as an exception but rather as a part of a larger progression of what Simon calls, the “idealized subject of law” (2007, 77), preceded by but also incorporating many of her forerunners, including the ‘white slave’, youth sex worker, the complainant in a sexual assault case, the sexually abused child and assaulted woman. While Canada’s ‘ideal’ victim of trafficking, the white daughter of a middle-class family, is a gender, age, class and age specific category produced through risk

discourses that construct every young woman and girl as a potential victim of trafficking, her image simultaneously encourages 'at risk' women and girls to be responsible, vigilant and always on guard, to prevent victimization by traffickers. At the same time, the marginalized trafficking victim is constructed through, what the UN calls 'pre-existing vulnerabilities', which allow the victim of trafficking label to be applied more broadly, including upon those working in the sex trade. Neither the responsabilization of middle-class women and girls through risk discourses aimed at the preservation of their sexual purity and safety, or the targeting of the sex trade under the guise of protectionism are new. And, yet, with the emergence of the human trafficking matrix, these concerns have intersected with broader fears around national security, War on Terror and organized crime, thus inflating the danger posed by traffickers and 'pimps' to potential trafficking victims through the crime-security nexus. The combining of these discourses has resulted in a powerful justification for protectionism, which as this chapter shows, can result in women and girls being pressured and scripted to tell a story of victimization, at times even under the threat of criminalization. By scripting women and girls' stories and pressuring them to adopt a narrative of victimization, the police are continually involved not only in shaping the understanding of who is a victim of trafficking, but also in the ongoing production of the very definition of domestic trafficking by establishing precedent on what behaviours and activities constitute the offence.

Chapter 6 –Legal Strategies and the Creation of the Victim of Trafficking in the Courtroom

As demonstrated in the previous chapter, while Canada’s domestic trafficking discourses are upheld by the existence two victim images, ‘the girl next door’ and the marginalized and often Indigenous girl or woman, anti-trafficking policing efforts are focused on marginalized non-Indigenous women and girls often working in the sex trade. In this chapter, I show that the focus on the marginalized women and girls continues at the trial stage where Crown attorneys use the same vulnerability factors as police in order to construct complainants as maximally vulnerable and thus exploitable. And, while the entrenchment of the trafficking matrix has shaped the emergence of this kind of ‘counter-victim’ – a victim who fails to fit the ‘ideal victim’ category and, in some respects, stands in opposition to it - it has also resulted in the simultaneous development of defence strategies that challenge this categorization. This chapter provides evidence for the ways that defence attorneys’ use tactics, strategies and lines of arguments which parallel those used in sexual violence cases, demonstrating ways in which trafficking trials, on their face, reproduce earlier tropes around sexual violence and victim blaming. The strategies used by the Crown and defence attorneys borrow from the wide range of new and existing knowledges, logics and tools to construct trafficking complainants, on the one hand as vulnerable due to their marginalized status, while on the other hand discrediting them for the very same reasons. This chapter examines how Crown and defence attorneys utilize the criminal trial process, behavioural expectations, courtroom rituals, and trial strategies to construct opposing narratives of the complainant in trafficking trials. The use of these pre-existing trial strategies, frameworks, processes and courtroom rituals which become entrenched within the trafficking matrix and enable legal actors to present human trafficking as a familiar form of criminality.

Vulnerability Factors and Legal Strategies

As scholars have observed, in order for a human trafficking case to be prosecuted, the complainant must fit into the cast of the ‘ideal trafficking victim’, which includes innocence, vulnerability and passiveness (Hua 2011; Doezema 1991, 2001, 2010). The characteristics of the ‘ideal victim’ in trafficking cases parallel those of other forms of gendered violence, including domestic and sexual assault. As Bakht notes in the context of sexual assault, “This ideal victim has been described not only as morally and sexually virtuous (read white), but also cautious, unprovocative and consistent” (2012, 591; see also Bumiller 2008; Craig 2015; Gotell 2008). In the Canadian context, we see the image of the ‘girl next door’ being upheld as the ‘ideal victim’ of domestic trafficking. This, however, does not hold true in domestic human trafficking prosecutions in Ontario. As my research suggests, complainants in trafficking trials more often align with the second prominent image of the victim outlined in Chapter 5 - the Canadian woman or girl from a marginalized background, who does not fit this cast of the ‘ideal victim’ of trafficking. While Crowns in sexual assault cases typically avoid bringing cases to trial if the complainant does not fit into this ‘ideal victim’ cast, in trafficking trials Crowns are quite single-mindedly preoccupied with those very features that make the complainant a *less* than ideal victim. Using complainants’ drug abuse, mental health issues, family problems, economic needs and other typically negative factors, Crowns argue that the complainant is in a position of heightened vulnerability, thus, in a sense - *making* the victim – through the use of these vulnerability factors. The more troubled she is, the stronger the case.

Consider the following roster of the complainant’s suffering and tribulations provided in the Crown’s closing submission in *R.v. Byron (2014)*, where he lists, not only her many sources of vulnerability, but presents an actual picture of the complainant from her Facebook page which

he says displays her vulnerability:

I'll start with a photo of [the complainant] from Facebook. Looking at her *it's hard to picture a more vulnerable* person in our society. You heard a lot of evidence about [the complainant]. You know that she is a ward of the Crown. Her mother passed away. She suffers from fetal alcohol spectrum disorder. She's been diagnosed with a bipolar disorder. There's a very serious learning disability and she needs help to do just about anything. One of the last exhibits filed demonstrates how she had to be helped through various public systems, such as school, housing. She can't really get by on her own [emphasis added] (*R.v. Byron*, Audio of Trial: May 17, 2013).

The numerous vulnerabilities outlined provide support for the Crown's argument that the complainant was indeed exploited as the image illustrated by the Crown makes it difficult to believe any other way.

In *R.v. (Gregory) Salmon (2014)*, the Crown paints a similar picture of the complainant's vulnerabilities:

First, if you look at her background, her parents split up when she was quite young, she lived in foster care for years and left home returning briefly at 13-14 and then back out on her own in her early teens. She had her first child at the age of 18. In her evidence, she presents as a very immature person. She presents as a naïve person (*R.v. Salmon*, Audio of Trial: May 25, 2014).

The Crown's argument that the accused exploited the complainant is therefore premised on and made believable by these pre-existing vulnerabilities, which include immaturity and naiveté attributed to divorced parents, teenage pregnancy and having lived in foster care. While sexual assault cases in which the complainant has certain, what are perceived as negative vulnerabilities, are often dismissed, in trafficking trials the very same characteristics are used by the Crown to build their case. Thus, in contrast to sexual violence cases, in which the Crown and the defence each place emphasis on *different* characteristics of the complainant and highlight *diverging* aspects of the story, in trafficking trials the Crown and defence attorneys use the *same* pre-existing vulnerabilities to construct opposing versions of the event. This use of pre-existing vulnerabilities enables the police and Crowns to cast their nets more widely to target and

successfully prosecute individuals charged with trafficking marginalized women and girls.

The Decision Making Power of Crown Attorneys

Crown attorneys exercise an enormous amount of discretionary power on whether to prosecute the charges, negotiate a plea-bargain or stay or withdraw the charges. Crowns may exercise this discretion by deciding not to prosecute certain cases where they feel the evidence is lacking or to proceed with lesser charges (Comack and Balfour 2004; Farrell et al. 2016; Davis 2017). And while in theory the Crown's purpose is not to convict but to lay out all relevant evidence to a crime, in practice the likelihood of conviction is an important consideration for Crowns (Comack and Balfour 2004, 24). As Farrell et al. (2016) found in the context of the US, prosecutors³⁸ are less likely to proceed with human trafficking charges since it's an untested legal territory. Prosecutors who decided to proceed with charges found it challenging to explain and prove facts of the relatively new offence to the court (Farrell et al. 2016, 60). As they further found, prosecutors were "operating on their own with little to no source of legal guidance" on the issue; thus when prosecutors decided to move forward with prosecuting trafficking cases, they "created" their own rules and standards on jury instructions on the issue (ibid, 61).

Crown attorneys in Ontario seem to be conceding because of similar reasons - limited training. As one Crown attorney contends, "no, we don't receive any training [on human trafficking]" (participant 8). As she notes, Crowns must seek training on human trafficking, as it is considered a specialty. Another Crown, who was designated a human trafficking lead contended, "I haven't received any specific training. The topic has been discussed at various conferences that I've attended so I guess that's training" (participant 15). Indeed, one officer attributed low conviction rates on trafficking offences on Crown attorneys' lack of knowledge on

³⁸ In the US, state prosecutors are called prosecutors, while in Canada they are called Crown attorneys.

human trafficking: “human trafficking is a very complex investigation and Crown attorneys and judges don’t understand it. They don’t understand the complexity. It’s all about education, that’s what it is” (participant 1). In expressing his frustration with plea deals, the same officer explains,

we see this more now because Crowns aren’t educated as much and they don’t want to deal with these complex cases. So, we charge a person with trafficking, sexual assault, aggravated assault, use of a firearm, whatever it is, and they will take pleas to lower offences ...now I think we’re finally starting to get through to Crowns that you can’t do that. You’re hurting us because we need these guys – these guys are going to go back to it (participant 1).

As the police perceive it, Crown’s lack of familiarity with the components of the offence is combined with their high workload: “at the end of the day, it comes down to, they [Crown attorneys] just don’t want to do the work, cause [sic] they’re so bogged down with other cases. And I don’t blame them right because they’re as overworked as we are” (participant 1).

Nonetheless, as with domestic violence zero-tolerance policies enacted in the 1980s, which entailed increased respect for domestic violence prosecutions and increased pressure to convict (Comack and Balfour 2004), a similar trend is developing in relation to domestic human trafficking prosecutions in Ontario. In recent years’, there has been a rise in specialized human trafficking Crowns, making it more likely that cases will go to trial and that the Crowns will feel especially motivated to put their best foot forward to achieve convictions. As one Crown attorney explains, “human trafficking has been an important issue and I think there was an initiative by the Ontario government to start to really focus on these kinds of cases and fund” strategies (participant 15). Indeed, the province of Ontario has recently appointed six Crown attorneys to specialize in human trafficking cases. According to the Ministry of Community Safety and Social Services (2017), Ontario’s Strategy to End Human Trafficking will include,

Creating a Provincial Human Trafficking Prosecution Team that will ensure the provincial coordination of an enhanced prosecutorial model across Ontario and work collaboratively with police and the Victim Witness Assistance Program to improve and

enhance human trafficking investigations and prosecutions. The ministry has recruited a Provincial Crown Coordinator to lead the team and specialized Crowns with expertise in prosecuting human trafficking cases. Once fully implemented, there will be six new Crowns on the prosecution team.

As one Crown attorney put it, human trafficking prosecutions are becoming a “big ticket item....the message from the boss is, take it very seriously” (participant 8), thus demonstrating pressure on Crowns to move forward with trafficking cases. The pressure to prosecute trafficking cases seems to also come from the police. As one officer stated,

For the most part, we have a really good relationship with some of the Crown attorneys, we are trying to establish, what I was talking about earlier, assigned courts, and one thing we wanted was assigned Crown attorneys. So, they were in tune with some of the nuances with a human trafficking case, so they wouldn't get frustrated or reluctant or even discard a case because the victim didn't seem like they had strong credibility or whatever the case may be. We wanted them to understand the psychological impact factors to which their statement was received (participant 3).

The combination of these pressures, funding increases and allocation of certain Crowns as specializing in human trafficking prosecutions will undoubtedly result in more aggressive prosecution strategies and increased numbers of convictions and guilty pleas in trafficking cases.

Role of Defence Counsel in Trafficking Trials

Like with Crown attorneys, the task of the defence counsel is not to prove the innocence of the accused but “to ensure that individuals are not convicted improperly and that the principles of fundamental justice enshrined in the *Charter of Rights and Freedoms* are not overlooked” (Comack and Balfour 2004, 24). And like Crowns, this is not quite the approach of defence attorneys in practice as they focus on raising ‘reasonable doubt’ by “exploiting different properties of prosecution stories” (Bennett and Feldman 1981, 98). Paul Drew explains that defence attorneys in Anglo-American (and Canadian) justice system use particularly hostile cross-examination techniques to challenge the credibility of Crown's evidence and witnesses “with questions which are designed to discredit the other side's version of events, and instead to

support his or her own side's case" (1992, 470). The usual and controversial defence strategy of discrediting complainants in sexual assault cases parallels those used in human trafficking trials.

As one defence lawyer contends,

It [the trial] is the story that gets told. It's the reality [of what happened] that's changed. And that reality is changed based on the attack on credibility, this is what we do. I'm sorry for the people who think the justice system is about truth and justice. I'm sorry. It's not. It's about how you can affect the testimony of a witness so as to affect their credibility (participant 14).

Thus, contrary to the UN *Trafficking Protocol (2000)*, which places the protection of the victim at the forefront, the trial process breaks down these protections in order to allow for the 'truth-seeking' process to unfold. As Bakht notes, "The adversarial nature of our criminal justice system has often made women complaints feel as though they were on trial for their non-criminal behavior" (2012, 595). As the above-quoted defence lawyer further claims,

Victims don't have rights. Sorry. In the criminal justice system, and by that I mean they have no voice. There's nobody advocating for victims. There no place in the trial for a victim or the Crown to advocate for the human rights of the victim. That's not the issue. The issue is, are they credible, not what rights they have (participant 14).

In this process, where both defence and Crown attorneys pose carefully scripted questions to elicit answers that will support their version of events, the complainant becomes a pawn in the legal game of presenting the most convincing narrative. The experience of re-victimization is well-known in these kinds of cases. As succinctly expressed by one complainant who was particularly vocal, "I'm not the accused and like everyone is turning the camera on the victim like it should be the other way around, I shouldn't feel like the accused" (*R.v. Beckford*, Audio of Trial: March 5, 2013). She goes on to note, "you may as well put cuffs on me and throw me in jail with the accused because you are acting like I am the accused" (*ibid*). Interestingly, the complainant's expression of frustrations directly contradicts a promise made in *Canada's Action*

Plan to Combat Human Trafficking that the Criminal Code “contains measures designed to make testifying less traumatic for victims and other vulnerable witnesses” (2012, 8).

The Use of Legal Strategies from Sexual Assault Cases in Trafficking Trials

Between 1981 and 1983 and between 1992 and 1997 several amendments were made to Canada’s sexual assault laws, including placing limitations on the use of women’s sexual history in legal proceedings (Sheehy 2012; Doe 2003; Comack and Balfour 2004). The goal of the amendments was to eliminate gender discrimination against complainants in sexual assault cases, re-focus police attention from the sexual nature of the offence to the harm done by the offender, eliminate the link between women’s sexual history and credibility as witnesses, and increase reporting of sexual offences (ibid). Yet, as scholars have demonstrated, in many ways these amendments have failed to transform the treatment of complainants in sexual assault cases (Comack and Balfour 2004; Randall 2010; Larcombe 2002; Gotell 2008, 2012; DuBois 2012; Johnson 2012; Backhouse 2012; Ehrlich 2012; Craig 2015; Odette 2012). The implementation of the rape shield provision, which aimed at protecting women from being discredited based on their sexual history, was challenged by lawyers for its violation of their clients’ rights to present a full defence. Failure to strike down the provision led defence attorneys to resort to another strategy for access – the use of private records held by third parties, including psychiatrists, counsellors, clinics, among others (Balfour and Comack 2004, 115). According to Balfour and Comack, many lawyers took on sexual assault cases to challenge, what they perceived to be, politically motivated restrictions on their clients’ constitutional rights (ibid, 144). That the disregard of these legislative changes continues in sexual assault cases has been well documented by feminist scholars (Gotell 2008; Randall 2010; Larcombe 2002; Comack and Balfour 2004; Sheehy 2012).

In particular, feminist scholars have documented the way in which the credibility of complainants is attacked by defence attorneys in sexual assault trials (Sheehy 2012; Backhouse 2008; Ehrlich 2012, 2012(a); Bakht 2012; Craig 2015; Johnson 2012). The sexual assault trial of Jian Ghomeshi provides a recent example. Ghomeshi, a well-known radio host was charged with sexually assaulting three women over a period of several years. A cross-examination of the complainants during Ghomeshi's 2016 trial, according to Kari (2016) was, "about actions or incidents not directly related to the allegations". Emails and pictures communicated between one of the complainants and Ghomeshi were presented at the trial as evidence, without any objection from the Crown regarding the authenticity of the documents or their relevance (ibid). In the end, the judge found that "the complainants were neither reliable nor credible", based on their "after-the-fact" actions and lack of disclosure about that conduct (Kari 2016), demonstrating that re-victimization of complainants during a trial process is a continuing trend, despite decades of feminist efforts.

Similar disregard of legal changes is also seen in human trafficking trials which are often accompanied by sexual assault charges and where defence attorneys made subtle to explicit suggestions about the complainant's sexual promiscuity in order to suggest a level of responsibility. For instance, in *R.v. (Gregory) Salmon (2014)*, the defence attorney focused on the complainant's sexual relationship with the accused's friend through the following questions: "that's when this fooling around with [the best friend of accused] took place?", following her affirmative reply, he asked, "that was right after you got here [to the city where the two met]?", when she confirmed, he verified, "within days?" (Audio of Trial: March 4, 2014). This line of inquiry showed that the complainant had sexual relations with the accused and his best friend within days of her arrival to the new city, and without knowing either of the men beforehand.

This was followed by questions about the complainant's history, which revealed that the complainant had sex with, got pregnant by and moved in with her boyfriend by the time she was 14 years old. The questioning further revealed that she met people online and in person, who the defence attorney suggested she had sex with, despite the complainant's rejection of this version of events,

Defence: You'd go on to dating sites and make fake profiles?

Complainant: Yeah.

Defence: And, when people contacted you to meet up you would make the meetings where?

Complainant: In Toronto.

Defence: On the street or where?

Complainant: A few times it was at their apartments.

Defence: Sometimes in a hotel room?

Complainant: Never in a hotel room.

Defence: But you would meet up and how would you get their money?

Complainant: They would give it to me.

Defence: And, then you'd have sex with them?

Complainant: I didn't have sex with them.

Defence: They'd just give you money to talk to them?

Complainant: Yes (*R.v.(Gregory) Salmon*, Audio of Trial, March 4, 2014).

This line of questioning was used by the defence to demonstrate that the complainant was sexually promiscuous and of questionable moral character. And yet, the Crown used these same behavioural patterns to argue that she was vulnerable to exploitation and that she was naïve in her expectations when she travelled from Manitoba to Ontario to meet the accused. The Crown relied on the distance that she put between herself and her family to advance the argument that the accused isolated her from her family to increase her vulnerability and exploit her.

In another case, *R.v. Beckford (2013)*, the defence attempted to demonstrate the complainant's sexual promiscuity by suggesting that she was romantically involved with several people at the same time:

Complainant: I CALLED [name of boyfriend] BECAUSE HE WAS MY BOYFRIEND AT THE TIME AND I THOUGHT THAT HE MIGHT WANT TO KNOW³⁹.

Defence: *Did you not also have a fiancé at the time?*

Complainant: That's irrelevant.

Defence: *Did you not also just recently have a relationship with a [name of person]?*

Complainant: That's irrelevant. My sexual life is my sexual life. It's irrelevant [emphasis added] (*R.v. Beckford*, Audio of Trial, March 6, 2013).

The defence counsel's request for confirmation that the complainant was engaged to a woman at the same time as she was also dating a man is a typical defence strategy in sexual assault trials. This strategy often aims to portray complainants as having questionable morals and therefore somehow being 'deserving of what they got.' This, as Ehrlich has noted, is a part of a cultural mythology surrounding rape that aims to undermine the credibility of the complainant (2012, 396). Yet, the complainant in this case, adamantly rejected the defence counsel's subtle suggestion regarding her sexual promiscuity. And, as Drew notes, the power of the complainant's answers in impacting the narrative of the story should not be overlooked (as cited in Ehrlich 2012, 403). In this case, the complainant rightfully pointed out that the defence attorney's question, indeed, had nothing to do with the case at hand.

Furthermore, the different linguistic choices of the defence and complainants to describe the sexual assault in trafficking trials, is also noteworthy. For instance, in *R.v. Beckford (2013)*, the complainant described a sexual assault incident as follows, "he pulled it [his penis] out, pointed it at my head and said, to get on my knees and suck his dick...I got on my knees and sucked his dick" (*R.v. Beckford*, Audio of Trial: March 4, 2013). The complainant's use of the words "dick" and "sucked" are contrasted with the defence lawyers use of the words "penis" and "performing fellatio", which removes the violence and absence of consent from the activity. In addition to the use of linguistic strategies which assimilate the crime more with consensual sex

³⁹ Capitalized statements indicate raised voice.

than sexual assault, the defence counsel uses the complainant's lack of memory on the details to argue that "you never did perform fellatio on him, you don't even know what his penis looks like" (*R.v. Beckford*, Audio of Trial: March 6, 2013). In this way, the complainant is once again cast as a liar whose testimony cannot be trusted.

Courtroom Rituals, Legal Language and Tactics

The image of the white and pure trafficking victim that circulates in popular culture of innocence, vulnerability and youth, comes with behavioural expectations that include coyness and cooperation. My research on trafficking trials, however, presents a very different picture. Complainants in trafficking cases are often assertive, confident and at times aggressive. For instance, in contrast with the picture of the complainant painted by the Crown in *R.v. Byron* (2014) (see above) as one of the most vulnerable types of people in our society, her demeanour on the stand did not match assumptions about what vulnerability looks like. Indeed, she presented herself quite confidently, she was assertive and at times even forceful. For instance, in response to a question by the defence, the complainant replied, "I don't know. That's a ridiculous question! It's pissing me off that I have to get into details like this" (*R.v. Byron*, Audio of Trial: May 13, 2013). Furthermore, in answering the defence attorney's question as to why she did not leave the situation when her friend did, the complainant snapped: "if her dad wasn't going to pay for me, where else was I going to go? There's your answer. Now move on from the question" (*R.v. Byron*, Audio of Trial: May 10, 2013).

Similar behaviour was also exhibited by the complainant in *R.v. Beckford* (2013), who expressed her frustration and anger with the series of questions regarding one incident; "ok, this is irrelevant to everything, why don't you start moving onto the evidence instead of just simple little facts that have nothing to do with this at all" (*R.v. Beckford*, Audio of Trial: March 5,

2013). In response to defence counsel's repetitive questioning, she exclaimed, "you're really starting to frustrate me, you know that?" (*R.v. Beckford*, Audio of Trial: March 5, 2013). When pushed further, the complainant loudly responded,

I DON'T REMEMBER THIS INCIDENT, SO WHY YOU KEEP ASKING ME ABOUT IT. I DON'T KNOW BUT YOU'RE REALLY STARTING TO GET ON MY NERVES. HOW MANY TIMES DO I HAVE TO TELL YOU THAT I DON'T RECALL SO IT WOULD STICK TO YOU HEAD, SIR? I'M TELLING YOU, I DO NOT RECALL THIS INCIDENT (*R.v. Beckford*, Audio of Trial: March 5, 2013)⁴⁰.

This burst of anger was used by defence counsel to argue that the complainant cannot be controlled by the accused since she loses her composure when frustrated. This is significant in the context of trafficking cases in which 'exercising control' is an important component part of the offence. According to the defence, the complainant's behaviour on the stand is suggestive of her overall behaviour, including if she were forcibly confined, kidnapped and forced to provide sexual services:

Defence: *I'm going to suggest that you didn't have self-control yesterday.*

Complainant: And, that's because you were frustrating me.

Defence; *So, when you feel frustrated you lose control, right?*

Complainant: Not all the time.

Defence: But you agree that what happened yesterday was you losing control.

Complainant: I got upset but I had a reason for getting upset [emphasis added] (*R.v. Beckford*, Audio of Trial: March 6, 2013).

Such responses by the complainant, which became more frequent as the cross-examination continued, violate the "hermetically sealed zone of restraint and order" that the courtroom represents (Ferguson 1994, 56). Every courtroom, according to Ferguson, "formally depends upon careful observation of protocol and ritual and requires the participation of all parties" (*ibid*, 57). Failure by any party to do so creates an imbalance which can jeopardize the fairness of the trial process (*ibid*). In an effort to regain control of the courtroom and the participation of the

⁴⁰ Capitalization of texts indicates raised voice and/or yelling.

complainant, the judge in *R.v. Beckford (2013)* provided strict directions to the complainant to abide by the rules of the court, yet even here the complainant pushed back:

Complainant: I can't guarantee I'm not going to be angry. As a victim and as a normal person with rights I feel like you guys are not giving me my rights. I'm allowed to make statements. I'm allowed to ask questions.

Judge: You are certainly allowed to feel what you feel.

Complainant: No, it's my right. I'm allowed to make statements and I'm allowed to ask questions.

Judge: I am telling you as the judge in charge of this courtroom that you are not permitted to ask questions.

Complainant: But it's my right as a human being! I have rights! It doesn't matter if I'm in the courtroom or on the street Your Honour. I HAVE RIGHTS!

Judge: I'm directing you. I want you to listen to me.

Complainant: Whatever!

Judge: I am directing you that you are not permitted to ask questions.

Complainant: Then I won't answer them.

Judge: You are not permitted to make statements that are not responding to the questions that you've been asked.

Complainant: Ok, and as a human with rights I do not have to answer if I do not feel like I want to answer. I have rights, Your Honour. And out of anyone, you should understand that, but apparently, you don't. I'm asking to take 45 minutes off and that can't even be permitted, that is pretty sad. I'm telling you that I want to stop this situation before it gets any more heated and you're just saying no, so it's going to get worse.

Judge: I have given you direction, you are not permitted to ask questions and you're not allowed to make statements.

Complainant: But I've...

Judge: No, listen to me. You are required to answer questions. If you cannot comply with my direction then there will be consequences for you.

Complainant: That those (inaudible) walk free? Those are the consequences? That they will walk free and go rape whoever else they want to?

Judge: If you continue to behave inappropriately, you may be cited for contempt and there can be serious consequences for you. I want you to understand that.

Complainant: I WANT YOU TO UNDERSTAND THAT AS A PERSON I HAVE RIGHTS! (*R.v. Beckford*, Audio of Trial: March 5, 2013)

The complainant's insistence that she should be able to make comments and ask questions since that is her right is rejected by the judge since it conflicts with court procedures which, according to Ehrlich, allocate differential speaking rights to participants based on their institutional role, a defining characteristic of institutional discourse (2012, 401). Furthermore, the complainant's refusal to abide by the rules of the court challenged the ability of legal actors to control the

narrative, since as Bennet and Feldman point out, “the degree of success in a lawyer’s attempt to engineer the course of testimony depends a great deal upon the willingness of the witness to cooperate and his or her ability to respond to the cues in a line of questioning” (1981, 124). The importance of this is seen in the comments of one⁴¹ defence attorney who in response to the complainant’s behaviour made the following statement:

I would say that Your Honour’s interaction with this witness confirms the witness’ disrespect for Your Honour’s directions. She argued with you, she said she doesn’t accept that. She should be told, this is Your Honour’s direction, you don’t follow it, you will be in contempt. Bottom line. And that should happen if she doesn’t follow Your Honour’s directions. I think in just allowing the witness greater latitude only encourages these occurrences and when they happen they can’t be taken back from the jury. I think Your Honour should firmly tell her what her obligations are, what her rights are and she has to conduct in accordance with that. And any behaviour contrary to that is contemptuous – plain and simple. And I’m putting my friend on notice, if any outburst like that happens again there definitely will be an application for a mistrial. Absolutely. It cannot continue in front of the jury to have that kind of behaviour (*R.v. Beckford*, Audio of Trial: March 5, 2013).

The complainant’s refusal to abide by her role in the courtroom demonstrates the frailty of courtroom procedure, which depends on a high level of cooperation, and where extensive “disregard of that cooperation brings the interactive mechanism to a halt” (Ferguson, 1994, 66). In this case, that was precisely the outcome as the judge declared a mistrial in response to the complainant’s comments that the accused are “pervs” who “like to rape” and “kill” (*R.v. Beckford*, Audio of Trial: March 6, 2013). While the Crown’s miscalculated assumption that the seriousness of a human trafficking offence, suggestively due to its linkages with crime-security nexus, would outweigh the complainant’s defiance⁴², the courtroom ritual appeared to have exceeded this in importance. The courtroom ritual is premised on civility and decorum, including the performance of roles by all actors with “propriety, decorum and politeness” (Craig 2015,

⁴¹ The case involved two accused and thus two defence attorneys.

⁴² Complainant’s defiance was evident at the very least by the preliminary hearing stage (*R.v. Beckford*, Audio of Trial: March 5, 2013).

208). As Craig notes in the context of sexual assault trials, “the ritual of civility requires a sexual assault complainant to do what is expected even when what is expected grossly exceeds, or is utterly alien to, any concept of ‘civil’ interpersonal interactions within her normative universe” (2015, 210). In this way, as Gotell claims, “the courtroom scene and the language of law create the image of law as separating out the ‘truth’ from the hysteria of the victim” (2002, 258). The judge’s decision to declare a mistrial in *R.v. Beckford* (2013), is therefore a logical outcome given the failure to maintain ‘civility’ within the court process and subsequently to separate truth from ‘hysteria’.

Lawyers’ focus on defiance, aggression and assertiveness is not limited to complainants’ conduct at trial. As indicated by the feisty exchange above, defence attorneys also explore a complainant’s history of violent behaviour to demonstrate that it is unreasonable to suggest that she could be forcibly confined or made to do something against her will. In *R.v. Beckford* (2013), this is exemplified in the following exchange between one defence attorney and the complainant:

Defence: *And you’d agree with me that when your mother tries to get you to do something and you don’t want to do it you react by raising your voice like you did at me yesterday for asking the questions, correct?*

Complainant: No, incorrect.

Defence: *And I’m going to suggest that when the police ask you to do certain things, you respond by raising your voice and getting aggressive, correct?*

Complainant: Incorrect.

Defence: You’ve been convicted of assaults in the past?

Complainant: Correct.

Defence: *You actually hit somebody as a result of an interaction you had with them.*

Complainant: I punched somebody because that somebody cut off my cat’s toe and the cat had to have 12 stitches, so yeah, I punched them out [emphasis added] (*R.v. Beckford*, Audio of Trial: March 6, 2013).

The defence attorney’s suggestions that the complainant is defiant, aggressive and therefore not a ‘true victim’ continues as follows,

Defence: Essentially when you feel that if somebody is doing something you don’t like you can get aggressive?

Complainant: Doesn't mean that I will be aggressive.

Defence: *But you can be aggressive.*

Complainant: Anyone can be aggressive.

Defence: *In cases where you feel that somebody is telling you to do something that you don't feel is right you can get aggressive, right?*

Complainant: I can, yeah.

Defence: *You can raise your voice?*

Complainant: Not every time. I do have self-control [emphasis added] (*R.v. Beckford*, Audio of Trial: March 6, 2013).

In the above exchange, the defence attorney is clearly aiming to construct the complainant as someone who gets frustrated, loses control and becomes violent when placed in a situation she does not want to be in, such as, for instance, the situation under investigation at the trial. The defence attorney's strategy shows the complainant, not only as failing to abide by the requirements of an 'ideal victim' but also suggests that, given her aggressive response to authority and attempts to control, the complainant could not have been controlled and victimized by the accused.

Defence emphasis on the aggressive behaviour of the complainant is also demonstrated in the case of *R.v. Oliver-Machado (2014)*, as seen in an exchange by the defence attorney and the mother of one of the complainants,

Defence: On March 10, 2011, you called 911 because of an assault complaint you had.

Witness: No, that's not the reason I called. I called because she [the complainant] was out of control and smashing the walls, not for an assault.

Defence: She kicked holes in the dry-wall?

Witness: Yes, underneath her window.

Defence: You were afraid of getting hurt by your daughter?

Witness: Yes, I didn't want her to hit me. The female officer that responded suggested I charge her with mischief that would open up doors for her to get help. I didn't know she was charged with assault (*R.v. Oliver-Machado*, Audio of Trial: April 26, 2013).

The image created by the defence attorney of the complainant as smashing walls, kicking holes into dry-wall and endangering the physical well-being of her own mother, stands in stark contrast to the image of the 'ideal victim'. Further to behavioural evidence, defence attorneys also relied

on the criminal records of the complainant to discredit the possibility of their victimization.

In *R.v. Beckford* (2013), the defence tried to construct the complainant as ‘dangerous’ by pointing out her extensive criminal record and suggesting that the teardrop tattoo near her eye indicates a gang affiliation:

Defence: I’m noticing that on your right side there appears to be some tear dropped tattoos?

Complainant: Yes.

Defence: You agree with me that that is a reflection of gang culture – that you’ve been involved in some sort of murder or request for...

Complainant: No, I disagree – I strongly disagree.

Defence: I’m going to suggest to you that you are still involved in the gang and drug culture now (*R.v. Beckford*, Audio of Trial: March 5, 2013).

As this exchange demonstrates the defence attorney, using a set of controlled questions, constructed an image of the complainant as a ‘gang member’ involved in murders. In contrast with open questions - that ask what, why, when, which, who, where and how – and solicit an explanation or elaboration as an answer, controlled questions pose a statement and end with “isn’t that true?”, “correct” or “didn’t you?” (Conley and O’Barr 1998, 24). As such, controlled questions can serve as ways for lawyers to lay blame on the complainant regardless of the answers provided (ibid), in effect transforming the cross-examination “from dialogue into self-serving monologue” (Ehrlich 2012, 394). Thus, even if the question is answered in the negative, the denial of the suggestion is “lost in the flow of the lawyer’s polemic” (ibid). Accordingly, by making the statement that the complainant’s tattoo is a reflection of her involvement in ‘gang culture’ and then ignoring the complainant’s rejection of it, the defence attorney - in a way - testified on his client’s behalf. This is followed by another controlled question posed as a suggestion by the defence that the complainant’s involvement in ‘gang and drug culture’ is ongoing. The attorney goes on to point out that the complainant’s extensive criminal record, which is “18 offenses long” and includes things like “robbery, drugs, theft” (*R.v. Beckford*,

Audio of Trial: Jan 25, 2013), demonstrates that she is a hardened criminal with violent tendencies who is far from the vulnerable victim she is made out to be.

Similar to the above situation, one of the complainants in *R.v. Oliver-Machado (2014)* also had a criminal record, which the defence attorney gladly explored with her mother in an effort to construct her as violent:

Defence: Many instances where the police came to your house in response to a complaint against your daughter?

Witness: Some yes, some correct and a number of them weren't...

Defence: She was issued a number of YCJA [*Youth Criminal Justice Act*] warnings. How many? 6?

Witness: I'm not aware of 6, I received something twice.

Defence: Warning your daughter for criminal conduct?

Witness: I'm not sure it was criminal, it was minor, not criminal.

Defence: Do you recall receiving one for shoplifting?

Witness: Yes.

Defence: Would you consider that criminal?

Witness: I'm not sure for youth (*R.v. Oliver-Machado*, Audio of Trial: April 26, 2013).

While defence counsel in trafficking trials routinely used such accounts of violence and aggression to undermine the believability that the complainant was vulnerable to exploitation, Crown counsel typically found a way to use the very same accounts to underscore the complainant's vulnerability and hence her susceptibility to exploitation. For instance, lawyers typically look for ways to explain complainants' violent behaviour. One of the most common explanations provided for women's violence is mental health concerns (Comack and Balfour 2004, 62), an explanation, which also acted as a pre-existing vulnerability used by Crowns in both of these cases described above to justify complainants' history of violence.

As feminists have documented, psychiatric ('psy') discourses have become a prevailing influence in the legal terrain, particularly with respect to women as victims and perpetrators of crime (McGillivray 1998; Smart 1989, 1995; Comack and Balfour 2004). Mental health issues are often used by defence attorneys to discredit complainants in sexual violence cases. Women

with developmental and psychiatric disabilities or with brain injuries especially have a hard time accessing the justice system as sexual assault complainants (Benedet and Grant 2007, 517). They are treated either as asexual and child-like and therefore infantilized or oversexed and not choosy about their sexual partners (ibid). In the Beckford case, as demonstrated below, both narratives were employed by defence and Crown counsel to illustrate very different pictures of the complainant.

According to Benedet and Grant, differently abled complainants and witnesses in sexual assault cases are particularly disadvantaged by the lack of flexibility in court procedures but also by the legal system's "blind faith in the importance of repeatedly accusing women of lying about sexual assault as a means of getting at the 'truth'" (2007, 530). This was clearly evidenced in the Beckford case where the defence attorney painted a picture of the complainant, who was dealing with a number of mental health challenges⁴³ as hypersexualized by pointing out that despite her young age, she has been in numerous romantic relationships with men and women, even putting forth the suggestion that she had engaged in sex work:

Defence: You posted yourself in the Craigslist postings, correct?

Complainant: Are you stupid?

Judge: No [complainant's name].

Complainant: Sorry, but we went over this enough times. Yeah, I'm 16 years old and I really want to be opening my legs to all pervs like your client and the people that like to rape and the people that like to kill (*R.v. Beckford*, Audio of Trial: March 6, 2013).

While the complainant was very clear in rejecting the version of events put forth by the defence, the controlled way in which the questions were posed, once again allowed the defence attorney to, in effect, testify, rather than inquire. Furthermore, the complainant's anger and frustration with the questions, which as demonstrated above, have no space in the courtroom setting,

⁴³ Including, Bipolar Disorder, Obsessive Compulsive Disorder (OCD), Attention Deficit Hyperactive Disorder (ADHD), Oppositional Defiance Disorder (ODD), anxiety and depression.

worked to undermine her image as an ‘ideal victim’ and even resulted in her making comments that were perceived as prejudicial to the accused’s ability to have a fair hearing.

Given that this aggression and defiance do not fit the normative understanding of a sexual violence victim and women more generally (Comack and Balfour 2004), Crown attorneys rely on the ‘psy’ discourse to bridge this gap. Indeed, in trafficking trials, Crowns routinely suggest that complainants who exhibit such behaviour are unstable and therefore unable to control their emotions and demeanour in socially acceptable ways – this, from a Crown’s perspective, makes them more susceptible to exploitation. The Crown’s approach in the Beckford case demonstrates this, as he infantilized the complainant throughout the trial, continuously expressing concern over her mental health: “I am concerned about this witness...knowing what we know about her mental health condition and the way that she is presenting at this time” (*R.v. Beckford*, Audio of Trial: March 5, 2013). The Crown’s ‘coddling’ of the complainant, as one of the defence attorneys called it, even led to an objection by the defence:

I certainly understand my friend’s⁴⁴ desire to calm the witness down but she has another cross-examination ahead and I find it difficult to understand how you can calm the witness down without getting into what happened in court and I would suggest that the support person can perform that function. I have concerns of my friend doing it because it would naturally lead to, ‘oh, I don’t like those questions or I don’t like what this lawyer is saying and I don’t like what’s happening in court’ (*R.v. Beckford*, Audio of Trial: March 5, 2013)

By emphasizing the complainant’s vulnerability caused by mental health concerns, the Crown then constructed her as a ‘real’ victim of trafficking, despite her failure to abide by the behavioural expectations of an ‘ideal victim’ of gender violence. In this way, mental health conditions provide a ready explanation for the aggressive demeanour of complainants in trafficking cases, which the Crowns are more than happy to explore.

⁴⁴ ‘My friend’ is a term used by Crown and defence attorneys in Canadian courts refer to each other.

Despite this, the expressions of anger by the complainant in the Beckford case led the trial judge to grant an application for a mistrial. In her decision, the judge notes,

In making this decision I have considered the particular vulnerability of this witness and her mental health conditions in respect of her inability to follow my direction. I've also considered that her response yesterday was an emotional response to a question that while a proper question was insulting to her. But my direction to her on Tuesday was clear and unambiguous. Despite an apparent inability to follow my direction yesterday her comments made yesterday afternoon about people who like to kill was not responsive to the question, it was completely gratuitous and has the potential to be seriously prejudicial to Mr. Beckford and Stone. I have considered whether there is a remedy short of a mistrial which would adequately address the harm done and I conclude that in these circumstances there is not, and so the application for mistrial is granted (*R.v. Beckford*, Audio of Trial: March 7, 2013)

The judge's decision reflects an acknowledgement of the complainant's mental health conditions while simultaneously dismissing these factors through expectations that the complainant behave in ways expected by courtroom rules.

We see a similar use of the 'psy' discourse by the Crown in *R.v. Byron (2014)* who relied on the complainant's mental health concerns to make his case. The Crown noted that "it is hard to imagine a more vulnerable person in our society", due to her Fetal Alcohol Spectrum Disorder, Bipolar Disorder and a very serious learning disability (Audio of Trial: May 16, 2013). The Crown furthermore argued that the complainant was specifically targeted "because she has limitations" (*R.v. Byron*, Audio of Trial, Dec 13, 2013). On this account, we see the prosecution strengthening their case by using the complainants' intellectual limitations and mental health concerns as pre-existing vulnerabilities easily exploited by the accused.

In addition to mental health concerns, Crown and defence attorneys in trafficking trials also utilize complainants' drug use in their case building strategies. Crowns establish drug use to show that the accused drugged the complainant and subsequently exploited her non-sober or addicted state. For instance, in *R.v. Dagg (2015)*, the Crown argued,

They [the accused] start off by giving her as much crack cocaine and she can consume, they know that she's just came out of rehab, she's told them that....So part of the lolling her in into the prostitution services is to hook her into needing all that crack cocaine (Audio of Trial: April 7, 2015).

By providing her with cocaine in the beginning and scaling it back later, the Crown suggested that the two accused' re-established the complainant's drug addiction so that she could be forced to work in the sex trade and exploited. The Crown argued that "because [the accused] is aware of what's going on during that time [regarding her addiction] and he continues to pimp her out after that point that, he is ultimately exploiting her" (*R.v. Dagg*, Audio of Trial: April 13, 2015).

Given that the complainant in this case was already a self-professed alcoholic and drug addict, the Crown relied on the pre-existing vulnerability of her drug addiction to argue that the accused had utilized her addictions to exploit her, therefore making her a victim of human trafficking.

In contrast, the version of events put forward by the defence attorney in this case was that the complainant's drug addiction led her to enter into a contractual agreement with the accused, whereby he provides her with a safe place to meet her clients and supplies her with drugs and protection in exchange for fifty percent of her earnings. This, according to the defence, was a better alternative to street prostitution, which the complainant would have engaged in without the accused's involvement. The defence further argued that when the complainant was arrested for shoplifting, she was undergoing a drug withdrawal, a factor which motivated her to exaggerate the situation as one of exploitation to avoid going to jail while 'jonesing' (*R.v. Dagg*, Audio of Trial: April 7, 2015). In a sense, then, the defence argued that the complainant's drug dependency was the central reason that she claimed to be victimized.

The defence also relied on the complainant's drug addiction to argue that she was not a reliable witness since her drug use led to significant memory gaps. Interestingly, the judge clearly sided with the defence asking, "what does this woman want more, does she want help or

does she want drugs?” (*R.v. Dagg*, Audio of Trial: April 7, 2015). Indeed, the judge dismissed the Crown’s argument that the complainant’s pre-existing drug addiction made her more vulnerable to exploitation. As he stated, the accused “are not taking some vulnerable young person, addicting them and then putting them into prostitution; quite the opposite, she’s a prostitute, who is an addict who found these people [the accused]” (*R.v. Dagg*, Audio of Trial: April 7, 2015). The judge even went as far as to suggest that the complainant may have in fact been exploiting the accused by asking him to supply her with drugs, protection and a safe place to work, rather than the other way around. This is reflected in the following exchange,

Judge: On the first meeting [the accused] basically tried to talk her out of what she wanted to do.

Crown: But then he takes her anyways.

Judge: Well yeah because she’s so insistent. Now, who’s exploiting who? (*R.v. Dagg*, Audio of Trial: April 7, 2015).

By contrast, in *R.v. Beckford* (2013), it was the Crown who elicited questions about the way in which drug use impacted the complainant’s memory,

Crown: Were there times when you took your prescribed medications and street drugs?

Complainant: Yes.

Crown: Were you using any alcohol?

Complainant: No.

Crown: How would you describe your memory about the events you are here to testify about?

Complainant: It’s not perfect.

Crown: Why not?

Complainant: Because of the street drugs and my prescribed drugs – I have gaps in my head.

Crown: Are you referring to gaps in your memory?

Complainant: Yes.

Crown: Do you have gaps in your memory about other things too?

Complainant: Yes.

Crown: Is there any other reason that may have affected your memory about the details of the events you are here to testify about?

Complainant: Yeah, the fact that I try to block it out.

Crown: How do you do that?

Complainant: I try to forget (*R.v. Beckford*, Audio of Trial: March 4, 2013).

This examination of the complainant's drug abuse was the Crown's attempt to control the use of potentially damaging information, which the defence could and in this case, did use to make the case that the complainant was a liar (see discussion below). Instead, the complainant's memory gaps were constructed as not only the result of drug use, but also due to her intentional efforts to erase the painful memories of the incident. Furthermore, despite the complainant's voluntary drug use outside of the incident at trial, the Crown suggested that drugs were provided to the complainant by the accused with the intent of kidnapping, assaulting and exploiting her,

Crown: Describe any interaction you had with him [the accused] around that [drugs]?

Complainant: He offered me some, so I took some.

Crown: Do you know how much ecstasy you took *from [the accused]*?

Complainant: I think four double stacks.

Crown: What does that mean?

Complainant: Drugs are regular size, double stack, which is double the pill or triple stack, which is triple the pill.

Crown: And, did the drugs have an effect on you?

Complainant: Yeah, they got me all messed up.

Crown: How were you feeling?

Complainant: Not good.

Crown: How so? Can you describe what you mean by not good?

Complainant: Especially with drinking that night too – I just felt messed up, I wanted to go home [emphasis added] (*R.v Beckford*, Audio of Trial: March 4, 2013).

By emphasizing the fact that the accused offered drugs to the complainant, despite her own admission that she accepted his offer, presumably voluntarily, the Crown suggested that the accused had an underlying motive.

Although Crowns in trafficking cases utilize potentially damaging information about complainants in order to construct events in a way that fits their version of the story, defence counsel continue to discredit complainants in ways that parallel sexual assault trials. This is most notably seen in defence construction of complainants as dishonest, morally flawed and therefore unreliable as witnesses. The case of *R.v. (Gregory) Salmon (2014)* provides a clear example. In this case, the complainant, prior to meeting the accused, had engaged in the practice of asking for

money from people that she met online – a practice which the defence attorney characterized as ‘scamming’:

Defence: And then you would *scam* them for money?

Complainant: I guess if you wanna [sic] call it that.

Defence: It’s not a question of...you’re telling these people that you need money for something and you’re *lying* about it [emphasis added] (*R.v. Salmon*, Audio of Trial: March 4, 2014).

The defence goes further to label the complainant a ‘con-artist’:

Defence: You are going on [the internet] and creating fake profiles, meeting people, making them think you care about them and then taking the money they send you, right?

Complainant: I’d never tell them I had feelings for them, I’d just tell them I’d come visit.

Defence: And they are sending you money so you can do that?

Complainant: Yes.

Defence: And, you’re keeping the money and never showing up?

Complainant: Yeah, it’s only \$30-40.

Defence: Does that sound like fraud or theft?

Complainant: Yeah that’s theft.

Defence: Because earlier you were saying technically that’s theft. So even when you are out in Alberta you’re making money as a con-artist, right?

Complainant: Sure.

Defence: You get to Ontario you’re still making money as a con-artist, right?

Complainant: Yes (*R.v. (Gregory) Salmon*, Audio of Trial: March 4, 2014).

Thus, by getting the complainant to admit that she made money as a ‘con-artist’, the defence attorney effectively dismantles the complainant’s credibility. In his closing address, the defence states: “She [the complainant] is by her own admission a con artist and the kind of witness who would mandate a *Vetrovec*⁴⁵ warning. ...she is an admitted con artist who has made a living from misleading other people” (*R.v. (Gregory) Salmon*, Audio of Trial: April 25, 2014).

Efforts to construct the complainant as a liar were also seen in *R.v. Beckford (2013)* as one of the defence attorneys questioned the complainant about her prior testimony in an effort to

⁴⁵ *Vetrovec* warning communicates the risks of adopting the evidence of an unreliable witness, as established in *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811

portray her as dishonest:

Defence: And, later on – question – ‘and when you said you messed people over for money you’d lie to people about paying them or giving them money’?
Complainant: I told you I wouldn’t lie to them.
Defence: And, your answer to that was ‘yeah’ – do you see that question?
Complainant: I am not lying.
Defence: Do you see the question?
Complainant: YES, I SEE THE QUESTION, SIR.
Defence: And, you see that your answer was yeah, correct.
Complainant: Ok.
Defence: So, you understood what the question was at the time, correct?
Complainant: No, I messed people over.
Defence: And, you would lie to them too.
Complainant: No, I messed people over.
Defence: You understood the question when it was asked of you?
Complainant: Ummm, yeah.
Defence: I’m going to read the question one more time.
Complainant: But I don’t need to hear it again – I’ve heard you the last three times, sir.
Defence: When you answered the question you were being honest with the court, correct?
Complainant: YES, SIR.
Defence: And you would agree with me that your answer to you lying to people was ‘yeah’, correct?
Complainant: Ok.
Defence: Correct?
Complainant: Again, I didn’t lie to people, I messed people over.
Defence: When you spoke to the court in February 2012, you were not lying to the court about you lying to other people, correct?
Complainant: About me messing people over.
Defence: I’m going to read the question to you one last time.
Complainant: I DON’T NEED TO HEAR IT ONE MORE TIME
(*R.v. Beckford*, Audio of Trial: March 5, 2013).

The defence attorney is painting a very particular picture of the complainant as a habitual liar, despite her persistent rejection of this characterization. Specifically, the replacement of the word “lying” with “messing people over” is an important linguistic move, as it shifts the behaviour from action taken by the complainant to a character trait - a liar. Using a controlled question, the defence attorney states, “I’m going to suggest to you that you had a reputation of *being a liar* in the community” [emphasis added] (*R.v. Beckford*, Audio of Trial: March 5, 2013). The defence

attorney's insistence that the complainant did not exaggerate, but rather lied, contributes to this image, as seen in the exchange below:

Defence: Mam, you say you over-exaggerated but what you actually did was you lied to her, correct?

Complainant: I said I might have over-exaggerated, that's not lying, that's over-exaggerating (*R.v. Beckford*, Audio of Trial: March 6, 2013).

A similar linguistic approach is evident in *R.v. Dagg (2015)*, where the complainant's admission that she may have exaggerated a part of the story is used by the defence attorney to argue that she is a liar. The defence argues that "Many times, when it comes to the lying – she mentions that she exaggerated the truth and I submit that that's twisting the truth; it becomes a lie" (*R.v. Dagg*, Audio of Trial: April 7, 2015). The defence goes on to note, "She [the complainant] has shown time and time again a pattern that she lies under oath and that she twists the truth just enough to make sense of the lies that she's told in the past" (*R.v. Dagg*, Audio of Trial: April 7, 2015).

Unlike in sexual assault trials with an adult complainant where defence strategy is to cast doubt on the absence of consent, the objective in child⁴⁶ sexual assault cases is to construct the incident as not having taken place at all. As Comack and Balfour observed, lawyers portray child complainants as "liars, fabricators, provocateurs or attention seekers" (2004, 134). In other words, the story being told is of a lying child. Similar strategies are employed by defence counsel in trafficking trials. For instance, the defence in *R.v. Beckford (2013)* attempted to build a narrative of a young complainant who made up the story of being trafficked in order to save herself from getting in trouble for having gone missing for several days: "I'm going to suggest to you that you were just making things up as you went along, is that not fair to say?....I'm going to

⁴⁶ Despite the above set out issues with the 'child' category, the reference to the 16 year old complainant as a 'child' in this case is to maintain consistency with normative and legal standards.

suggest to you that you lied to her [the complainant's mother] about this entire affair about you being in a strip club at all" (*R.v. Beckford*, Audio of Trial: March 6, 2013). The defence placed particular focus on the complainant's claim that she did not sustain any physical injuries from the sexual assault she underwent: "I'm going to suggest that that would be impossible for you to be forcefully anally raped and not have any physical injuries" (*R.v. Beckford*, Audio of Trial: March 6, 2013). The defence further asked the complainant a series of detailed questions about the incident under examination, at the end of which he concluded, "you have no idea what idea you are talking about" (*R.v. Beckford*, Audio of Trial: March 6, 2013). He suggested that the reason she has no recollection of these events and the location is "because it never happened" (*ibid*).

As Comack and Balfour suggest, these defence tactics become even more prominent when the character of the child is questionable (2004, 134). This is evident in the cross-examination of the same complainant's mother, where the defence constructed the incident as a 'stunt' pulled by a 16 year old girl:

Defence: Would it be accurate to say that you didn't know whether it was another stunt your daughter is pulling?

Witness: No that would not be inaccurate because my daughter has never pulled a stunt as you say, this is not a stunt why we're here today. There's no history of this situation, so I wouldn't agree with that.

Defence: And, you would not have used those words to describe that phone call, correct?

Witness: No.

Defence: At the preliminary hearing, you were asked by the Crown, what your son said to you and you indicate he told you she was out in [name of city] with some guy. You say that you felt something wasn't right about that and you say, 'I didn't know what to do at the time, I wasn't sure if she was just pulling a stunt but I knew that she wasn't high and I knew that she was scared so something wasn't right', do you recall being asked that question? (*R.v. Beckford*, Audio of Trial: Jan 25, 2013).

The defence attorney's use of the word "stunt", which undermines the seriousness of the events as a joke played by a child, stands in contrast with the seriousness of the charge of human trafficking. As the use of defence tactics typical of sexual assault trials demonstrates, the youth

component, which is a central pre-determined vulnerability for identifying a victim of trafficking, is in turn being used by defence counsel to undermine the credibility of complainants in trafficking trials.

Given the conflation of sex work and trafficking, the issue of sex work and specifically whether or not the complainant engaged in sex work voluntarily is a significant point of exploration for both Crown and defence attorneys. Crown attorneys typically took the position that the complainant was forced to provide sexual services in order to make the case a trafficking one. In the case of complainants who were already engaged in sex work, the argument relied on the assumption that all sex work is harmful as captured by the Crown's comment in *R.v. Byron (2014)*, "Prostitution becomes the activity that is degrading to the individual dignity of the prostitute which is a vehicle for 'pimps' and customers to exploit the disadvantaged position of women in our society" (Audio of Trial: May 17, 2013).

In contrast, the defence attorney in *R.v. Greenham (2015)* tried to demonstrate consent in complainant's engagement in sex work in order to make it a simple case of voluntary sex work:

She [the complainant] was not deceived about what was going to happen here. She wasn't like these young teenagers who were asked, 'hey I'm going to take you dancing and end up being prostitutes'. She knew before she met my client all about prostitution and she volunteered to get involved. There was no deception. She wasn't coerced, she got in voluntarily (Audio of Trial: Aug 26, 2015).

The theme of consent was also central in *R.v. Dagg (2015)*, where the defence counsel argued that the complainant could not have been forced into the sex work because she had a history of drug abuse and involvement in the sex trade, activities that she continued to engage in after the accused was arrested. Here we begin to see the assumption that once an individual has consented to sex work, they can no longer be forced into it. This is similar to the assumptions operating in intimate sexual assault cases, where previous consent to sexual relations is treated as ongoing,

even when withdrawn. Indeed, in cases where the complainant engaged in sex work prior to meeting the accused, defence attorneys often constructed the situation as akin to a contractual agreement between two parties. This was the argument of the defence in *R.v Dagg (2015)* who suggested that “This was an agreement. She got into this because she was going to be making more money on Backpage than she would’ve on the street” (Audio of Trial: April 7, 2015).

A similar narrative was presented from the cross-examination of the complainant in *R.v. Greenham (2015)*,

Defence: You’re getting educated [on sex work] like you would in any new job.

Complainant: Before I moved out we sat down and he said if you want to work for me, we will come to a financial agreement where you give me a certain amount of what you make in a day.

Defence: That sounds like an ordinary business arrangement, doesn’t it?

Complainant: Yes (Audio of Trial: Aug 26, 2015).

On this account, the defence attorney not only suggested that the relationship between the accused and the complainant was contractual, but that the accused was even improving the complainant’s life by “educating her” on her the new job.

Defence attorneys went to great lengths to bring forth any evidence that might signal the complainant’s voluntary participation in the sex trade. In *R.v. Beckford (2013)*, the defence attorneys brought an application requesting the court’s permission to question the complainant about her potential involvement in sex work before the incident (Audio of Trial: Feb 22, 2013).

While the judge denied this application, the defence used a less direct line of questioning to accomplish the same objective,

Defence: [name of complainant] you met [name of friend] in the [name of juvenile detention centre]?

Complainant: [pronounces name of friend]

Defence: She was involved in prostitution?

Complainant: Yup.

Defence: And you indicated that she was recruiting young girls like herself into prostitution?

Complainant: Yup.
Defence: And, this was a time just before you were released in August 2010?
Complainant: Probably, I don't remember the dates.
Defence: You recall that she used to brag about how much money she had during prostitution?
Complainant: Yup.
Defence: She would brag about how she made money in prostitution?
Complainant: It's kind of not hard to figure out how you'd get money from prostitution.
Defence: I'm going to suggest that that stood out in your mind from your experience at the [juvenile detention centre]?
Complainant: Your point?
Defence: Is that a yes, madam?
Complainant: Yeah, I recall that. If you're trying to say that her bragging about the money she made from prostitution was what I was going into because of her saying that, then you are very very very VERY WRONG⁴⁷.
Defence: You would get called out about what you were wearing at the [juvenile detention] centre by [name of friend]?
Complainant: No.
Defence: She would make fun of you?
Complainant: No.
Defence: She would talk about how she was able to live in hotels because she was able to make as much money as she did?
Complainant: Ok.
Defence: You recall that?
Complainant: Ok.
Defence: Is that a yes?
Complainant: YES.
Defence: She told you that she would be able to bring over all the clients every day and that she would be able to make money?
Complainant: I DON'T KNOW ALL THE LITTLE CONVERSATIONS WE HAD – AND THIS WAS BACK WHEN? LIKE, WHY IS THIS RELEVANT? IT'S NOT.
Defence: She indicated that she made money through a gentleman by the name of [states name] who was a pimp?
Complainant: Ok, yeah.
Defence: You recall that?
Complainant: Any prostitute will make money, yup.
Defence: And that pimp named [name], you spoke to him about 10-15 times while you were in jail?
Complainant: Yeah, someone to talk to – free call.
Defence: And you got [name of 'pimp'] number from [name of friend]?
Complainant: Yeah.
Defence: You got out August 13, 2010, there was no job waiting for you, right?
Complainant: Ummm...no I don't like spreading my legs for money thank you very much. I'm not a whore (*R.v. Beckford*, Audio of Trial: March 5, 2013).

⁴⁷ Capitalization indicates raised voice.

The above line of questioning demonstrates the great lengths to which the defence attorney went to construct the complainant's friendship with a woman involved in the sex trade and engaged in the recruitment of girls and women into the trade, as evidence that the complainant was also working in the sex trade. The defence attorney's suggestion that the complainant was enticed by money that can be made through sex work received notable pushback from the complainant, as she firmly stated that he was "very very very VERY WRONG" (*R.v. Beckford*: Audio of Trial, March 5, 2013).

Similar exceeding efforts to draw a picture of complainant's consent to engaging in sex work were put forth by the defence in *R.v. Oliver-Machado* (2013),

Defence: At some point, you thought about doing something.

Complainant: Can you be more specific?

Defence: The foot massage?

Complainant: Yeah, it was in my mind cause \$150 is a lot of money for a kid but it's only questionable, I was there but it's not something I would actually go and do.

Defence: But you were thinking about it.

Complainant: Yeah.

Defence: And, you and [another complainant] talked about doing it.

Complainant: We just kinda [sic] told each other the possibilities and we were like what if this actually happened, but we weren't actually going to do it. It's not something that you would go and do in your right mind.

Defence: By January 13 it's crystal clear to you what she is asking you to do.

Complainant: Yes.

Defence: You knew she was acting as a pimp.

Complainant: Yeah

Defence: She sells people for money.

Complainant: I don't know if I knew what that was before.

Defence: Well, it was you who uses the word on Facebook.

Complainant: True, sorry (*R.v. Oliver-Machado*, Audio of Trial: Sept 10, 2013).

The above transcripts demonstrate how cleverly defence attorneys work to associate the complainant's actions with voluntary involvement in sex work. The suggestion underlying the above set of questions is that the complainant's sheer knowledge that the accused was a 'pimp'

and the conversation she had with her friend about giving foot rubs for money followed by her subsequent decision to meet the accused, amounted to consent to engage in sex work.

Trafficking for sexual exploitation trials also reveal a strong underlying current of ‘whorephobia’, which positions sex work as dishonourable and shameful. For instance, in *R.v. Beckford (2013)*, the judge condemned the defence attorney’s suggestion that the complainant engaged in sex work voluntarily, explaining that “the suggestions you are putting to her are off putting– they would be insulting to anyone. They are obviously insulting to her, that’s how she is reacting” (Audio of Trial: March 6, 2013). In *R.v. Dagg (2015)*, where the complainant had admitted to having engaged in sex work before and after the incident at trial, the defence attorney engages in what Pheterson calls the dishonouring of whores as lost or bad women (1993, 58).

This was seen most clearly through the defence attorney’s line of questioning about the complainant’s hygiene:

Defence: And, I’m going to ask you a question here and I’m just trying to get a sense of the timeline here, but between clients would you take a shower?

Complainant: Not very often, no.

Defence: So, you would service a client and then if there was another client, you would service that client right after?

Complainant: No, I would go in the washroom and – this is really embarrassing to have to – I would go in between clients and kind of clean up (*R.v. Dagg*, Audio of Trial: April 1, 2015).

The remarks and questions of the defence attorney, which are degrading in nature, are also riddled with judgment towards the person involved in the sex trade. This person, as Pheterson contends, is seen as having no honour and doing no good (1993, 42). Such expressions of disdain reveal the continued existence of a divide between ‘good’ and ‘bad’ women, while the ‘whore stigma’ works as a warning for women that transgressing norms of sexual propriety will lead to their downfall into prostitution (Bernstein 2007, 60). Furthermore, as Durisin observes, sex work stands in opposition to, what she calls, ‘Canadian sexualized nationalism’, whereby acceptable

sexual expression can only take place within a committed relationship. Sex work, in this context is seen as undermining women's equality and in so doing fails to align with Canadian national identity.

Associating the complainant with sex work also works to undermine their credibility, casting them as 'not a true victim'. The suggestion is that sex workers engage in risky behaviour and therefore fail to perform "diligent and cautious femininity" which positions them into the category of "bad victimhood" (Gotell 2008, 879). The condemnation of a women's sexually risky behaviour is exhibited in the following exchange between the defence counsel and the complainant in *R.v. Greenham (2015)*:

Defence: *So, you're taking in these men in your room – I told you before I'm not criticizing at all for what you are doing.*

Complainant: No, I understand.

Defence: But you took in strange men in a hotel room all by yourself.

Complainant: Yes.

Defence: Locked the door behind you?

Complainant: Yes.

Defence: Takes a fair amount of courage to do that [emphasis added] (*R.v. Greenham*, Audio of Trial: August 25, 2015).

Despite the defence counsel's preface that he was not criticizing the complainant, it appears to be precisely the intent of his line of questioning. Indeed, the narrative being drawn is of a risky woman simultaneously responsible for the victimization she experienced, while at the same time un-victimizable due to her already fallen state.

The defence attorney in *R.v. Burton (2013)* even argued that the negative effects on the complainant came from her engagement in sex work, rather than the actions of the accused:

Defence: You probably underestimated what kind of a negative effect prostitution was going to have on you?

Complainant: Yes.

Defence: You didn't think about the emotional effects of exchanging sex for money.

Complainant: No.

Defence: But obviously, sex is something very personal and intimate?

Complainant: Yes.
Defence: When someone pays you for it, it's not intimate or personal at all?
Complainant: No.
Defence: So even when it's not physically violent it's still hard on you emotionally?
Complainant: Yes.
Defence: And, when you were with [name of john] you drank a lot and it made the act of prostitution easier?
Complainant: Yes.
Defence: Dulled your emotions to separate yourself from the act?
Complainant: Yes.
Defence: The reason you come to Toronto is the same reason for prostitution, right?
Complainant: Yeah.
Defence: You and [complainant 2] were expanding business?
Complainant: Yeah.
Defence: You were in a bad place in your life?
Complainant: Yes.
Defence: *I really don't want you to feel like I'm judging you* – that's not my intention.
Complainant: Yeah.
Defence: And, you came to Toronto to support your addictions?
Complainant: Yes.
Defence: And, that was really hard and created a substantial emotional toll on you?
Complainant: Yeah, I know where you are going with this, the difference with these people was that I developed some sort of a relationship with them, we talked before.
Defence: You had more control over the situation?
Complainant: Yeah.
Defence: It was still hard?
Complainant: Yeah.
Defence: Prostitution is dangerous, right?
Complainant: Yeah.
Defence: Anytime you engage with it it's dangerous and emotionally challenging?
[emphasis added] (Audio of Trial: November 2, 2015)⁴⁸.

Here, like in the cases of Greenham and Dagg, the defence attorney prefaced his remarks with a disclaimer that his line of questioning is not rooted in judgement, while continuing to engage in a

⁴⁸ The defence counsel's suggestion that sex is "something very personal and intimate", which cannot be reflected in the experience between a sex worker and a client, is challenged by at least a few sex workers and advocates. As Love, a sex worker, writes, "sex work is about emotionally complex relationships that involve genuine feelings of intimacy" (2013, 64). She further notes, "I am happier in sex work than I was in any of the straight jobs I've ever had, and I'm not planning on exiting any time soon" (2013, 64). As Redwood, another sex worker contends, "over my working years I've found that my biggest challenges have come not from sex work but from people's misperceptions, stereotypes, and prejudices" (2013, 45). These experiences demonstrate that sex work is not always and only violent and damaging, but can also be rewarding and enjoyable for those involved in it.

form of shaming and victim-blaming by suggesting that the complainant was irresponsible in her decisions to use drugs and become involved in sex work, an activity which he described as inherently violent. The victim-blaming takes place in order to relieve the accused from being held responsible for his actions. In effect, as Gotell (2008) argues, this is normalizing male violence against women and placing the onus of risk-management on women. Yet, at the same time, it reveals paternalization and infantilization of sex workers as not recognizing the danger they are putting themselves. Unlike the defence attorney here, who used these sentiments to demonstrate responsibility on the part of the complainants, anti-trafficking efforts often rely on the same sentiments to argue for the need to rescue women from sex work.

This was demonstrated by the Crown's approach in *R.v. Dagg (2015)*, where she suggested that street prostitution with its frequently accompanying factors of violence, drugs and alcohol are pre-existing vulnerabilities, but that trafficking charges were warranted due to the accused's exploitation of these vulnerabilities. This argument received considerable resistance from the judge and the defence attorney. The defence attorney took the position that because of the violence experienced by sex workers on a regular basis, the complainant could not have been made fearful by name-calling and insults:

when she [the complainant] was mentioning the reason she felt fearful was because [accused 2] would call her names and [accused 1] called her a crack hoe, I put to her that people on the streets aren't the nicest, it's not something that was new to her. It's not something that would instill fear in her and I felt like she was trying to twist it....And I distinctly told her at the cross, I'm not saying that it's okay but you would agree with me that on the streets, you've been called names before. And she agreed. And you never run to the police about that – no (*R.v. Dagg*, Audio of Trial: April 14, 2015).

While both the Crown and the defence attorneys' case building strategies normalized violence in the context of sex work, they did so with different outcomes in mind. The Crown used this form of violence to demonstrate that it represents a pre-existing vulnerability that made it easier for

the accused to exploit the complainant. In contrast, the defence suggested that violence is a normal part of the complainant's life due to her extensive and voluntary experience in sex work, therefore it can be considered neither coercive nor exploitative.

Further to this, in some cases where the complainant and the accused had a romantic relationship, defence attorneys advanced arguments regarding the accused's protectiveness of the complainant fueled (usually) by his desire to keep her safe. For instance, in *R.v. (Gregory) Salmon (2014)*, the defence lawyer argued that the accused was upset by and tried to dissuade the complainant from engaging in sex work:

Defence: I suggest that when you had that conversation with [the accused] and told him that you were going to prostitute yourself, [the accused] got upset and said if that's what you're going to do, I'm leaving, right?

Complainant: No, he said he wasn't going to stay around the hotel, he'd leave to go to his friend's house.

Defence: Right, so I'm suggesting that the reason he did that was because he was upset because he didn't want you to prostitute yourself.

Complainant: He just didn't want to get in trouble.

Defence: Again, I'm going to suggest he said, forget it, if you're going to prostitute yourself, I don't want to be with you, I'm leaving (*R.v. (Gregory) Salmon*, Audio of Trial: March 4, 2014).

Despite the complainant's repeated rejection of this theory, the defence further suggested that not only did the accused not want his girlfriend to engage in sex work and was upset by it but that he was also a nice guy by trying to take care of her:

Defence: I'm going to suggest that when you were prostituting yourself in [name of motel] he wasn't around because he was upset that you were prostituting yourself and that he ended up coming with some food for you at your request and he ended up being arrested by the police.

Complainant: I don't see how you're trying to make it seem like it's all me, when he is the one who showed me everything and told me how to do this and that and he's the one who did all my ads and telling me I needed to make \$1200 for the first and last (*R.v. (Gregory) Salmon*, Audio of Trial: March 4, 2014).

Once again, the defence attorney's suggested narrative of a caring boyfriend was rejected by the complainant who pointed out that the accused was the one who introduced her to the sex trade and put requirements on how much money she needed to make.

Unlike in sexual assault, domestic violence and other sexual violence cases, the Crown's case in domestic human trafficking trials often hinges upon the testimony of complainants who work in the sex trade. In these cases, the central aim of the defence is to undermine the complainant's credibility, which is frequently and effectively achieved by deploying sexist and misogynistic stereotypes that construct her as an irresponsible and risky individual. As Gotell notes, careless disregard for personal safety, which is assumed when engaging in sex work, "becomes a site for an altered form of victim-blaming" (2008, 880). As such, even when involvement in the sex trade is a pre-existing vulnerability used by police and Crown attorneys to argue that the complainant is a legitimate victim, the same factor is used by defence attorneys to lay blame and undermine the complainant's credibility.

Another theme that threads its way through many defence strategies in trafficking trials is the complainant's ability (or lack thereof) to leave the situation, which hinges on the idea of 'common-sense' - that once in a dangerous situation, common sense surely dictates that the complainant would do what they can to get out of jeopardy. For instance, in *R.v. Burton (2013)*, the defence counsel challenged the complainant's inability to leave through the following questions,

Defence: I'm going to try and jog your memory by suggesting that on the days that you were at [the accused's] house, he wasn't always there with you, correct?

Complainant: Correct.

Defence: He would leave that resident for several hours at a time, correct?

Complainant: Correct (Audio of Trial: Jan 31, 2014).

Through this line of questioning, the defence counsel suggested that the two complainants were able to leave the situation but chose not to, thereby holding them responsible for what transpired.

Similarly, the complainants' ability to leave the situation was also questioned by the defence in *R.v. Oliver-Machado (2014)*. Consider the following exchange:

Defence: You step into his [client's] vehicle, he doesn't force you to get in there.
Complainant: No.
Defence: [accused #1] doesn't force you to get in there.
Complainant: No.
Defence: [accused #2] doesn't force you to get in there.
Complainant: No.
Defence: You don't try to walk away.
Complainant: No, I didn't want to try. I thought I was going to get beat up.
Defence: But you don't try to run away.
Complainant: No.
Defence: It's a well-lit busy area, you didn't try running out and flagging someone down?
Complainant: The streets were clear, there was [sic] no cars at all.
Defence: When you get in the car with the first male, you have a polite conversation with him?
Complainant: Yes.
Defence: He doesn't make any threats to you.
Complainant: No.
Defence: You have a conversation with him about what you do for a living. He makes small talk.
Complainant: Yes.
Defence: You talk about having done this once or twice before.
Complainant: Yes.
Defence: There's a conversation about money.
Complainant: Yes.
Defence: He stops at a bank machine, goes in and takes out a certain amount of money. When he does that you are in the car by yourself?
Complainant: Yes.
Defence: You don't get out of the car and walk away.
Complainant: No.
Defence: You don't get out of the car and run away.
Complainant: No.
Defence: You never asked the man if you can not do this.
Complainant: No (*R.v Oliver-Machado*, Audio of Trial: April 2013).

As we can see, not only did the defence point out that the complainant was not physically forced into the car, but he also suggested that she had several opportunities to escape the situation by

simply walking or running away. This is despite the complainant's indication that she was being threatened by the accused and was feeling scared, to which the defence attorney suggested that "smoking marijuana is having the effect of making you paranoid" (*R.v. Oliver-Machado*, Audio of Trial: April 22, 2013).

This line of questioning is also common in trials dealing with sexual assault where evidence of resistance is paramount to legitimizing the complainant's claim – a point that is also made by the Crown counsel in *R.v. Dagg (2015)*:

Judge: I would ask you this, here she is at the [name of location], early on, I think this is very early on in her interplay with these people when she says things are pretty good. So here she is at the [name of location] and here's [another woman] being beaten up by [accused 2]. Why wouldn't she just say 'I'm out of here'? You're trying to turn it around to say 'oh no she's confined by this conduct'? A 35-year-old woman?

Crown: Well, Your Honor, this is the same question we've been asking in rape and domestic violence cases forever. The domestic violence victim is beat up by her husband why would she stay with her husband, you know? (Audio of Trial: April 7, 2015)

In addition to clearly displaying a rather limited understanding of gendered violence, the judge also articulates widely held assumptions about age and blameworthiness, whereby 'risky' behaviour is often excused as youthful ignorance (Gotell 2008, 879). In contrast to this, as demonstrated throughout this chapter, the prosecution's argument is premised on the idea that the coerciveness of these situations is much more subtle and is generally dependent on complainant's pre-existing vulnerabilities.

Conclusion

A key mandate of international and Canadian anti-trafficking laws and policies, as outlined in previous chapters is the protection of victims of trafficking. The emphasis on careful and sympathetic treatment of trafficking victims is due to their presumed or imputed extreme vulnerability and need for protection. Even Canada's *National Action Plan to Combat Human Trafficking*, promises that the Canadian government will consolidate efforts of the federal

government to, amongst other things “identify victims, protect the most vulnerable” (2012, 9). As mentioned above, the government has also set out measures in the Criminal Code, aimed at making testifying “less traumatic for victims and other vulnerable witnesses” (ibid 8). Yet, this examination of frontline human trafficking trial strategies at play in the courtrooms of Ontario demonstrates that defence attorneys use many of the same tactics, strategies, language and narrative constructions as are commonly used in sexual assault trials to undermine the credibility of the complainant, attack their character as morally flawed, and construct them as sluts, ‘drugged-up hookers’, liars or mentally unstable. The harms of such trial strategies in sexual assault cases that re-victimize complainants are well known and quite roundly criticized by advocates, activists and complainants themselves. Some have even gone so far as to cast them as a form of ‘judicial rape’, as damaging as the attack itself (Ehrlich 2012, 389). Despite feminist efforts to change the way complainants in sexual assault cases are treated by police and legal actors, the persistence of misogynistic and sexist beliefs and stereotypes remains widespread (Craig 2015; Ehrlich 2012; Bakht 2012; Johnson 2012; Sheehy 2012; Lindberg et al 2012; Vandervort 2012; Gotell 2008, 2012; Kari 2016). The law and policy mandates at international, national and local scales, and political proclamations that victims of human trafficking are especially vulnerable and therefore in need of extra protection and care have clearly not been translated into the way complainants in trafficking cases are treated by police and in courtroom proceedings.

The fact that complainants in Canada’s trafficking cases do not fit the cast of an ‘ideal victim’, who is seen as young, white, innocent and pure, but are instead marginalized women and girls with a number of vulnerabilities, provides defence attorneys with even more ways to attack their credibility. Interestingly, both the Crown and the defence attorneys use these vulnerabilities

of the complainants to construct a very different version of the events at trafficking trials. While defence attorneys attack of complainants using these pre-existing factors has been well documented in sexual assault trials, the use of these factors by Crowns to show complainants' vulnerability seems to be a new development. The contrasting ways in which Crown and defence attorneys use the same factors of the case demonstrates the operationalization of the human trafficking matrix through which common-place vulnerabilities have become seen as indicators of victimization in trafficking cases, while simultaneous continuing to be used to discredit complainants.

Chapter 7 - The ‘Human Trafficker’

Like the victim of trafficking who in her idealized form is seen as young, white, naïve and innocence, the image of the ‘human trafficker’ in popular discourse is an Eastern European or Chinese ‘gangster’ involved in a transnational criminal organization. This, however, is not the figure that has emerged as the threat to public safety and national security on the front lines of Ontario’s anti-trafficking police and prosecutorial efforts. Rather, it is predominantly poor, young black men who fit the stereotypical image of the black ‘pimp’ that are criminalized by these anti-trafficking efforts. Acknowledging that other groups have been and continue to be oppressed and discriminated against in similar ways, this chapter focuses more specifically on the construction of black men as traffickers. This focus on black men stems from the findings of my research data, where racialized, but especially black men emerged overwhelmingly as the accused in trafficking cases. As Angela Davis notes, black men’s experiences in the criminal justice system are unique primarily because they are targeted more than any other demographic (2017, xiv). While Davis writes in the context of the US, these findings are also applicable in Canada and in the context of human trafficking are supported by my data.

In this chapter, I draw on critical race literature to explore the ways in which the black ‘pimp’, the well-known and longstanding target of the procuring provisions in Canada (s. 286.3 (1) of CCC) has re-emerged on the frontline of police and prosecutorial efforts as the main target of anti-trafficking enforcement. This chapter explores how the Crown and even defence attorneys draw on racialized stereotypes of black men as always and already suspect, threatening and criminal, despite engaging in rather common activities that would not otherwise raise suspicion. I then explore how characteristics and activities stereotypically associated with ‘pimps’ and ‘pimping’ are recrafted such that they fit the legal requirements of human trafficking

and contribute to the formation of the human trafficking matrix. In the process, young black men are routinely represented as ‘monsters’, ‘parasites’ and ‘animals’, who not only pose a threat to members of the public but who also, by virtue of their imputed ‘gangsterism’, pose a larger threat to national security and the public. These developments contribute to what Robyn Maynard calls Canada’s anti-blackness that “continues to hide in plain sight, obscured behind the normal commitment to liberalism, multiculturalism and equality” (2017, 3).

Who are the Traffickers?

According to the UNODC, “for a universally condemned, but globally evident issue, surprisingly little is known about human traffickers - those who enable or partake in the trade and exploitation of individual human beings” (2008, 2). As the UNODC outlines, traffickers “can be men or women”, “some traffickers are former victims”, “majority of offenders are nationals of the country in which the trafficking case is investigated”, they can be “children to elderly adults”, and, some “are married or in domestic partnerships, others are single” (2008: 5-8). The profile of the trafficker, then, is very wide-ranging and has resulted in anti-trafficking efforts in Ontario to focus on poor, young, racialized and especially black men engaged in procuring offences. Given the international discourse of the trafficker as a Russian or Chinese foreigner involved in transnational criminal organization (see further discussion in Chapter 4), police and legal actors have had to go to significant lengths in order to transform the ‘pimp’ into human trafficker. This transformation takes place through the human trafficking matrix where racialized stereotypes are redeployed as indicators of trafficking activities and characteristics of traffickers. The urgency of these indicators and characteristics is amplified by the crime-security nexus, which links them with larger concerns over public safety and national security.

While there are no official statistics that can be used to determine the race of those charged with human trafficking, this study gives a small glimpse into who is being charged with trafficking offences in Ontario, the province with the largest number of trafficking charges in Canada. A comprehensive Canada-wide study on who is being charged with trafficking offences is much needed, particularly given the troubling findings of this study. According to my data, 56 of the 89 (63%) accused charged with human trafficking in Ontario between 2005 and 2016, whose race could be determined, were visible minorities⁴⁹ (see Appendix A for breakdown). Of these 56 racialized accused, 51 were men (57%). Of those 89 charged, only 33 individuals (37%) were visibly white. Yet, nearly half of those individuals (15 out of 33) were racialized minorities from two large Romani families, the Domotor and Kolompar families, from Hungary, whose case received significant public attention as an example of transnational labour trafficking in Canada. Consequently, only 19 out of 89 (21%) other accused, whose cases were examined for this study, were visibly white. In 34 cases, the race of the accused was unknown. That 63% of those whose race and ethnicity could be determined were racialized people charged with human trafficking becomes even more noteworthy when considering that according to Canada's 2011 census, only 25.9% of the population identified as visible minorities in Ontario and 19.1% in Canada overall (Statistics Canada 2016(a)). These findings are also consistent with studies in the US. For instance, Elizabeth Bernstein found that 62% of those suspected of sex trafficking in the US were African American, while 25% of all suspects were Hispanic/Latino (2012, 253).

In addition to a racial component, anti-trafficking efforts also include gender and age elements. As my data shows, 99 out of 123 (80%) individuals charged with human trafficking

⁴⁹ This determination was made based on pictures of accused published in the news media and/or descriptions of the accused at trial, sentencing hearings or court documents available through CanLii and Quicklaw, or obtained from defence counsel of the accused.

were men, with the average age of 27 years (see Appendix A for details). If we remove the Hungarian family from the data set, most of whom were between 30 and 68 years of age, then the average age of the accused during the period under study goes down to 25 years. It is important to note that in providing this data, it is not my intent to make definitive claims about the demographics of the accused in human trafficking cases, particularly given the relatively small and Ontario focused sample of a large and growing number of trafficking cases in Canada. Instead, the findings are meant to provide a glimpse into the profile of those criminalized under Canada's human trafficking provisions and to suggest, given the troubling findings, that a more comprehensive study is needed. As I have discussed elsewhere, tracking legal cases over space and time is a very challenging, time-consuming and at times complicated task (Roots, forthcoming; see also Millar et al. 2017). Consequently, while a few non-governmental studies have examined trafficking-related legal cases in Canada, their findings, like my own, were limited by challenges with data collection (see Millar et al. 2017; Millar and O'Doherty 2015; Ferguson 2012). Nonetheless, the anti-trafficking efforts, on the frontline of police enforcement and in the courtrooms in Ontario investigated for this study, show a disproportionate targeting of young racialized men as traffickers.

This finding is also supported by my interviews with criminal justice actors, as captured by the comment of one defence attorney:

Most of the ones, I mean, my understanding when I first read about the anticipated legislation dealing with human trafficking was basically to help people who are being moved into our country and tricked and manipulated and coerced into the sex industry whether it would be dancing to escort to prostitution. But what I really find is *minority males* who break off with dancers. Those are the ones I find end up being charged all the time [emphasis added] (participant 12).

According to Michelle Alexander, “in the era of mass incarceration, what it means to be a criminal in our collective consciousness has become conflated with what it means to be black”

(2012, 198). The criminalization of racialized and especially black men is, of course, nothing new and has been well-documented by scholars (Davis 2017; Maynard 2017; Alexander 2012; Chan and Chunn 2014; Jeffries 2011; Hill Collins 2004; James 2012). As Angela Davis contends, young black men are much more frequently charged and imprisoned than young white men for engaging in similar behaviour (2017, xiv).

Human trafficking, historically known as ‘white slavery’ has been one of many ways in which racialized men, and particularly black men were criminalized. Consider for instance the prosecution of Jack Johnson under *The Mann Act* in the US. Johnson, the first black man to win the world heavyweight boxing champion in 1908, was convicted of ‘white slavery’ for travelling across a state border with his ex-girlfriend (a sex trade worker) and several of her friends who were also sex-trade workers. Johnson was sentenced to five years in prison (Doezema 2010, 89). As this, and other similar cases show, and as academics have extensively documented, efforts against ‘white slavery’ specifically targeted racialized men who were in any way associated with the sex trade (see Doezema 2010; Donovan 2006; Valverde 2008). According to Doezema, the racist discourse of ‘white slavery’ is a,

perverse inversion of the historical reality of black slavery in America, an attempt to reconfigure its horrifying meaning by recasting the sexual violation of white women in the hands of dark men as ‘more terrible than any black slavery that ever existed in this or any other country’ (2010, 83).

Brock has documented a similar targeting of racialized black men during the 1980s and 1990s panics over youth involvement in the sex trade in Canada, during which the police continued to use the language of ‘white slavery’ (1998, 123; Jeffrey and MacDonald 2006). The criminalizing focus of these panics was on young black men who engaged in the ‘pimping’ of white women and girls (Jeffrey and MacDonald 2006; Smith 2000; Brock 1998). As I discuss in Chapter 8, the

discourses and knowledges of this historical panic have been re-deployed by police and legal actors in anti-trafficking efforts in Ontario.

Black men have historically and continuously been arrested for violence, drugs and sex trade related crimes beginning as early as nineteenth and twentieth centuries (Maynard 2017, 4; Brock 1998; Doezema 2010). These racist stereotypes are now being redeployed in the enforcement of human trafficking laws, which, fuelled by the crime-security nexus evoke a much larger public safety and national security threat implied by the imported connection of ‘street gangs’ to organized crime. This is captured by a comment by one Crown attorney who noted, traffickers are “youngish, they are in their 20s generally, some are involved in gangs, the majority of the people, if not all. There’s ones who’s not - they’re black – young black males has been - from my experience” [sic] (participant 15).

Sexual Exploitation and Black Men

Even though human trafficking takes many forms – from labour to debt bondage to organ trafficking, the vast majority of human trafficking cases involve sexual exploitation (see Chapter 3 for discussion). This focus on sexual exploitation is enabled by various factors operating within the human trafficking matrix, including prevailing abolitionist rhetoric, legal changes that criminalized trafficking with a focus on the term ‘exploitation’, but also the recent legal changes in Canada’s sex work laws, which have enabled a re-direction of sex work related offences into the legal realm of trafficking. In line with this, and in the absence of transnational trafficking cases (Ferguson 2012), the front-line of domestic law enforcement and courts have re-focused on the prototypical black ‘pimp’, who can be easily resurrected and redeployed as part of anti-trafficking efforts in Ontario. As Jeffrey and MacDonald note, the ‘pimp’ mythology, based on a small reality is that “some men pressure women into the sex trade and/or run women in the trade

in order to make a profit for themselves” (2006, 95). The ‘pimp’, according to Kalunta-Crumpton is a racialized, classed and gendered image that reinforces the stereotypical popular mythology of black men in connection with black sexuality and crime (1998, 567; see also Jeffrey and MacDonald 2006). Patricia Hill Collins observes that the image of black men as criminals embodies the belief of their inherent violence and hypersexuality and links it specifically to poor and working class black men (2004, 158). She goes on to note that “in the current context of commodified black popular culture, the value attached to physical strength, sexuality and violence becomes reconfigured in the context of new racism”, which can be either admired or feared (2004, 153).

This new racism, according to Hill Collins, is class-specific as class differences now come to explain racial inequality whereby “authentic and respectable black people become constructed as class opposites, and their different culture help explain why poor and working class black people are at the bottom of the economic hierarchy and middle-class black people are not” (2004, 177). The perceived otherness of black culture is captured by a comment of one defence attorney I interviewed,

Yeah, and they [accused] have all kinds of twisted sort of motives and things that are important to them, it’s difficult to relate to like their value systems are clearly out to lunch like from anybody’s perspective. That kind of thing. He brings it on himself in a way you know, but like I said, he’s a visible minority male coming from the projects (participant 12).

Here then, ‘black culture’ is deemed as being premised upon a problematic value system which generates poverty and is used to explain black people’s criminogenic tendencies.

However, while wealth and education serve as insulation to some degree, it does not, as Renee McDonald Hutchins contends, provide immunity against racialized policing (2017, 96; see also Stevenson 2017). This is because blackness places black people beyond all bounds of

respectability (Maynard 2017, 13). This is exemplified by the case of *R.v. Finestone (2017)*, where the white, middle-class adoptive parents did not save the racialized accused from trafficking charges and aggressive prosecution by the Crown. Furthermore, as Maynard observes, to deem only the ‘respectable’ black people as worthy of protection is to “abandon those who have been designated as ‘bad’ by the law and by Euro-Christian morality” (2017, 13).

These racialized discourses of black people as criminogenic, lazy, poor and sexually promiscuous ‘pimps’ have become incorporated into the trafficking matrix through which they are repackaged as characteristics of human traffickers. And, despite the fact that the majority of the individuals charged with trafficking are Canadian citizens involved in domestic ‘pimping’ (RCMP 2010; Canadian Women’s Foundation 2014; Millar & O’Doherty 2015), the trafficker is deemed as far more dangerous than the ‘pimp’ due to the association of human trafficking with national security threats operationalized by the crime-security nexus. This construction of small-scale ‘pimping’ activities as national security threats demonstrates the established link “between terrorism, drugs, organised crime and immigration through the terms grey zone and urban savages” (Bigo 2000, 338). And so, we see criminality stereotypically associated with young black men, such as drug trafficking and ‘pimping’, being neatly folded into a fight against the scourge of human trafficking, whereby the street criminal becomes re-constructed as a sophisticated organized crime syndicate, the low-level drug dealer becomes an international drug lord and the ‘pimp’ becomes the human trafficker.

Racialization of Accused in the Media

The race of the accused in trafficking cases is revealed most notably through media portrayals of accused. Many individuals charged with human trafficking offences are paraded in newspapers with screaming titles, such as “Taylor Dagg, 23, wanted for human trafficking in

Ottawa” (*CBC News* June 3, 2014) and “Toronto police arrest 4 men in human trafficking probe involving teen victims” (*The Canadian Press*, Feb 12, 2018) declaring their status as ‘human traffickers’ alongside a mug shot and a description of their horrific actions not yet verified in court. As Finn points out, a police mug shot, which permeates people’s daily lives through newspapers “is an image that is taken to indicate criminality” (2009, 1). Therefore, publishing a mugshot of an accused confirms their guilt even before the charges are substantiated, and as Finn notes, works to document criminal identity (*ibid*, xviii). This is particularly noteworthy since pictures, in contrast with other forms of visual representation, are taken to be more objective, despite being as much cultural as they are natural (*ibid*, xii).

Unsurprisingly, a large portion of the pictures of accused traffickers published in newspapers articles were those of racialized men. Of the 123 individuals whose case I studied, 73 had their picture published in various news outlets. Of these 73 pictures, 14 were women,⁵⁰ 11 of whom⁵¹ were visibly white. Out of the 11 visibly white women whose pictures were published, five were racial and ethnic minorities and members of the two Hungarian Roma families convicted of human trafficking in 2012. Of the 73 pictures, 19 were of visibly white men and once again nine of these men were racial and ethnic minorities belonging to the Hungarian family of traffickers. This leaves only 10 other white men, which constitutes 8% of the total number of cases, one of whom contacted the media himself to provide his side of the story. There were three pictures published of racialized women accused of trafficking, while 40 pictures, or 55% of all pictures published were of racialized and particularly black men. It is noteworthy that pictures of racialized men accused of human trafficking were published more

⁵⁰ Out of 24 total number of women who were charged with human trafficking in my study.

⁵¹ This constitutes 18% of all pictures and 8% of all cases.

frequently than the other three groups combined, including racialized women and visibly white men and women.

Racialized and chiefly black men are depicted in particular ways that result in the visualization of black men as dangerous and criminal. In the context of human trafficking, this can, for instance, be seen in the case of Yul Styles-Lyons, a black man who was charged with human trafficking in 2011 and whose mugshot accompanied a *Hamilton Spectator* article entitled: “Jail escapee faces Hamilton human-trafficking charge” (Dec 7, 2011). The note underneath the picture warns the public of his dangerousness, a message which is also conveyed through the depiction of a black man in a mugshot, foregrounded by a height chart - a common representation of black criminality and dangerousness, which young black men are burdened with (Stevenson 2017, 4). Despite the grave written warning and visual depiction of this black man’s dangerousness, the human trafficking charges were withdrawn by the Crown under a year later. Yet, Yul Styles-Lyons’ name will remain associated with human trafficking accusations as a result of these media reports which are particularly easily accessible in the age of the internet and social media. Such assumptions and quick association between blackness and criminality is not surprising given, for instance, that racial and ethnic characteristics such as dreadlocks are emphasized in descriptions of likely drug traffickers in police training materials (Tanovich as cited by Maynard 2017, 95).

Newspaper articles covering trafficking related arrests also provide brief summaries of the incident provided to them by police. These summaries, however, are based on police theories of what occurred and are not yet verified in court, at times also diverging from the events as they are later revealed. For instance, CTV news reported that Daryn Leung, yet another black man, was charged with human trafficking along with a string of other charges after an “18-year-old

woman contacted them [the police] with allegations that she had been forced into the sex trade and violently assaulted” (*The Canadian Press* April 2, 2014). In court, it was revealed firstly, that she had entered the sex trade voluntarily rather than being forced into the trade; that the two were in a romantic relationship where the complainant was giving the accused money from her proceeds; and that the police had made the initial contact with the complainant after they found her advertisement on the escorting site Backpage.com, rather than her contacting the police, as reported by the media. Despite these important differences between the story told by the media and the evidence presented in court, these corrections rarely, if ever, become a part of the official story.

This is especially troubling given the seriousness of the charge, which is given effect by the crime-security nexus and the linking of trafficking with threats to national security. As one Crown attorney commented: “when I stand at a justice bail hearing two weeks ago, for example, and say, this is a human trafficking case, that resonates now in a way that it wouldn’t have necessarily five years ago...that has meaning and content and that increases the seriousness of the case” (participant 6). Moreover, human trafficking charges are often withdrawn or stayed. According to my findings, in 55⁵² out of 84 (65%) cases for which a disposition was available at the end of my research, trafficking charges were withdrawn, stayed or acquitted by a judge (see Appendix B for a breakdown of case outcomes). This is supported by information from Statistics Canada (2016), which indicates the frequency of trafficking charges being dropped or withdrawn by the Crown. The suggested reasons for this varied widely amongst criminal justice actors interviewed for this study and include challenges with cooperation of complainants (see Chapter

⁵² This includes cases where the accused pled guilty to other offences but not trafficking: 7 (8%); was convicted of other offences but not trafficking: 13 (15%), or where the charges were stayed: 9 (11%) or withdrawn: 23 (27%) (see Appendix B).

5), lack of Crown familiarity with the offence (see Chapter 6) and poorly conducted investigations (see Chapter 8). Some defence attorneys, however, attribute high numbers of withdrawn charges to overcharging practices. As a defence lawyer states in relation to police enthusiasm in laying human trafficking charges, “In my mind, they’re just charging everybody with human trafficking now”⁵³ (participant 10).

Furthermore, 21 out of 84 (or 25%) of the accused in my study whose case outcome was known pled guilty to human trafficking charges. This significant number is contrary to the statements of defence attorneys that they would never let their client plead guilty to a charge as serious as human trafficking. One defence attorney expressed his dismay at the idea of anyone pleading guilty to human trafficking:

as regards to human trafficking, I can guarantee you no matter what the circumstances are I would never plead a client to human trafficking, never ever. Before I plead a client to human trafficking I’m going to exhaust everything, I’m going to attack the case from an attack on the law, I’ll argue the exploitation issue, I’ll argue everything before I plead someone guilty to this nonsense. Plead to human trafficking? (participant 14)

Similar sentiments were conveyed by another defence attorney who noted that if “you don’t do a good job, your client’s facing mandatory minimums.... He’s going away for a very long time. Like you don’t take a case like this and half-ass it ever” (participant 13). According to yet another defence attorney: “The reality is on those cases so often we’re going to work out a deal, they’re going to plead to something less rather than human trafficking right unless it’s a really compelling human trafficking case” (participant 10). Thus, as the defence attorney noted, while plea deals in trafficking cases may be frequent they usually involve pleading to a lesser charge. And yet, despite the sentiments of these defence attorneys and the severity of the charges, 25% of accused in my sample pled guilty to trafficking-related charges.

⁵³ An extended version of this quote is also cited in Chapter 3.

Legal Strategies and Racialization in Trafficking Trials

Anita Kalunta-Crumpton (1998) who studied a series of drug trials in the US showed how lawyers produce crime and criminality at trial by placing evidence within social contexts and relying on extra-legal factors. In particular, she found that in order to build a story that would resonate with the jury, evidence against the accused was embedded within racial stereotypes related to poor black men who were most commonly the accused in the drug trials she analyzed. Similar uses of racialized stereotypes of black criminality were also commonly seen in the strategies of Crown and even defence attorneys in trafficking trials. For instance, in *R.v. Beckford* (2013), the Crown's questioning led the witnesses to indicate that they had seen the two black accused persons with pizza boxes entering the hotel where they believed the complainant was being held and that they found the accused suspicious:

Crown: Did you make any observations?

Witness: We witnessed three coloured men carrying a pizza box into the hotel.

Crown: What colour?

Witness: Black (*R.v. Beckford*, Audio of Trial: Jan 27, 2013).

The emphasis on the 'colour' of the accused with the explicit question 'what colour [were they]?', and the coding of the accused's ordinary behaviour of carrying a pizza box up to their hotel room as somehow suspicious confirms the argument made by Hill Collins that the sheer physical presence of the black male body can be "enough to invoke fear, regardless of his actions and intentions" (2004, 153). Emphasis on the accused's race in the same case was exemplified several more times as the Crown posed the following questions: "when did you see *this black man?*" [emphasis added]; "with regard to *those black men* that you saw, did you ever see them prior to ever coming to court?" [emphasis added]; "The person with the hat was [accused 1], *the bigger black man*" [emphasis added]; "on how many occasions did you see *these black males* around the hotel?" [emphasis added] (*R.v. Beckford*, Audio of Trial: Feb 26, 2013). Such

emphasis on the accused's race is rarely, if ever, evidenced in the case of white accused. It is hard to imagine a Crown posing the following questions: 'when did you see this white man?' or 'The person with the hat was the bigger white man?', or 'on how many occasions did you see these white males around the hotel?' This emphasis on the whiteness of the accused would be unnecessary since 'whiteness' is the standard against which all others are measured and therefore does not need to be identified.

In contrast, blackness not only needs to be identified but is also relied on to enact the persistent cultural myth that black people and especially black young men are more criminogenic than other groups (Chan and Chunn 2014, 17; Hill Collins 2004; Jeffries 2011; Davis 2017, 2017(a); Alexander 2012). Indeed, the suspiciousness read into the conduct of the accused above, did not appear to be based on anything other than the accused's blackness, as revealed by the below exchange between a defence attorney and a witness:

Defence: You said that there is something suspicious about them [the accused]?

Witness: They were checking me out as intense as I was checking them out.

Defence: And you thought these two black individuals walking around 1 o'clock or 3 o'clock in the morning look suspicious to you?

Witness: The way they were looking at me was suspicious. And there was enough thickness in the air to cut it with a knife. There was just a certain vibe that was in the air (*R.v. Beckford*, Audio of Trial: Feb 25, 2013).

As the exchange reveals, the witness believed that the two accused were 'checking her out', which we can presume to mean glancing or looking at her, rather than any real or uttered threat-behaviour that would be unlikely to elicit the same assumptions had the accused been white men. Indeed, the interpretation of mundane or ordinary behaviour when exhibited by black people as somehow suspect is not new. In his study of black surveillance, Fiske notes that

street behaviours of white men (standing still and talking, using a cellular phone, passing an unseen object from one to another) [are often] coded as normal and thus granted no attention, whereas the same activity performed by black men [is] coded as lying or beyond the boundary of normal, and thus subject to disciplinary action (2000, 71).

This is captured by the following exchange in *R.v. Beckford (2013)*,

Witness: Closer towards the end of us walking around we saw two of the three black males we saw earlier come out of the elevator and walk to their room.

Crown: Did you make eye contact with either of them?

Witness: No, I was too uncomfortable to make eye contact (Audio of Trial: Jan 27, 2013).

The witnesses' reluctance to make eye contact due to discomfort was presumably because the accused were black and therefore feared as dangerous. Interestingly, in this instant the defence attorneys pointed out the racialization of the accused that was taking place⁵⁴:

Defence: And you are indicating that at that point you had already seen these suspicious black men?

Witness: Yes.

Defence: What was so suspicious about the black males?

Witness: I didn't point out that they were suspicious, I had pointed out that we saw three people walking into the hotel. We were just looking to see people walking around.

Defence: You didn't think they were suspicious?

Witness: I didn't really know who to think was suspicious. I was just looking and observing people to see if I can see [the complainant].

Defence: There is nothing suspicious about a black male walking with a pizza box, right?

Witness: I agree (*R.v. Beckford*, Audio of Trial: Jan 27, 2013).

The above line of questioning highlights the racist assumptions underlying the witnesses' statements that the accused going to their hotel room with a pizza box at night while black was suspicious. As Wacquant explains "the conflation of dangerousness and criminality with blackness has a long legacy in many countries, and it is therefore not surprising that the combination of being young, black, and male is routinely equated with 'probable cause'" (as cited in Chan and Chunn 2014, 11).

In contrast to Crown strategies, which evoke racist stereotypes to construct the accused as dangerous and therefore guilty, defence attorneys, at times, rely on the same racist stereotypes to construct a much softer narrative of the accused and one suggestive of innocence. For instance,

⁵⁴ This was likely because the defence attorney himself was a racialized man.

in *R.v. Greenham* (2015), the defence attorney's line of questioning drew a narrative of the accused as a big and protective black man:

Defence: I'm going to ask you about [the accused], he's a big guy, what 6'4", 250 lbs. – *big black guy*?

Complainant: Yep.

Defence: So, you felt safe that if one of these clients got out of line that you could call him, he would come to the rescue [emphasis added] (*R.v. Greenham*, Audio of Trial: Aug 26, 2015).

Despite the defence counsel's presumably good intentions, the suggestion that the accused - as a "big black guy" – would have been able to protect the complainant from potentially violent 'johns' nonetheless signals problematic assumptions about the potential for dangerousness and violence of black men, since the ability to inflict violence, even if not against the complainant, remains unchallenged.

The Role of Hip-Hop Culture in Constructions of 'the Trafficker'

The racialization of the human trafficker at the front-lines of anti-trafficking efforts is further revealed through association of trafficking offences with hip-hop culture by criminal justice actors. As Alridge and Stewart note, hip hop has been commodified and distributed in ways that emphasize sexism, misogyny and nihilism, thus reinforcing historical stereotypes about African Americans (2005, 193). According to Jeffries, the hip-hop performer who is a "violent Black supercriminal bent on capital accumulation and personal gratification.... began as a figment of the white racist imagination now thrives as a commoditized sign of immoral rebellion and masculine strength" (2011, 77). Stereotyped assumptions around black men's engagement in hip-hop culture and its association with criminality, as revealed by my research data, have also been linked to the crime of human trafficking. Explicit links drawn between human trafficking and hip-hop culture can be seen in an intelligence brief by the Criminal Intelligence Service Canada (CISC), entitled "Organized Crime and Domestic Trafficking in

Persons,” which states that “hip hop music, clothing, and prostitution are popularized” in order to lure potential victims to be trafficked in the sex trade (2008, 2). Nearly a decade later, a Crown attorney I interviewed made the same links between hip-hop culture and trafficking while describing how traffickers meet their victims: “there have been [human trafficking] cases where the accused is a low-level rapper and has a bunch of loser videos on YouTube and people are posting saying ‘I like your video’ or whatever...and that’s how people meet” (participant 15). The comment links human trafficking, not only to hip-hop culture and subsequently to black men, but the reference to “loser videos” also demonstrates a reliance on race-based stereotypes of black culture characterized by apathy, laziness, greed and violence.

Another interviewee, a police officer, revealed that his knowledge about human trafficking was gained from reading “pimping books, breaking down hip-hop culture, listening to the lyrics, understanding what they are saying” (participant 3). The production of knowledge on human trafficking from music embedded with racist stereotypes of, as Jeffries describes it, “the ghetto-poor Black male” as “a heartless criminal” (2011, 77) reveals the highly troubling racialization of the accused in human trafficking cases. The same police officer went on to note that when looking at suspected traffickers’ tattoos, he looks for ones that say “thug, nigga, riches...bitches and game” since “when people talk about game, or he’s got this, it’s like charisma, male charisma in hip-hop culture, it’s black male charisma” (participant 3). This reference to black male charisma as a sign of criminality demonstrates the argument advanced by Hill Collins whereby controlling narratives of black masculinity are associated with sexuality and violence (2004, 151). In other words, black men are depicted as physically powerful, hypersexual and hyper-masculine (read: violent and dangerous), therefore posing a threat to

society and particularly white women - a threat that must be neutralized through physical removal from society, either through imprisonment or if possible, deportation.

Moreover, the word ‘thug’, used by the officer above, according to Boyd “has come to stand in for ‘nigger’ as an epithet for criminally inclined black men. ‘Thug’ can be spoken in the public sphere without rebuke because it is ostensibly racially neutral” (as cited in Jeffries 2011, 86). And yet, as Boyd points out, the re-employment of racially insulting words such as ‘thug’ by black communities is done as a form of resistance against this racism and “to affirm Black self-worth” (as cited in Jeffries 2011, 87). This, however, was not the way in which the term was taken up by the officer, who himself was not black. The police officer’s comment that he looks for tattoos with the words “bitches and game” demonstrates a continuation of the race-based controlling narrative of black men as hypersexual and speaks to way in which the objectification, degradation and insult of women within hip-hop music noted by Jeffries (2011, 154), are seen as innate characteristics of black men more generally. Furthermore, according to Hill Collins, the essence of the identity of the ‘gangsta’ “lies in the inherent violence associated with his physicality” (2004, 159). The use of these racial stereotypes to construct black men as human traffickers is painfully evident in trafficking trials. Take, for instance, the following exchange between a defence counsel and a young, white, female complainant in *R.v. Burton (2013)*,

Defence: He [the accused] wasn’t just black but he had sort of a gangster persona.

Complainant: Yeah.

Defence: He spoke differently, in patois.

Complainant: Yes.

Defence: It was difficult for you to understand him.

Complainant: Yes.

Defence: You thought he might have a gun.

Complainant: I never saw it.

Defence: But all these things affected your impression of him? (*R.v. Burton*, Audio of Trial: Nov 2, 2013)

The defence attorney's statement that the accused "wasn't just black" reveals the underlying assumption that the accused's blackness was in and of itself dangerous. In this case, it was also compounded with his 'gangster persona', thus doubling the threat. Furthermore, the defence attorney's line of questioning was meant to suggest that the complainant had feared the accused due to her unfamiliarity with Jamaican culture and language, rather than any tangible reason. While the presumed intention of the defence attorney was to suggest that the complainant's fear was based on racialized stereotypes that fail to hold merit, his line of questioning, instead, constructed the accused as not just black, but also speaking patois and embodying a "sort of a gangster persona", therefore increasing the perceived dangerousness of the accused. The danger of the accused's Jamaicanness and blackness when combined with his 'gangster persona', operationalized the crime-security nexus by linking of the accused with foreign criminals and transnational criminal 'gangs', despite lack of evidence to support either connection. What we see then, is the use of racialized stereotypes by legal actors which operationalize the crime-security nexus by drawing connections between the activities and characteristics of what are essentially poor black men engaged in domestic 'pimping', with broader fears around transnational 'gangs', national security and public safety.

Hypersexual and Violent Black 'Pimp'

Construction of black men as hypersexual 'pimps' who exploit women (Hill Collins 2004, 162) makes them easy targets for the aggressive anti-trafficking efforts. Reliance on this trope to demonstrate the guilt of the black accused was also evident in trafficking trials. In *R.v. Greenham (2015)*, for instance, racialized stereotypes of hypersexualized black men were evoked by Crown's line of questioning regarding the accused's practice of having sex with the various sex workers that he was managing:

Crown: But it was a problem that [the accused] would have sex with the girls who were working for him, correct?

Witness: It bothered me.

Crown: And one of those girls that he had sex with while she was working for him was [name of complainant].

Witness: Yes.

Crown: And that was what caused your relationship with [name of complainant] to fall apart when you found out that the two of them had been having sex behind your back?

Witness: Yes (*R.v. Greenham*, Audio of Trial: Aug 26, 2015).

The above examination suggests that the accused's uncontrollable sexual urges reflected in his need to have sex with the women who worked for him caused significant problems. This depiction demonstrates the way in which even the heterosexual relationships entered into by black men are negotiated by the prevailing stereotypes of promiscuity as a defining feature of black masculinity (Hill Collins 2004, 162). The way in which legal actors tap into these stereotypes in order to paint the accused's behaviour as criminal is demonstrated in the Crown's questioning in *R.v. Burton* (2013),

Crown: When you were intimate with [the accused] was he using protection?

Complainant: No.

Crown: Did you ever ask him to?

Complainant: No.

Crown: And you just said that if he was your boyfriend he wouldn't have had relations with your friend – who were you referring to?

Complainant: [Name of complainant 2]

Crown: Were they intimate as well that you were aware of?

Complainant: Yeah.

Crown: Were you there when that happened?

Complainant: Yes.

Crown: Were there any – that you were aware of – any rules around the relationship between [the accused] and [complainant 2] having sex?

Complainant: Again, not rules that were spoken, it was more just like, when he wanted it he got it, kind of thing.

Crown: How often would he want it, do you think?

Complainant: Usually every night and in the morning (*R.v. Burton*, Audio of Trial: Jan 29, 2014).

The accused's need for sex "every night and in the morning" with two women, sometimes at the same time, captures the cultural stereotype of black man's uncontrolled sexual desire and the

need for unrestrained access to ‘the booty’. Indeed, the Crown paid particular attention to the accused’s failure to use protection when having sex with women who were also sex trade workers, which she used to demonstrate his sexual recklessness, a feature which is also captured in the investigating officer’s statement:

She [complainant 2] talked about having a sexual relationship with him [the accused]. She said she was forced but not held down or anything. She describes it as disgusting. He knew that she had slept with all these men during the day but he wouldn’t care. He’d make her have sex anyway (*R.v. Burton*, Audio of Trial: Dec 16, 2013).

In addition to sexual recklessness and uncontrollable urge for sex, the above statement was also used to depict the accused as a sexual predator who forced the women to have sex with him. Indeed, as the following statement seems to suggest, he didn’t care and possibly even took pleasure from knowing that the complainant “hated him”:

Crown: And what if anything did she [complainant 2] say about whether she wanted to engage in this sexual relationship?

Witness: She definitely did not want to. And she says that he [the accused] knew that she hated him.

Crown: Did she tell you how this sexual relationship started and how long it went on?

Witness: They had to all sleep in the same bed together and he would just say, hey let’s go, let’s do it. It was a matter of fact, you have to.

Crown: Did she say how often?

Witness: I believe it was every day (*R.v. Burton*, Audio of Trial: Dec 16, 2013).

Although the complainant was not physically forced to engage in sex with the accused, representations of black men’s uncontrolled sexual urges compounded with stereotypes of the predatory black male hustlers are used to suggest that she did so under threat of violence. This is because black men’s predatory skills as hustlers and their association with violence construct a controlling image of black men as “booty call-seeking rapists” (Hill Collins 2004, 166). The construction of black men as sexual predators, according to Weigman, emerged after the end of transatlantic slavery, as a product of “the fault line of the slave’s newly institutionalized

masculinization by framing this masculinity as the bestial excess of an overly phallicized primitivity” (1993, 458). As Weigman notes,

The transformation of the image of the Black man from simple, docile Uncle Tom to violent sex offender characterizes the oppositional logic underwriting the representational structure of Black male image in nineteenth-and twentieth-century United States culture, a logic in which the discourse of sexual difference – from feminized docility to hypermasculinized phallicity – comes to play a primary signifying role (1993, 459).

Violence, according to the racialized narrative of the black ‘pimp’ is a natural extension of their behaviour. According to the RCMP (2013), violence is one of the ways in which the trafficker gains control over the victim. Traffickers are portrayed as harbouring hate for women. In response to a question about the most surprising aspect of human trafficking, one police officer commented “the length to which these guys go to and the way they treat these girls. I’ve never seen anything like it.... you can’t flower this, you can’t flower human trafficking. This is an awful criminal offence” (participant 1). He goes on to note, “They [‘pimps’] have between 5-10 girls in that stable. This is how they talk about these women. These girls. It’s disgusting. It’s plain and simple disgusting” (participant 1). Such views of accused as motivated by hatred of women or greed attribute blame exclusively on individual shortcomings of the accused person and divert attention from possible structural factors, such as poverty, racism and so on.

Emphasis on the violence of the accused is also seen in court cases. In *R.v. Byron (2014)*, the accused’s violence towards the complainant was described by the Crown as follows:

The violence which is an essential element of some of the offences cannot be more clearly corroborated. [The complainant] was very clear on a continual violence when she didn’t want to give him money. You’ve seen the picture of her on all fours wearing a red bra and panties on a bed. The photo was taken for the purpose of improving the ads. And Your Honour has had the opportunity to see the large red mark on her leg. [The complainant] testified that that was a mark left on her through an assault by [the accused]. She described a lot of his physical behaviour as punches. This testimony is corroborated by the evidence of [a witness], [the complainant] shows up at her door with a blue mark under her eye and upset, she just had a fight with [the accused]. She had a scar from

another time [the accused] is alleged to have been violent with her (Audio of Trial: May 17, 2013).

Crown attorneys went to great lengths to demonstrate that the violence was used to control the complainant. For instance, in *R.v. Greenham (2015)*, it was suggested by the Crown that the accused's violence towards his girlfriend (who was not a complainant in the case) was meant as a threat towards the complainant:

I would ask you to accept [the complainant's] evidence as she testified that she was afraid not to give [the accused] his 40%. She had told this court what she had seen had happened between him and [his girlfriend] in the past. She had seen the accused assault [his girlfriend] in the past and the fact that that was corroborated by [name of witness]. And subjectively speaking, although she doesn't relate the second portion at all to fear objectively, Your Honour has to consider that [the accused] had on two occasions destroyed her personal belongings, her phones, apparently out of anger with her. I would ask you to accept [the complainant's] evidence that she was afraid not to give [the accused] his 40%. (Audio of Trial: April 13, 2015).

The Crown's suggestion was rejected by the judge who in his decision noted that:

From an objective basis, there is no evidence that [the accused] used or threatened to use force against [the complainant]. The fact that on one occasion she saw him argue with [his girlfriend] does not support a reasonable belief that her safety or the safety of a person known to her would be threatened if she failed to provide the services which she was providing in their business arrangement (*R.v. Greenham*, Audio of Trial: Oct 27, 2015).

Despite the judge's rejection of this argument, the Crown's suggestion that the violence exhibited upon others was a subtle form of threat towards the complainant demonstrates the lengths to which the Crown went to connect the actions of the accused to indicators of human trafficking.

Black Trafficker and White Victim

The mythology of the black 'pimp' is even further aggravated when the perceived predatory advances of black men are towards white women. As Wierman notes, the white woman, who is depicted as a "flower of civilization" (1993, 454) to be preserved and protected

from threats, is a “pivotal rhetorical figure for shaping the mythology of the black rapist” (ibid, 461). The myth of the ‘black rapist’ threatening the safety of white women has historical roots dating back to transatlantic slavery. Emerging during the Jim Crow era, the myth of the black man as a rapist who lusted after white women became a tool for controlling black men seen as “prematurely freed from the civilizing influences of slavery” (Hill Collins 2004, 166). The ‘black man as rapist’ trope has historically functioned in powerful ways to justify racism and segregation of black men under the guise of protecting white women (Maynard 2017, 41). As Maynard points out, in Canada, this trope was effectively utilized to justify the use of capital punishment as a sentence for rape and exclude black people from settlement in order to protect the safety of white women (2017, 41).

The image of the prototypical black ‘pimp’ is a continuation of these historical mythologies, and according to Hill Collins, is redeployed whenever the need arises (2004, 166). The need to revive this myth appears to have emerged through anti-trafficking efforts. It is indeed telling that in seven out of eight trafficking cases examined for this study the complainants were white women and girls, while six of the eight accused were black men. We also see this being inferred in the case of *R.v. Beckford (2013)*,

Defence: And, at the time your *hair colour was blond?*

Complainant: Yes.

Defence: And, you were 105 lbs?

Complainant: *100lbs at most.*

Defence: And, you indicated that now there were *lots of black men that came in and had sex with you?*

Complainant: Yes [emphasis added] (*R.v. Beckford*, Audio of Trial: March 6, 2013).

The complainant’s whiteness and fragility captured by the description of her physical appearance as small, “100 lbs at most” and with blond hair is contrasted with the image of her sexual violation by “lots of black men.” The equation of the complainant’s child-like physical

appearance combined with her young age, as discussed in Chapter 5, also renders the ‘john’ or the ‘pimp’ as violating not only the white woman but even more reprehensibly, the white child.

Similar strategies were used by legal actors in *R.v. Oliver-Machado* (2014), where complainants’ physical appearance and particularly their whiteness, beauty and youth were highlighted through questioning. For instance, a witness described one of the complainants as “white, pretty, tall, very nice, her hair was long” (*R.v. Oliver-Machado*, Audio of Trial: May 2, 2013), while another complaint was described as “middle height, blond hair” (*R.v. Oliver-Machado*, Audio of Trial: Sept 9, 2013). This kind of questioning by the Crown brought forth the whiteness of the complainants and positioned these girls and women as worthy and indeed deserving of protection. Interestingly, in this case the main accused, Kailey Oliver-Machado is also young, pretty and white. Yet, as I discuss below, these mitigating factors are erased during trial through a focus on her marginalized background, thus racializing and Othering her.

Given this protectionist focus on the need to save the white child, black men’s violent actions towards girls and women [read: white girls and women] are seen as particularly aggravating and given significant weight in sentencing decisions. This was also reflected in the sample of cases I analyzed. For instance, in sentencing yet another black man for human trafficking in the case of *R.v. R.R.S.* (2015), the judge noted,

what I consider particularly aggravating in the circumstances of this case is R.S.’s lengthy criminal record – particularly in regards to crimes against women. There is no evidence that suggests that R.S.’s attitude towards women has improved....R.S. will continue to be a danger to women...therefore protection of society plays a significant role in my sentencing of R.S. (*R.v. R.R.S.* March 29, 2016, para 40).

The judge’s sentencing decision in this case provides another example of the way in which severe punishment and exclusion of black men from Canadian society is justified in the name of women’s protection.

‘Romeo’ Tactics

At the same time as the violence of the accused against the complainant is seen as a defining feature of trafficking, traffickers are also depicted as employing subtle tactics. In particular, that characteristics indicative of human trafficking are created through reliance on the old familiar figure of the ‘pimp’ is also shown by continued emphasis on the ‘romeo tactics’ employed by the ‘pimp’. Through the human trafficking matrix, these ‘pimping’ tactics have become repurposed to become recruitment methods of traffickers. Relying on these ‘romeo tactics’ allows Crown attorneys and the police to suggest that the complainant, rather than being kidnapped and forced into their situation through threats of violence, was instead lured and exploited through false promises of love. As one police officer described it:

Pimps...will approach a girl and the way they do it, they will shower her with gifts, that’s the process of procurement.....and all of a sudden, boom! Now you’re going to work for me. It goes from that starting point of, I’m going to be your boyfriend, I’m going to shower you with gifts and it ends when they say, now you’re going to work for me. So, it’s not just the act of you’re going to work for me, it starts way before that (participant 1).

Another police officer noted that the ‘romeo tactic’ is “where they get the girls to fall in love with them and from that position they exploit their affection to transition them to working in the sex industry”. This romancing is a form of manipulation, as the officer explains, “he doesn’t have to tell you he’s going to kick your ass or beat you; he just has to romance you, do whatever, manipulate you” (participant 2). And so, unlike in the popular imagination where the victims are kidnapped by the trafficker, the effects of the human trafficking matrix enable the police and legal actors to argue that victims are lured, tricked and manipulated by subtle methods that can be confused with a romantic relationship. According to Quinn, “the pimp figure has long been associated with the trickster in African American vernacular traditions and it is above all the persuasive power” (2000, 118). As Quinn notes, “Like gangsta rappers, the ‘pimp’ and the

trickster are expert ‘mackers’: they earn a rich living from their wit, guile, and dextrous language use” (2000; 118). This is captured by the comment of one police officer I interviewed who noted that, “these guys are master manipulators. They will see it and seize it” (participant 1). He goes on to explain that,

They will say, ‘hey honey, you look great. Don’t let anybody tell you you don’t look great’. That’s how the conversation starts. Now the girl’s like, well somebody’s paying attention to me. Somebody thinks I’m pretty. That’s how they hook them (participant 1).

As an effect of the trafficking matrix then, the racially stereotyped ‘romeo tactic’ comes to bridge the gap between consent and exploitation by transforming subtle methods of persuasion commonly associated with ‘pimping’ into recruitment tactics of traffickers. This is evidenced in the argument of the Crown in *R.v. Byron (2013)*,

there’s a certain sophistication executed by [the accused] by posing as a potential romantic relationship with [the complainant], being very nice to her, forwarding her money, arranging her travel, all the while knowing exactly what was going to happen when she got to Montreal (Audio of Trial: Dec 13, 2013).

The Crown’s description of these ‘pimping’ tactics as ‘sophisticated’ is noteworthy as it increases their seriousness through implied connection to organized criminality. Warnings about the dangers of ‘romeo tactic’ are also conveyed by the media. For instance, in 2015, a *Toronto Star* article covered an interview with an accused human trafficker describing his summary of the ‘romeo tactics’ as follows,

It begins with the boyfriend stage, he says, where pimps prey on vulnerable girls and pretend to be in love....But, he added, it’s an illusion because ‘there’s no love in the sex trade’. The next stage is the ‘sale’ where the pimp starts to manipulate the girl into thinking prostitution is an easy way for them to make fast money so they can start to build a future together...’and, she’ll do it. Why? Cause you just sold her a dream’. (Carville, Dec 12, 2015).

The ‘romeo tactic’ is depicted as a new recruitment tactic in the ‘pimping’ world. In a *Toronto Star* article on human trafficking, a mother whose daughter was ‘pimped’ out by her boyfriend is

quoted as saying, “we never knew about boyfriend pimps” (Carville, Dec 13, 2015). Yet, similar depictions of boyfriend ‘pimps’ as a new development were also seen during the 1980s and 1990s panics around youth in the sex trade. As Jessome writes in his journalistic book on ‘pimping’ in Halifax,

Violence had been touted as the key to pimp’s success. Today it is seen as a weakness. The Game is played for money and the players adjust to rule changes quickly. If beating girls means going to jail, then beating girls is not a smart man’s way to play. One jailed pimp recently joked about this trend, saying his colleagues now had to buy ice-cream cones for their girls to keep them happy (1996, 14).

The depiction of recruitment tactics of traffickers as new and more dangerous due to their subtlety is, therefore, a historical continuation of the strategies used during the 1980s and 1990s panics over young women’s engagement in the sex trade. Moreover, within the trafficking matrix historically stereotypical ‘pimping’ tactics intersect with numerous other issues, factors and discourses to assign new meaning, enabling police and legal actors to argue that these recruitment tactics are indeed indicators of human trafficking.

Economic Factors and the Lavish Lifestyle of ‘Pimps’

The image of the black ‘pimp’ also comes with stereotyped depictions of lavishness and wealth accumulated on the backs of exploited women. These racialized stereotypes are used by police and legal actors to convey criminality since having wealth in and of itself is clearly not criminal. The reliance on and perpetuation of this ‘pimp/hustler’ aesthetic of luxury is seen in the comments of one police officer: “these guys [‘pimps’] are very arrogant. They like to show off their money” (participant 1). He goes on to note, “There’s no real demographic. The only demographic is that they want to make money. They want money and control” (participant 1). He adds that “They [the ‘pimps’] flaunt it. These guys have money, are driving cars, Ferraris, Benz, BMW, all high-end cars. I know the pimp that’s driving 2 Bentleys. \$500 000 cars each

(participant 1). The flaunted wealth is seen as accumulated through criminal activity and in particular exploitation of women and is in line with the stereotypical image of ‘pimps’ as wearing gold chains around their neck, having floppy hats, and driving Cadillacs bought with the money earned by their stable of ‘hoes’ (Brock, 1998, 96).

The ‘pimp-like’ luxurious lifestyle as an indicator of criminality is captured in the interesting reversed use of this racialized stereotype by the defence attorney in *R.v. Byron* (2014). In this case, the defence attorney argued that the accused deserves a lesser sentence because he did not live a luxurious life like another convicted trafficker, Imani Nakpangi,

Mr. Nakpangi’s lifestyle as reported in that decision is also a distinguishing factor from the one we have before the court. It’s relayed that Mr. Nakpangi drove around a BMW. Mr. Nakpangi was buying himself jewelry, expensive furniture, nice clothes, pieces of art, a home in Niagara Falls, paid vacations. In terms of the evidence, in this case, there’s no indication that Mr. Byron owned or drove himself around in expensive cars, buying himself jewelry, that he was going on paid vacation, or buying himself real estate or pieces of art. As a matter of fact, it appears that at times Mr. Byron was struggling to make ends meet. So, the lifestyle that’s exhibited by Mr. Nakpangi, I would suggest, is quite different from the lifestyle that’s exhibited in this case by Mr. Byron (*R.v. Byron*, Audio of trial: April 21, 2013).

The efforts of the defence to reduce the apparent blameworthiness of the accused by demonstrating his lack of economic success were rejected by the Crown as follows: “if [the accused] had trouble making the ends meet, he couldn’t manage that money; I don’t see that as mitigating in any sense” (*R.v. Byron*, Audio of Trial: April 21, 2013).

The stereotype of the ‘pimp’ living in the lap of luxury was also evoked by the Crown’s questioning in *R.v. Burton* (2013) where the complainant told the court how she had to kiss the accused’s ‘pimp ring’:

Crown: You had to kiss the ring?

Complainant: Yeah.

Crown: When did you have to kiss the ring?

Complainant: At random times.

Crown: How would you know when you had to kiss the ring?

Complainant: I don't know, he would say little things and I would do it. I wasn't forced to or anything.

Crown: I just want to focus on what you were thinking at the time. A couple of times you told me that you reflected on it after the fact so I'm going to ask you to think about and tell us right now about what you were thinking at the time, ok? What did he say to you to let you know that you had to kiss the ring?

Complainant: Again, I don't remember what he would say.

Crown: Do you have an understanding of why he made you kiss the ring?

Complainant: I googled it but I didn't really think anything of it at the time.

Crown: Was there anything about the ring that made it look a certain way?

Complainant: It was just sparkly I guess – had diamonds on it.

Crown: You remember what finger he wore it on?

Complainant: His pinky (*R.v. Burton*, Audio of Trial: Dec 20, 2013).

The image of the black accused as requiring his 'hoes' to kiss the 'sparkling' ring on his pinky finger captures the stereotypical representation of the 'pimp' almost too well. And so, the well-known popular image of the gold chain, floppy hat, and fur coat wearing 'pimps' with sparkling pinky rings to be kissed by 'hoes' has become integrated into the human trafficking matrix to become the face of the human trafficker at the frontline of anti-trafficking policing and prosecutorial efforts in Ontario. This image of the trafficker emerging at the frontlines differs considerably from the face of the trafficker as a foreign member of an organized transnational crime syndicate, constructed in the shadows of the crime-security nexus. In the absence of transnational trafficking cases (Ferguson 2012), however, police and legal actors rely on the 'hustler pimp' stereotype associated with black men to make the argument that the accused was motivated by financial gain, therefore fulling the *mens rea* requirement so important in trafficking cases (see Chapter 3 for discussion).

Poverty and Lack of Education

In her study of drug trials, Kalunta-Crumpton (1998) observed that legal actors used the impoverished socio-economic circumstances of the accused to argue that the crimes they committed were economically motivated. In order to make sense of the accused's actions in

human trafficking cases, legal actors are relying on similar socio-economic circumstances of the offender where capital accumulation is deemed to be a significant motivating factor for accused. This is captured in the observations of defence attorneys that the accused in human trafficking cases are “mostly low level, Backpage, thug wannabes” (participant 13) and “compromised males, failures at communicating” (participant 12). Indeed, one defence attorney went as far as to suggest that it is actually the unsophisticated men who are being exploited by women in the sex trade industry, explaining that: “these guys who aren’t the most sophisticated guys are ripe for exploitation” (participant 12). Some criminal justice actors also see the accused in trafficking cases as unsophisticated, uneducated and unintelligent. According to a police officer, “We don’t catch the smart ones [pimps]” (participant 1). In addition to being seen as unsophisticated and unintelligent, accused in trafficking cases are also conveyed as lazy, greedy “losers”. This understanding is evident in trafficking court cases. For instance, in rendering her sentencing decision, the judge in *R.v. Byron (2014)* described [the accused] as having “worked in a variety of positions in the fast food and retail clothing area, as well as for delivery companies, however, he has never been steadily employed. The longest job he has held is for a period of one year at a catering company” (*R.v. Byron*, Feb 13, 2014). In this case, then, we see the accused’s low-level precarious work situation highlighted and contrasted with his greed and parasitic actions in forcing the complainant to work in the sex trade and without using protection.

The low-income earning ability of the accused is further highlighted in the Crown’s cross-examination of the accused in *R.v. (Gregory) Salmon (2014)*:

Crown: How much did you claim on your income tax in 2011?

Accused: I think maybe \$14,000.

Crown: What about 2012?

Accused: 2012-2013, I started a process to file it this year.

Crown: Was that because you didn’t make any money?

Accused: I made money but I didn’t file the taxes.

Crown: Why?

Accused: When I came out of jail I didn't have my IDs to go to H&R Block.

Crown: What were you going to claim?

Accused: The sales from the previous year. Probably like \$9,000, but everything was commission so I didn't have to pay taxes (*R.v. (Gregory)Salmon*, Audio of Trial: April 25, 2014).

As in the case of *R.v. Byron (2014)*, discussed above, the Crown in the case of Salmon also highlighted the precarious work and low income of the accused suggesting that the gap between his earning ability and his desires fueled the motivation for his crimes:

the dynamic of [the accused] is, he wants to portray himself as a big shot entrepreneur and there's nothing wrong with that, but if you look at his evidence as a whole, he wants to project one thing when the reality is much different. And the reality became much different for him from a number of different angles (*R.v. (Gregory)Salmon*, Audio of Trial: April 25, 2014).

The Crown's statement reveals the way in which racialized poverty, which is a frequent reality of black men's lives, is used to demonstrate their criminal motivation in trafficking cases through a portrayal of the accused's desire for a better life and contrasted with their limited success in achieving it through legitimate means. What we see then, is the construction of the accused as yet another low-earning, criminogenic black man, who parasitically rides on the earnings of others to survive. A similar sentiment is expressed by a police officer who noted that in human trafficking cases "you're not running into a guy whose university educated or who's a professional" (participant 3). Such depictions of young black men's low earning potential are attributed to black cultural inferiority whereby black people "are assumed to be poor because of deficiencies intrinsic to Black culture" (Maynard 2017, 52). The portrayed lack of education, sophistication and laziness on the part of the accused in trafficking cases is therefore attributed to group and cultural differences, which blame the individual for their lack of success (James 2012, 84), and stands in stark contrast to the popular image of the sophisticated, savvy and smart member of a transnational criminal organization engaged in human trafficking. These depictions

of the unsophisticated black criminal are also evidenced in *R.v. R.R.S. (2015)*, where the judge highlights the accused's employment history as follows,

Following his departure from high school, R.S. has held sporadic employment as a cleaner, forklift operator, and a scrap metal worker arranged for him through his father's employment. Other jobs in the area of framing, construction and renovation work with a local contractor. Most of these jobs have been short-term in nature. During lengthy periods of unemployment, R.S. has relied on social assistance benefits. He lived either with the women in his life or at his father's residence (*R.v. R.R.S. March 29, 2016*).

The judge's comments then depict the accused as an unsophisticated, unsuccessful parasite, who lives off the state, his women and his father. Such portrayals ignore the reality of many black Canadians who, as Maynard points out, are "among the poorest population in Canada, and continue to face discrimination in access to employment, housing, education, wages and positions of public service" (2017, 51). As Maynard further contends, "structurally mandated poverty persists, defines and constrains the lives of significant proportion of Canada's Black population" (2017, 51).

Moreover, the judge's comments in *R.v. R.R.S (2015)* conveyed neo-liberal expectations of individual responsibility, the absence of which justifies removal from society: "it is unlikely that any sentence that I may render will promote in R.S. a sense of responsibility and realization of the harm he has done to A.M.C [complainant] and to the community" (*R.v. R.R.S. March 29, 2016: para 15*). Interestingly, in contrast with this neo-liberal responsabilization, the judge placed significant emphasis on the fact that R.R.S. grew up in Jamaica, which the judge describes as a community with "violence and unemployment" (*ibid*). The accused's cultural background was therefore seen by the judge as the reason for, what she saw as irresponsible, lazy and criminogenic behaviour. The continued emphasis on the accused's lack of education, unsteady employment and overall lack of achievement taps into racialized stereotypes of poor black men as criminogenic and provides possible motivations for legal actors to point to in explaining why

the accused engaged in human trafficking activities. And yet, once again, the low-level thug, frequently emerging as the accused in human trafficking trials does not abide by the popular image of the trafficker as a transnational organized crime syndicate.

Accused as Drug Dealers and/or Users

The socio-economic situation of the racialized accused is also used as a ‘common sense’ explanation for black people’s involvement with drug crimes. Indeed, a prominent theme rising from trafficking trials with black accused was drug dealing and use. This finding is in line with the observations of critical race scholars who have documented the ways in which the war on drugs has created an association between black people and crime (Alexander 2012,197; Maynard 2017). As Maynard contends, although profiling and surveillance of black lives is a continuation from slavery, “the ideologies and practices of drug law enforcement have consolidated, and have given new breadth and scope toward, the criminalization of Blackness” (2017, 92). Indeed, Alexander, writing about the US observes that, “nothing has contributed to the systemic mass incarceration of people of colour in the United States than the War on Drugs” (Alexander 2012, 60).

In the context of Ontario’s anti-trafficking efforts, similar association is constructed between black accused and drug crimes. For instance, in the sentencing hearing in *R.v. Byron* (2014) the Crown relied on a pre-sentencing report to describe the accused as “consuming drugs 2-3 times a day”, which he then sums up as “a drug habit” (Audio of Trial: Dec 13, 2013). Similarly, in *R.v. Beckford* (2013), the way in which the accused were linked with drug crime is seen in the following exchange,

Crown: Can you describe the person you call [accused 2]?

Complainant: He’s a male, always wearing a red hat with the letter P on it, facial hair, black, maybe 5’5”, late 20’s, early 30s.

Crown: How about [accused 1]?

Complainant: He was a male, light-skinned black, he looked older, shorter, more lanky, he had raccoon eyes.

Crown: What do you mean raccoon eyes?

Complainant: I don't know, from drugs or whatever he had bags under his eyes (*R.v. Beckford*, Audio of Trial: March 4, 2013).

In this way, the Crown's examination drew out two important components of the accused – their skin colour and drug use, which stereotypically go hand-in-hand and are seen as indicators of criminality.

More than the assumptions of the accused's own drug use, Crown strategies often included suggestions that they also offered drugs to complainants in order to control them and subsequently force them to work in the sex trade. For instance, in *R.v. Dagg (2015)*, the Crown makes the argument that the accused, who sold drugs, lures the complainant by

giving her as much crack cocaine as she can consume. They know that she's just come out of rehab she's told them that, and we know that from [the accused's] own statement to the police that he's aware that she has just come out of rehab. So, part of the lulling her into the prostitution services is to hook her into needing all that crack cocaine. And she knows that they are an easy source of crack cocaine (Audio of Trial: April 7, 2015).

As such, the black accused in this case is constructed by the Crown as purposely giving the complainant drugs in order to kick-start her pre-existing drug habit with the intent to then force her into prostitution.

Similarly, in *R.v. Beckford (2013)*, the complainant made the following statement about the accused: "he had a big black bag filled with ecstasy and I was offered a bunch of ecstasy" (Audio of Trial: March 4, 2013). What is being insinuated here is that in offering the complainant "a bunch of ecstasy", the accused intended to drug her in an effort to then exploit her by forcing her to work in the sex trade. The Crown's efforts in constructing the accused as having drugged the complainant were also seen in *R.v. Greenham (2015)*,

Crown: And when you moved in with them [the accused and his girlfriend] where were you getting the [drugs] from?

Complainant: Either clients or [the accused].

Crown: Was there any arrangement with respect to that?

Complainant: No arrangement, no.

Crown: How would you get the drugs from him [accused]?

Complainant: What do you mean how?

Crown: Well, for example, was it something that you had to get special arrangements for? For example, did you ask him to get them for you?

Complainant: Sometimes, yes. He did sell drugs so he had it on him majority of the time (Audio of Trial: Aug 26, 2015).

Despite the Crown's attempts to elicit a response which would suggest that the accused drugged the complainant in order to exploit her, the complainant's responses instead reflected voluntary efforts of her own to obtain drugs, either from the accused or others. According to the RCMP, drugs are used by traffickers in order to maintain control over their victims and increase their dependency on them (2013, 22). As such, demonstrating the accused's active role in the complainant's drug use strengthens the Crown's case. Moreover, as the *Crown's Guide to Human Trafficking Cases* suggests, "The use of drugs or alcohol to help maintain control over the victim can be viewed as an aggravating factor" (Department of Justice Canada 2015, 70). The mere presence of drugs or alcohol is therefore used by the prosecution to argue that the accused relied on these substances to exploit the complainant.

In contrast, when the accused did not give drugs to the complainants, and indeed discouraged the use of drugs, as was the case in *R.v. Burton (2013)*, it was suggested that this too was done to maintain control over the complainants, as captured by the below exchange,

Defence: In fact, there was evidence that [the accused] didn't want them to use drugs at all.

Witness (investigating officer): Because he wasn't in control.

Defence: But the girls didn't say he didn't want them to use because he wasn't in control, correct? That's your opinion (Audio of Trial: Dec 16, 2013).

Thus, as the defence attorney pointed out, it was the investigating officer's interpretation that the accused's disapproval of complainants' drug use was due to his need to control them, much like encouragement to use drugs is commonly used to argue the same.

The Responsibility of Black Families

In addition to the long list of factors, broken black families are yet another reason attributed to black men's criminality. In particular, it is seen as a product of absent fathers and overwhelmed mothers as explained by one defence attorney:

The mothers are kind of bitter, understandably, they've got three or four kids and are trying to make it through the day with the crumbs that they're given with public assistance. They are only human, they get ticked off at you, 'Whack! Shut up jr. Whack!' Then you can see when you interview them [the accused], you can see the hostility they have towards women. The main woman figure they have in their life is their mom, right, and the mom doesn't have anyone supporting them and helping them and dealing with them (participant 12).

In the context of the racialized construction of the trafficker, the above quote reveals a number of troubling race-based stereotypes, including black women as having many children; their reliance on social welfare to support their children; the absence of fathers in black families; neglect of children and violence within these homes. This type of mother blaming is particularly prevalent in the case of single and/or poor, racialized mothers. Indeed, the mother's singleness and poorness is suggestively a result of black culture's otherness characterized by laziness, violence and uncontrolled sexuality resulting in multiple fatherless children. As Maynard notes, "today, Black reproduction continues to be seen as a threat and contamination" (2017, 180). Indeed, as Feldstein notes, black mothers are seen as raising "sons who were either insufficiently aggressive, inhibited, and sexually passive and repressed; or sons who were too aggressive, insufficiently cooperative and violent" (1998, 159). And while the image of black mothers as 'matriarchs' whose actions damage black men is not new (Feldstein 1998), it continues to be

relied on to serve new purposes. In the context of anti-trafficking efforts, this mother blaming is then taken up as a possible explanation for the accused's exploitation and suggested hate of women.

Evidence of this can be seen in the psychological information and past risk-assessment in the case of *R.v. Burton (2018)*, which states:

Mr. Burton had a difficult childhood that included lack of care by his mother, physical abuse by both his mother and stepfather and a failure by his mother to follow through with recommended treatment. It would appear from the records that many state actors were aware of the physical abuse suffered by Mr. Burton and that his mother refused to get him the necessary treatment, but little was done to intervene – much to Mr. Burton's detriment. For example, in 1992, the Catholic Children's Aid Society (CCAS) closed their file on Mr. Burton noting that it was clear that Mr. Burton's mother was not going to get the necessary treatment for her son regardless of CCAS's recommendations. Another example is from 1995. There was evidence that Mr. Burton's mother was hitting him with a belt. The police cautioned his mother about this conduct to which she responded that she would nonetheless continue to engage in this kind of punishment. Despite this information, Mr. Burton largely remained in his mother's care. One final example of note is that when Mr. Burton was placed on probation in 1999, the probation officer spoke to Mrs. Burton many times about programs that Mr. Burton should attend, but she failed to take him to these programs and the probation officer failed to take steps to intervene and make sure that Mr. Burton received the counselling that the court ordered (para 29).

Descriptions of Burton's mother's abusive and neglectful behaviour in this case incite cultural stereotypes of black mothers' treatment of their children and are used to assign blame to this mother for her son's actions.

In line with this, the dangerousness of young black men is also attributed to an apparent lack of father-figures to act as role models (James 2013, 79). According to James, violence by young black men has been blamed explicitly on "the fact that they are 'from fatherless homes'" (2012, 79). In the context of trafficking, this is captured by the comment of one defence attorney,

I blame a lot on the males. To me, what they should make a criminal offence - child abandonment. I mean a parent leaving and not paying child support. To me, that's the biggest - and men, still, I mean I'd make that criminal. I really would because I find that 90% of my clientele is, I don't know my father or I haven't heard of him (participant 12).

The suggestion that further criminalization of black men would somehow benefit black families is a continuation of racialized surveillance and punishment justified through the cloak of protectionism.

The attribution of black men's criminality to the absence of a male role model is also captured in trafficking trials. In the sentencing decision in *R.v. R.R.S. (2015)*, the judge summarized the accused's father describing "how, over the years, R.S. has been unable to benefit from his support and direction" (March 29, 2016: para 13). The judge's mention of this suggests that fatherly support and direction in the accused's life would have prevented him from the criminal behaviour which he was being sentenced for. Similarly, a pre-sentencing report in *R.v. Byron (2014)* also highlighted the absence of a father in the accused's life,

The lack of a father figure has certainly affected him [the accused] and drawn him closer to the negative influence that is also spoken of and it's also expressed as a concern by all three individuals here. The fact that [the accused's] father was and perhaps still is incarcerated, the fact that he has not had any contact with him because he is in St. Vincent has left a void in his life and it's been difficult for him and his mother I'm sure. [The accused] also has a younger brother that his mother currently raises. And as mentioned in the report, it has unfortunately become taboo in the Byron house to speak of where Mr. Byron [the father] is and what has happened with him (Audio of Trial: Dec 13, 2013).

The absent father figure in the life of the accused in *R.v. Byron (2014)* then, is clearly given significant weight as a contributing factor to his actions. The negative peer influence that was perceived to have taken hold of the accused due to his lack of father-figure is a part of a larger discourse that, according to James, assumes the presence of father-figures in young men's lives will set them on the right path (2012, 79; see also Alexander 2012).

As is revealed during the trial, Mr. Byron's father was deported from Canada for his criminality (*R.v. Byron*, Feb 13, 2014) – a fate shared by so many black male immigrants in Canada. This, however, made Mr. Byron's father a taboo subject in the home. According to

Michelle Alexander, the attempts of black families at distancing themselves from a criminally convicted member of the family can be attributed to a racial stigma which today is associated with the shame of black criminality. As Alexander notes, in the era of mass incarceration the stigma of being a criminal is “fundamentally a *racial stigma*” since what it means to be a criminal has become conflated with what it means to be black (Alexander 2012, 198). This shame does not only extend to the individual but also their family members, friends and entire communities (ibid). As such, in the Byron household, the criminal father is cast out in order to remove the family from the associated shame.

Interestingly, despite the clear blame placed on the families of those convicted of human trafficking at trial and the consideration given to complainants’ family backgrounds, these elements appear to be insignificant as mitigating factors. This is exemplified in the comment of one police officer, “I don’t really dive into their, you know, did my mom beat me or did my dad, you know, didn’t love me or any of that. I don’t explore that. I could care less. For me, it’s about the evidence and challenging them on it and see what they have to say about it” (participant 3). This seemingly neutral approach which focuses on evidence-collection demonstrates the way in which black people are easily identified as offenders, but seen as incapable of being victims (Stevenson 2017, 4) and ignores the systemic destruction of black families that has been taking effect through state policies which criminalize poverty through enforcement of welfare fraud, sex work and drug laws that reproduce black people’s vulnerability (Maynard 2017).

A comparable dismissal of the accused’s background is captured in *R.v. Byron (2014)* where the Crown rejects the defence attorney’s suggestion that the accused was the “victim of a negative peer association”. According to the Crown attorney, the suggestion of ‘negative peer association’ is not applicable in this case as “negative peer influence is something that we hear

often in criminal courts when an otherwise troubled person may as youth steal from the corner store”, while the accused in this case, as the Crown put it, was running a sophisticated operation (Dec 13, 2013). The Crown’s construction of the offence of trafficking as a ‘sophisticated operation’ brings the crime-security nexus into effect, increasing the urgency and seriousness of the crime through its suggested association with organized crime. Evidently, then, the possibility of the accused’s background as a potential mitigating factor is undermined by the effects of the crime-security nexus, which increase the severity of the crime of human trafficking by constructing it as a national security threat through links to organized crime.

Depictions of Accused Traffickers as Superpredators, Animals, Parasites and Paedophiles

The popular perception of the human trafficker is that of a dangerous, cruel and foreign (racialized) member of a transnational gang – an ‘alien other’ which according to Garland, is cast as a racial and/or cultural ‘other’, “bearing little resemblance to ‘us’” (2001, 135). Garland observes that “some [criminals] – particularly ‘paedophiles’, ‘sexual predators’ or ‘juvenile superpredators’ – are evoked in ways that are barely human, their conduct being essentialized as ‘evil’ or ‘wicked’ and beyond all human understanding” (2001, 135). Those suspected of human trafficking have become a part of this group of criminals frequently referenced as ‘animals’, ‘monsters’ and ‘parasites’. For instance, in *R.v. Byron (2014)*, the Crown characterized the accused as “a parasite of sorts”, whose “behaviour is despicable” and “motivated by none other than greed” (Audio of Trial: Dec 13, 2013).

Similarly, a police officer I interviewed, described human trafficking as “disgusting”, suggesting that “only an animal would do that” (participant 1). The reference to human traffickers as ‘disgusting’, ‘animals’ and ‘parasites’ in the context of the crime’s racialization illustrates the continued removal of humanity from black people and their historically long-

standing association with animals. As Weheliye argues, “given the histories of slavery, colonialism, segregation, lynching and so on, humanity has always been a principal question within black life and thought in the west” (2014, 19). According to Garland, in reductionist accounts, “the reality and humanity of individual offenders is replaced by an imagery that comes from horror films”, invoked by “the face of a human predator...nothing is more cruel or more dangerous” (2001, 136). Garland’s point is well captured by the following description of an accused trafficker in a *Toronto Star* article,

His fingernails are long, his gaze steady. He has ‘pimpin’ tattooed across his knuckles, two teardrops on his cheek and ‘f--- all bitches’ on his chest. He doesn’t flinch when he describes how in the past he ‘backhanded’ a sex worker for ‘causing too much drama’ or how pimps prey on young girls who just ‘need that daddy figure’ (Dec 12, 2015, A16).

The grotesque image of the accused’s long (and surely dirty) fingernails, steady (and presumably cold) gaze combined with tattoos depicting violence against women and lack of emotion captures the comment of one police officer that “they’re [‘pimps’/traffickers] all sociopaths” (participant 3). Although the accused described above is a visibly white man, his actions have effectively equated him with a racialized other, consequently removing his humanity.

Garland observes that the ‘superpredator’, characterized as a high-rate offender, a young minority male “caught up in the underclass world of crime, drugs, broken families, and welfare dependency” (2001, 136) is distinct from the child sex offender. This observation holds true in popular understandings of the trafficker as a foreign threat involved in transnational organized crime and posing a threat to the Canadian public who is seen as much worse than the superpredator. And yet, the constant emphasis on the youth of the complainants (see Chapter 5) demonstrates painstaking efforts to link the two figures under the umbrella term human trafficker, thus creating an even more dangerous figure who is not only black and dangerous but also targets white children, as opposed to white women as has been the case historically. Such

depictions of black people's criminality have a significant impact on sentencing and immigration outcomes for those convicted of trafficking since the offence is defined as a serious form of criminality, as I discuss below.

The Female Trafficker

While young men of colour are the primary targets of anti-trafficking efforts, a few women have also been charged with the crime. One notable young woman charged with human trafficking is Kailey Oliver-Machado who was only 15 years old when she was, as the judge described it, "the leader of a highly organized and vicious human trafficking enterprise which found young, underage girls being lured through deception into a web of organized prostitution" (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014). She was found guilty of 27 counts related to the incidence and sentenced as an adult to a term of 6.5 years in an adult prison, an incredibly high sentence for a youth. Kailey Oliver-Machado is young, white and was often described as a beautiful girl - an image of a person most protected in our society. Yet, all this also made her violent and exploitative actions, particularly towards other white, young women even more troubling. An *Ottawa Sun* article describes Oliver-Machado as having "a porcelain face" with "ugliness beneath" (Spears, Oct 2, 2014). The commission of, what has been described as horrible, violent and despicable crimes by a beautiful, young white woman violates the "proverbial characterization of normal crime" (Comack and Balfour 2004, 62) as she is more closely aligned with the image of the 'ideal victim' of trafficking (see Chapter 5) than a perpetrator. Yet, Oliver-Machado's lower-class status and family background, which were central points of focus in her court case rationalized her status as an offender. This focus on Oliver-Machado's marginal background was evident in the Crown's description of her motivation:

the accused lived in a subsidized housing unit located directly across from the Giant Tiger store. It is our theory that the social matrix from which Ms. Oliver-Machado emerged did not provide her with the material possessions or the type of lifestyle that she craved. It is our view that the accused desire for instant material and financial gratification prompted her to act out of self-interest to target the population of young girls (*R.v. Oliver-Machado*, Audio of Trial: Oct 28, 2013).

This description of Oliver-Machado's motivations as stemming from the gap between the material conditions she lived in and her material desires bares direct parallels to the Crown's description of the black accused in *R.v. (Gregory) Salmon (2014)*.

In addition to her socio-economic background, Oliver-Machado was deemed by the court to have been raised in a,

highly dysfunctional home. Ms. Oliver-Machado's mother was a drug addict, an exotic dancer and a prostitute. [name] her father, abused alcohol and drugs and was convicted of partner assault on the defendant's mother. [father's name] was complicit in his spouse's prostitution as it brought income into the home. Ms. Oliver-Machado's parents separated when she was 14 years old (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014).

Yet, instead of allocating the accused's behaviour to her upbringing and socio-economic circumstances, as had been done for the racialized male accused, Oliver-Machado's behaviour was found to have been caused by a sociopathic personality disorder, which developed as a result of her poor upbringing. Consequently, as is often done in the case of female offenders accused of male-dominated crimes, the psychiatric ('psy') profession was brought in to explain this enigma.

The 'psy' profession offered powerful support in casting Oliver-Machado as cold, calculating, violent, cruel and lacking in empathy. In summarizing the psychiatric evidence, the judge noted that "Ms. Oliver-Machado is at high risk for future serious violence and that her narcissistic and anti-social personality function is quite sociopathic in its scope" (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014). That the 'psy' profession is frequently employed to provide explanations for women's behaviour as victims and criminals has been well documented by academics (Smart 1989; Comack 2006; Comack and Balfour 2004; McGillivray 2010;

Marriner 2012). In this case, it was also widely echoed by the media who described her as “narcissist. Sociopathic. Remorseless” (Cobb, Nov, 2014), and a “heartless flesh-peddler” (Spears, Nov 4, 2014).

As Comack notes, criminal women are “cast as excessively vile and cruel in their crimes”, combining the “qualities of the criminal male with the worst characteristics of the female: cunning, spite, and deceitfulness”, in other words, “monsters” (2006, 25). Indeed, depictions of Oliver-Machado are captured by the ‘evil-woman hypothesis’, according to which criminal women are doubly deviant: firstly, for violating the law and, secondly for violating gender-specific behaviour patterns (Comack and Balfour 2004, 72; Comack 2006, 25). This is seen in an *Ottawa Sun* article which described her as “something evil” having taken root and noted how “in grades 5 and 6 she’d sharpen her claws on the frail psyche of a young classmates” (Spears, Oct 2, 2014), therefore making age-old linkages between women and witches with long claws. Similarly, a criminal justice actor I interviewed described the three accused in the case as “evil little girls. Taking in friends and just enslaving them. I mean they were evil girls” (participant 9).

Women engaged in human trafficking were even equated with Karla Homolka. The case of Karla Homolka and her husband Paul Bernardo received significant public attention for their role in abducting, torturing, raping and murdering two teenage girls in St. Catherine’s Ontario in 1993 and 1995 (McGillivray 1998). Karla Homolka received a generous plea-deal in exchange for her testimony against Bernardo and information about the case. Her case and in particular, her plea-deal remains controversial as the domestic violence she suffered at the hands of Bernardo is weighed against her seemingly active role in the rape, torture and murder of the two victims. Homolka’s plea deal is widely seen as a ‘deal with the devil’, demonstrating the

commonplace association of women's crimes with evil-ness (ibid). In drawing the comparison between women who engage in human trafficking and Homolka, the police officer explained: "they [women who traffic other women] are just like that Karla Homolka, that sociopath, and they get these girls to do these things by their own evil mind" (participant 3).

As McGillivray writes, "Despite long association of women with evil and seduction into evil, actual evil in women is problematic"; therefore, the psychiatric profession is employed to bring forth the femaleness of these criminal women and provide an explanation for their otherwise unexplainable behaviour (1998, 258). In the case of Oliver-Machado, the psychiatrist attributed her behaviour to poor upbringing and lack of parental guidance, thus in a way transforming Oliver-Machado into a victim, a much more socially accepted characterization for women. This explanation also aligns with the 'abuse excuse' frequently employed within the criminal justice system to locate women's "violence in the context of her abusive past" (Comack and Balfour 2004, 62). While the 'psy' profession provides an explanation for Oliver-Machado's behaviour that resonates with the larger society and therefore puts people at ease, this explanation does not go further than that, as she is still cast as 'evil', 'sociopath' and 'narcissist'.

Moreover, it is interesting to note that, while young racialized men prosecuted for trafficking offences are characterized as 'parasites' and 'animals', creatures deemed as unintelligent, such depictions were not applied to Oliver-Machado. Instead, she was characterized as intelligent and high-functioning, descriptors that stand in stark contrast to those of the men accused of trafficking. Indeed, in her decision, the judge placed significant emphasis on Oliver-Machado's high level of intelligence. Although the judge spoke of her intelligence as a positive factor, the underlying suggestion was that her intelligence makes her especially dangerous as she "created an independent very adult-like world for herself....her actions were

the product of a mind that was far more advanced than her age” (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014). The judge further noted that,

Ms. Oliver-Machado created a very sophisticated and well-organized human trafficking enterprise.....‘Money over everything’ this was the ultimate driver and she let nothing stand in her way. That a 15 year old could be the ringleader of such an elaborate operation is shocking and yet she answered to no one (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014).

As such, she was seen as a high-functioning sociopath who did things with particular goals in mind. Consider the judge’s commentary on Kailey’s efforts at bettering herself in jail: “In my view, Ms. Oliver-Machado is going through the motions and doing what she perceives is necessary in order to receive the best possible outcome and least restrictive sentence from this court” (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014). This view was supported by the perspective of a clinical manager at the youth detention centre where Oliver-Machado was placed. According to the clinical manager, Oliver-Machado is a “superficial manipulator who plays the game” (*ibid*).

In effect then, Kailey’s high level of intelligence enabled her to be depicted as a calculating and manipulating sociopath who will fool everyone if vigilance is not maintained. As Garland notes, the child sex offender is typically represented as “dangerous, driven and unreachable – an unreformable creature who....lurks unseen in our daily environment, his [or her] ‘otherness’ concealed beneath his [or her] apparent normality. Once identified he [she] has to be marked out, and either set apart or else continuously monitored” (2001, 137). Oliver-Machado takes on the persona of the dangerous, driven and unreachable creature. Her physicality, unlike that of the young racialized men usually criminalized for human trafficking, enabled her to remain outside the scope of suspicion. This added dangerousness justified the long

sentence she was handed in order to keep her under the vigilance and control of the justice system.

Furthermore, although Oliver-Machado's young age and marginalized background with little parental guidance were seen as mitigating factors by the judge, she dismissed them both by pointing to her independent personality. This is captured by the following passage,

In all of the circumstances, I find that the Crown has rebutted the presumption of reduced moral blameworthiness despite Ms. Oliver-Machado's age at the time of the committal of these offences. Ms. Oliver-Machado may have been 15 years of age chronologically but she was fiercely independent (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014).

Thus, the judge constructs Oliver-Machado's youth as irrelevant due to her independent personality. In dismissing her "very poor upbringing", the judge referred to her psychiatric diagnosis, which found that as a result of her upbringing, Oliver-Machado had developed a "protective shell" that prevented her from "great things" she was capable of (*R.v. Oliver-Machado*, Audio of Trial: Nov 4, 2014). Consequently, the very circumstances that led to the formation of this "protective shell" were cast aside, as the existence of this protective shell became the only factor of importance.

As this chapter has shown, the human trafficking matrix plays an important role in the ability of police and legal actors to redefine certain activities and characteristics as indicators of human trafficking. The effects of the crime-security nexus also enable them to be reconceptualized as forms of 'serious criminality' – a term which according to Pratt is highly discretionary (2005, 141). Through the human trafficking matrix, anti-trafficking efforts combine transnational discourses of organized crime, the War on Terror and national security with domestic criminality which folds the exceptional into the normal. The urgency and severity brought to these criminal acts by the effects of the crime-security nexus justifies the racialized punitiveness of the state through increased criminal justice responses targeting ethnic, racial and

marginalized men as criminals. The consequences of this on racialized groups are significant. As scholars have observed, Canada's immigration history has seen criminality become linked with a wide range of activities and individuals in order to deport those seen as dangerous for "various combinations of moral, racial and ideological reasons" (Pratt and Valverde 2002, 137; Pratt 2014, 2005; Maynard 2017). In particular, as Maynard writes, a large number of black people have been deported from Canada for relatively minor crimes which have been re-inscribed as national security threats (2017, 174). The targeting of racialized men under anti-trafficking regimes is effectively demonstrated not only by the fact that a large number of individuals charged with human trafficking in Ontario are young racialized men, but that they are also from disadvantaged backgrounds and/or first or second generation immigrants.

For instance, of the 11 trafficking trials I analyzed either in full (8) or in part (3), all but one case involved an accused who was first or second generation immigrant and a racialized person. We can look to *R.v. Byron (2014)*, where the accused "was born in St. Vincent in the Grenadines and immigrated to Canada, to Montreal, when he was 13 years old" (Audio of Trial: Feb 13, 2014). In *R.v. (Gregory) Salmon (2014)*, the accused's Jamaican background and ties to the community are revealed at the trial through discussions of his inability to attend the funerals of his mother and father in Jamaica due to travel restrictions resulting from a criminal conviction. In *R.v. Burton (2013)*, we learn of the accused's background through the complainant's description of him as "5'7, short black hair, from Jamaica" (Audio of Trial: Dec 18, 2013). *R.v. A.A. (2012)* involves an accused who was born in Barbados and immigrated to Canada as a young child. In *R.v. Rasool (2015)*, one of the only female accused in trafficking cases I examined, grew up in Pakistan. This focus on the 'foreignness' of the accused is evidence of xenophobia in operation and creates, what Pratt calls, "a conceptual slippage between criminals,

refugee and “foreigners” (2005, 141); thus, perpetuating for the public the myth that all refugees and migrants are criminals (Pratt 2005, Maynard 2017).

It is also noteworthy that much is made of the Jamaican background of two of the accused during trial. The targeting of specifically Jamaican first or second generation men by Canada’s criminal and immigration systems has been documented by a number of scholars (Pratt 2005, 2012; Maynard 2017; Burt et al. 2016). Jamaican Canadians in particular are the most deported group from Canada for criminal offences (Burt et al. 2016, 3). In the context of Ontario more specifically, Falconer and Ellis found that Canadian immigration officers are “operating under a system of criminal profiling that seems to target black Jamaicans in a manner that defines them more commonly as dangers to the public than any other immigrant population in Ontario, leading to their deportation in record numbers” (as cited in Pratt 2005, 148). Burt et al. (2016) mark 1994 as the year when Jamaican Canadians began to be deported in large numbers. This was fueled by two high-profile incidents involving Jamaican nationals as perpetrators. The first was an armed robbery at a Just Desserts café in Toronto, which resulted in the death of a young white woman; and the second, a shooting incident that led to the death of a police officer (Burt et al. 2016, 5). The events led to a public outcry and resulted in the passage of Bill C-44, the *Danger to the Public Act*, which became section 70 of the IRPA. The new section allowed the deportation of non-citizens convicted of a crime punishable by imprisonment of 10 or more years’. As Burt et al. contend, “those affected by the new legislation were predominantly black Jamaican males” demonstrated by the fact that “in the two years following the passage of the bill, 40 percent of those deported were black Jamaican residents of Ontario, especially Toronto” (2016, 5).

Although I only examined the conviction and sentencing decisions of *R.v.R.R.S. (2015)*, the case provides yet another example of a Jamaican-born man convicted of human trafficking and placed under deportation order as a result of a human trafficking conviction⁵⁵. The importance of R.S.'s Jamaican-background emerges from the sentencing decision as follows:

He [the accused] was born and raised in Jamaica. He is second in line of seven children born to L.S. and J.C. His mother left the family when R.S. was young and his father subsequently emigrated to Canada. R.S. was raised primarily by his grandmother in Jamaica. He moved to Canada in 1997. Although unemployment and violence was commonplace in Jamaica when R.S. was growing up, according to him, he was not subjected to family violence or abuse during his developmental years (*R.v. R.R.S. March 29, 2016: para 4*).

This decision demonstrates the underlying sentiment of undesirability of Jamaican immigrants due to their cultural otherness where parents abandon their children and where unemployment and violence prevail. Similarly, the accused in *R.v. A.A. (2012)*, although not Jamaican was from West Indies and specifically Barbados. Given that he did not become a Canadian citizen, A.A.'s conviction in human trafficking led him to be placed under a deportation order. And yet, despite the cruelty of these laws, they are justified by invoking protectionist discourses as detailed in Chapter 5, where the protection of the Canadian public and in particular its white women and children takes precedence over the rights of foreign-criminals.

Conclusion

This chapter has explored the ways in which the conceptual folding of characteristics stereotypically associated with 'pimping' activities into human trafficking indicators has taken place through the human trafficking matrix. As the chapter detailed, racialized stereotypes of black culture and people and particularly black men as hypersexual, violent, greedy and controlling are being utilized by police and prosecutors in anti-trafficking efforts to construct

⁵⁵ Information obtained from his trial lawyer.

black men and their activities as human trafficking. And while the same depictions have historically been used by law enforcement and legal professionals to target ‘pimping’ activities of black men, the effects of the crime-security nexus on anti-trafficking regimes have enabled small-scale domestic offences, such as ‘pimping’ to become conceptually linked with larger concerns over the War on Terror, organized crime and national security. Thus, in the post 9/11 world, this criminality, which is so consistently associated with young racialized men is no longer simply a public nuisance but has become linked with much more serious issues through crime-security nexus and justifies otherwise punitive repercussions such as the deportation of offenders for serious criminality. As Maynard notes, “Canada is in the midst of an explosion of Black incarceration” (2017, 109). Evidently, anti-trafficking efforts which target racialized young men and especially black men are contributing to this explosion. They are also, however, contributing to the criminalization of race and poverty through a targeted focus on racialized people from marginalized socio-economic backgrounds, but especially on poor racialized young men. Being accused of and even worse, convicted of such offences has a significant impact on these young men, including the imposition of long prison sentences, long-term and dangerous offender designations and deportation for non-citizens.

Chapter 8 – Policing Trafficking

While the previous chapters focused mostly on legal aspects of anti-trafficking efforts, this chapter takes a slight turn to explore the role of policing as it pertains to anti-trafficking activities. Police play a significant role in anti-trafficking efforts of the state as the narrative often starts with the police. And, while much of it remains invisible, police also play an important part in constructing knowledge on trafficking and contribute substantially to shaping the meaning of human trafficking. Police role and decision-making in anti-trafficking efforts is largely an unexplored area, in part because information on this is strictly guarded by state governments (Gallagher 2016; Millar et al. 2017; Ferguson 2012). As Gallagher rightfully notes, “while states are often eager to share what they are doing in relation to protection and prevention, they tend to be much more circumspect when it comes to criminal justice responses” (2016, 5; see also Millar et al 2017; Ferguson 2012; Roots, *forthcoming*).

This chapter begins to bridge this gap by examining police practices in relation to human trafficking cases. International and to a lesser degree domestic trafficking discourses have resulted in policies that call for police cooperation and collaborative efforts of municipal, provincial, federal and international police organizations based on the presumed multi-jurisdictionality of trafficking. And while anti-trafficking raids involving multiple police forces take place with some regularity, examination of front-line anti-trafficking policing efforts in Ontario suggest that these efforts are first and foremost in the hands of specialized anti-trafficking units housed within municipal police forces. The front-line efforts of these policing units are motivated by a number of other factors, including pressure to arrest and charge traffickers, competition between anti-trafficking police forces for arrest rates and funding and the need to maintain their status as ‘experts’ on trafficking. To this end, anti-trafficking police

engage a variety of strategies, such as recruiting the assistance of community groups, NGOs, organizations from a variety of affected industries, the media and the public. They also, however, engage in over-charging practices and the use of questionable investigative tactics. These mundane motivations, technologies and strategies of application are not new, but they are important to note as they take on new significance by intersecting with other issues within the human trafficking matrix. While these localized anti-trafficking units are not engaged in combating transnational trafficking but focus instead on the domestic sex trade, their work is enabled and fueled by the crime-security nexus that discursively links trafficking with threats to national security.

Cooperation of Policing Agencies

The re-emergence of human trafficking at the turn of the twentieth century is often characterized as a new and pressing criminal concern that requires novel methods of policing. The UN, the US and now the Canadian governments emphasize the need for both innovative and aggressive anti-trafficking investigative and prosecutorial efforts. Significant emphasis is also being placed on cooperation between international and domestic police agencies. In the context of human trafficking, this emphasis is seen in the statement of Simonetta Sommaruga, the Federal Councilor and Head of the Swiss Federal Department of Justice and Police, who condemned calls by politicians for national solutions and argued that “when crimes happen on an international level, they must also be investigated on an international level. INTERPOL [International Criminal Police Organization] demonstrates the advantages of international cooperation” (International Criminal Police Organization 2016). Furthermore, INTERPOL’s Executive Director of Police, Tim Morris suggested that “since fighting transnational crimes like human trafficking requires global solutions, it is important that all actors in the law enforcement

arena work together to end this terrible crime and disrupt the criminal networks involved” (ibid).

In Canada, the importance of international cooperation of law enforcement agencies was emphasized by Yvonne Durand from the International Centre for Criminal Law Reform and Criminal Justice Policy at the University of British Columbia, who as early as 2006 pointed out the challenges of cooperation. According to Durand,

there are still many obstacles to international cooperation.given that the crime frequently occurs across borders, preventing it and controlling it and prosecuting it presupposes very good cooperation among law enforcement agencies and legal authorities in both countries, and that is still fraught with all kinds of difficulties. We have made great progress not only in Canada but internationally with the Convention Against Transnational Organized Crime, to which Canada is a party. This certainly resolves a lot of those issues, but we’re still very much at the beginning of this era of international cooperation. International cooperation comes at a risk, as I think all of us have discovered recently, so international cooperation is an area where we need to focus a little bit more of our efforts in future (Status of Women Canada Committee Meeting, Oct 3, 2006).

Despite calls by Durand and the INTERPOL for increased emphasis on international cooperation, anti-trafficking law enforcement efforts in Canada seemingly continue to be focused at the national level.

Law enforcement officers I interviewed reported that they work with various municipal police forces across Canada, yet they noted little contact with enforcement agencies at other levels. In response to a question on the frequency of their interaction with international agencies, one officer replied, “I would say not very much, this is a human rights issue. Human trafficking is a human rights issue but we, I don’t think - I don’t know how to answer this question” (participant 1). Contradicting himself, the officer later suggested that cooperation between Canadian municipal police and police organizations from other states and international policing agencies is frequent:

We have international partners that we deal with all of the time. We interact with INTERPOL and EUROPOL all the time. Homeland Security and the FBI all the time. I

talk to them all the time, sharing information and getting best practices and what they see over there, could it come here, stuff like that (participant 1).

And yet, in line with the officer's initial answer, according to most officers interviewed, in Ontario police interactions with international law enforcement agencies on human trafficking cases are rare. As one police officer explained, "International level, not to say it doesn't happen, we've actually worked with the States, we worked with Homeland Security on certain cases, it doesn't happen that frequently but it does occur" (participant 4). This sentiment is in line with a 2010 RCMP report on human trafficking which states that, "cooperation with foreign law enforcement on suspected transnational human trafficking networks yielded mixed results. Current levels of international cooperation resulted in untimely exchange of information and ineffective information sharing" (40).

One interviewed police officer attributes the lack of international cooperation to underfunding of anti-trafficking policing efforts:

International trafficking? That's on our radar, but we just, it's going to be no different. We gotta [sic] really, really look for it and you have to have dedicated resources for that. It's going to be more difficult to investigate. Because now we have language barriers when you're talking about the international labour. You need dedicated...that's all you're doing. We don't have that. We have a human trafficking team that falls under our mandate. Because we don't have enough resources, we can't even handle what's happening now (participant 2).

While transnational trafficking cases are more likely to fall under the jurisdiction of federal police, rather than municipal, the officer's comment nonetheless raise serious questions about the use of the large amounts of funding allocated to law enforcement for anti-trafficking efforts.

And while *Canada's National Action Plan to Combat Human Trafficking (2012)* mentions the coordination between RCMP Human Trafficking Coordination Center (HTNCC) and international agencies (Department of Justice 2016(b)), the focus of HTNCC remains on domestic cooperation. Despite this, an emphasis on cooperation, particularly between domestic

and international police agencies evokes international trafficking discourses which contribute to justifying the large-scale response to trafficking. It also provides support for the significant funding allocated towards criminalization of trafficking as the Human Trafficking Taskforce received the largest portion of the federal funding in the amount of \$2,030,000 out of \$6 million annually, to combat trafficking (Public Safety Canada 2012, 10).

In addition to cooperation between international and domestic police services, emphasis has also been placed on collaborative efforts of the federal, provincial and municipal levels of domestic police in Canada. According to the 2012 US Department of State *Trafficking in Persons Report*, Canada must “strengthen coordination among national and provincial governments on law enforcement and victim services” [emphasis added] (US Department of State 2012, 110). This mandate is also adopted by Canada’s National Action Plan which advocates coordinated cooperation of federal, provincial, municipal and international policing agencies in combating human trafficking (Public Safety Canada 2012, 9). *Canada’s National Action Plan to Combat Human Trafficking* mandated the formation of,

a dedicated integrated team, led by the RCMP, to undertake proactive human trafficking investigations. This is will be the first integrated team in Canada to focus on all types of trafficking, and will be complemented and supported by the Canada Border Services Agency, and a criminal intelligence analyst. Municipal and/or provincial police forces will be invited to participate (Public Safety Canada 2012, 18).

The dedicated integrated team known as the Human Trafficking Taskforce (the Taskforce) combines the efforts of federal agencies including the RCMP, the Canadian Border Services Agency (CBSA) amongst others.⁵⁶ This emphasis on coordination and cooperation of police forces written into the 2012 Action Plan (Public Safety Canada 2012, 19) was also consistent

⁵⁶ Participating agencies also include the Immigration, Refugees and Citizenship Canada (IRCC), Indigenous and Northern Affairs Canada (INAC), Global Affairs Canada (GAC), Status of Women Canada (SWC), Justice Canada (JUS), Employment and Social Development Canada (ESDC) (Public Safety Canada 2016, 7).

with the directives in the 2016 UN *Global Report on Trafficking in Persons*. According to this UN report, international and local law enforcement cooperation are central to finding and stopping human trafficking (2016(a), 1).

Notable efforts are made by police forces to demonstrate this cooperation through on-going raid-and-rescue operations carried out through collaborative efforts by numerous police forces. These raid-and-rescue efforts are widely reported on by media and in subsequent government reports on Canada's anti-trafficking efforts. For instance, in 2015, the Ontario Provincial Police (OPP), the RCMP, and 40 other police services across Canada carried out another raid-and-rescue operation entitled 'Operation Northern Spotlight' (Herhalt, Oct 22, 2015) in 45 cities across Canada (Public Safety Canada 2016, 15). In 2016, the RCMP and several municipal polices carried out another raid under the same name involving 53 police services in nine provinces "in a cross-country effort to crack down on human trafficking" (*The Canadian Press*, Oct 18, 2016). More recently, the RCMP reported on 'Operation Northern Spotlight VI', which took place between October 11 and 15, 2017, and involved 57 policing agencies across Canada, while similar operations were taking place in Europe, US and Asia at the same time. These raids are an effort to demonstrate police actions as a part of a sophisticated anti-trafficking policing network akin to a highly-organized military operation. However, what the RCMP described as a raid was seemingly synchronized, yet, independent efforts of various police forces to arrange simultaneously timed meetings "with individuals suspected of working in the sex trade against their will, or who are believed to be at high risk of being trafficked" (RCMP 2017). The operation resulted in 21 trafficking charges, the outcome of which is unknown. And, while the police believed to have encountered 324 people at risk of being trafficked, only four adults and two youths under the age of 18 were removed from the situation.

The circumstances under which this removal took place, the reasons for it (in the case of adults) and the outcome is unknown.

In addition to the above case, a few other notable examples demonstrate the extent to which these anti-trafficking raids have failed in their efforts to produce evidence of large-scale trafficking activities. For instance, a collaborative raid-and-rescue mission was carried out in British Columbia in 2006, involving RCMP detachments from Coquitlam, Richmond, Surrey, and Burnaby as well as the Vancouver Police Department, the Integrated Border Enforcement Team, and other government agencies. The 18 massage parlours raided were, for the most part, licensed and were not in violation of any laws. The raid resulted in the arrest of 106 people, 78 of whom were sex workers and 26 clients. The arrested sex workers were all over the age of 19, were in the country legally and all declined the offer of government assistance which came in the form of emergency shelters. The mission, which took the police nine months to plan and prepare, did not result in a single human trafficking charge (Bolan 2006; See also DeShalit and Roots 2016; Kaye 2017).

And so, national mandates and policies place the Human Trafficking Task Force, led by federal police agencies, most notably the RCMP and the CBSA, at the head of anti-trafficking policing operations in Canada. Significant efforts are also being made to demonstrate the cooperation and collaboration of police forces across Canada and with international policing agencies, most notably through large-scale raid-and-rescue operations. Yet, according to the 2016-17 summary report for the National Action Plan, “the NAP-HT [the Human Trafficking Taskforce] had limited contribution to the investigation and prosecution of HT crimes due to external factors (eg. jurisdictional constraint, difficulty to collect evidence) that limit the ability of the federal law enforcement to investigate and prosecute HT cases” (Public Safety Canada

2017(a)). Indeed, as John Ferguson's research showed, there are very few international trafficking charges and convictions by federal agencies in Canada. Ferguson's (2012) research found that between 2002 and 2010, the RCMP, as the 'lead police agency' on trafficking, was involved in 20.4 international trafficking investigations per year. Yet, the data provided by the RCMP on these investigations did not indicate the outcome of these cases (Ferguson 2012, 222). Similarly, according to *Canada's National Action Plan to Combat Human Trafficking: Annual Progress Report 2015-16*, while the CBSA was involved in a number of investigations involving trafficking of foreign nationals, "most investigations were concluded without further enforcement action or referral to another agency to due insufficient evidence" (Public Safety Canada 2016, 17). The peripheral role of federal police agencies in anti-trafficking efforts on-the-ground was also confirmed by my research. As explained by one municipal police officer:

Federally, the RCMP don't have a human trafficking team per se. They have a team out in Quebec that is somewhat like a major crime squad that deal with human trafficking but I don't know how much work they've really done. We have a coordination centre, the RCMP has a coordination centre we talk to them every day. They have one officer and they have one analyst. They're the best. They deal with all of the cyber tips. There are cyber tips that come from across Canada and the States, and they coordinate that information and then disseminate that information to where the crime is being committed. We get them all the time. The OPP also doesn't have per se a human trafficking team, they have one girl a human trafficking coordinator and she also goes out to investigate certain things. But what can one person do? (participant 1).

Despite the seemingly overstated role of federal and provincial agencies in national anti-trafficking mandates and policies, cooperation between police forces remains a significant priority for the United Nations Office of Drugs and Crime (UNODC) and the Canadian government. The involvement and cooperation of multiple police forces across Canada is presumed to be a necessary step in the face of imputed links between trafficking, organized crime and national security. While grand demonstrations of police anti-trafficking efforts tend to capture the attention of the media and serve well in reports on Canada's anti-trafficking efforts,

the majority of anti-trafficking efforts are carried out by specialized human trafficking teams operating relatively independently within municipal police forces.

Local Anti-Trafficking Police and Proactive Investigations

Specialized anti-human trafficking police units have been formed in municipal police forces across much of Canada, and have been responsible for the majority of domestic trafficking charges to date. At the time of writing in 2018, there are specialized anti-trafficking teams in Toronto, Peel Region, York Region, Durham Region, Ottawa, Winnipeg, Calgary, and London, while other municipal police forces, such as Vancouver and Edmonton, house them in their Vice units. These specialized units are largely responsible for the increase in domestic human trafficking charges and arrests in recent years. This is, in part, because, according to the National Action Plan, the local police, along with the RCMP and the CBSA have a “mandate to conduct proactive human trafficking investigations” (Public Safety Canada 2012, 18; see also US Department of State 2010). The need for proactiveness was reflected as early as 2005 in a report entitled *Human Trafficking: Reference Guide to Canadian Law Enforcement (2005)*. The report noted that: “The typical complexity of the investigation of a human trafficking case tends to dictate long-term, sustained efforts based on solid intelligence and multiagency collaboration. To that end, a proactive approach is often required” (University of Fraser Valley 2005, 23). Indeed, proactivity in identifying victims of trafficking is deemed by the US Department of State (2010) as one of the qualifying factors for countries to obtain a Tier One ranking – failure to do so, as discussed in Chapter 1, may have significant consequences. This need for proactive efforts was also reflected in the response of one police officer, who explained:

If you want to tackle this, you can't do it with four people. I was trained that you have to be more proactive so you have to do surveillance on people. More search warrants. You have to have boots on the ground. We've got to talk to these girls. We've got to know

how to interview these girls. It encompasses everything, that of all my experience. We have to throw everything at it to see if we can do a better job (participant 1).

The same officer went on to suggest that previously existing policing units that dealt with human trafficking were inadequate because in the old system: “you can only react, you can’t be proactive”. In the new organizational structure, officers can be more proactive by conducting mobile surveillance, checking social media sites, amongst other things (participant 1). The importance of proactive policing is summed up by the comments of another police officer, “you can’t wait for a girl to come and report it. It’s not a crime where somebody breaks into your house and you call the police to come and investigate. It’s a crime that’s happening and if you don’t look for it, you’re not going to get it” (participant 2).

This proactiveness is also seen in the raid-and-rescue operations carried out by municipal police forces. For instance, in an operation entitled ‘Project Guardian’, Toronto police carried out 13 raids in an area of the city known for its poverty and crime (680 News, 2015). And, in April 2017, *Global News* reported that York Regional Police “have arrested 104 men for attempting to have sex with children forced into prostitution, following a four-year undercover human trafficking investigation in which 85 underage victims were found and 49 pimps charged in York Region since 2012” (Miller and Shum, 2017). And if you look, you shall find. Therefore, the increase of trafficking charges can be explained not by an increase in the crime itself, but rather by the increased resources that have been directed to the fight against trafficking. This is captured by the comment of a police officer:

the reality is this problem has been here for a long time. You talk to individuals who have been in this line of investigation for years and years and this problem hasn’t escalated. The frequency hasn’t changed....the only difference was, whenever you deploy resources and money at a problem, you will find results (participant 3).

The formation of these specialized human trafficking units is in some sense then, a solution looking for a problem. As explained by one defence attorney,

now that they have specialized police departments or teams for police forces who are only investigating human trafficking so you're going to see more human trafficking charges. That's the biggest reason that you weren't seeing it before. It's cause [sic] the police weren't looking for it (participant 10).

Similarly, in response to a question about why there might be an increase in human trafficking arrests in recent years, one Crown attorney attributes this to “the establishment of a squad, not only in Toronto and the GTA [the Greater Toronto Area], like they're in York Region and other regions....the advent of that is helpful” (participant 15). This is also confirmed by a police officer who explained that the increase in trafficking charges is “because [the specialized team was] formed two years ago” (participant 4). Interestingly, according to an RCMP report on trafficking from 2010, reactive investigations are limiting since they are dependent on the cooperation of suspected victims and fail to “examine the criminal operations of facilitators involved in the exploitation of the victim” (40). Presumably the solution to the problem of police dependence on victim cooperation and the difficulties of finding large-scale trafficking operations is police proactiveness. And yet, despite the proactiveness of the specialized anti-trafficking police, trafficking investigations continue to be largely dependent on the cooperation of the complainant and remain focused on independent or loosely connected ‘pimps’, rather than uncovering any major trafficking operations, as the RCMP report suggests.

Funding, Competition and Pressure to Charge

As previously noted, significant resources have been allocated to anti-trafficking policing efforts from various levels of government. Increasing the federal funding towards anti-trafficking policing efforts was one of the recommendations of the Standing Committee on the Status of Women Canada on human trafficking in 2007. The justification for more resources, provided by

police officers interviewed by the committee, was the complexity of (presumably transnational) human trafficking cases. As the officers explained, trafficking investigations involve aspects such as potential need to travel to the victim's country of origin and cooperation between various levels of government due to the movement component of trafficking, amongst other similarly costly factors (2007, 43). And while the justification for this generous funding is based on the understanding of human trafficking as a transnational criminal offence, it is safe to say that the domestic small-scale 'pimping' offences being targeted by anti-trafficking police, are not nearly as complex or geographically expansive as this understanding implies nor are they transnational in nature, raising questions about the way in which these resources are being used.

The generous funding allocated to anti-trafficking efforts has also created a competition for resources, resulting in more divisive, non-collaborative and self-interested police departments. This competitiveness is seen in one police officer's comment: "a question that was posed to me in 2008, *how come [name of police force] are arresting all these guys, is it not happening in our region?*" [emphasis added] (participant 2). Another officer recalled a conversation he had with the Chief of his police force, who expressed a desire for his force to be "leaders in this [human trafficking] field" (participant 1). Thus, despite the emphasis on cooperation in official rhetoric of the UN and Canadian government and the collaborative raid-and-rescue operations, interviews with anti-trafficking police reveal a certain competitiveness between police forces to be the leaders amongst anti-trafficking policing units. This is fueled, at least in part, by the competitiveness for funding as there is a generous amount made available by the government. As one police officer noted,

There's a lot of grants that float around. As to who gets the grants and what it's going to be used for, sometimes there's competing forces who are trying to get those grants and who's going to manage money....I guess it would be dishonest to think that [municipality] would not have a stake into that provincial strategy and how much we

would get out of that. So, I could see a lot of services that didn't have human trafficking investigators come up with them so they would get some money (participant 3).

Moreover, when asked what their units need most, officers frequently expressed the need for increased funding. According to one police officer, "it's the funding that is the biggest part" (participant 1). This was confirmed by another officer that "More resources. More dedicated resources, more teams" were needed to combat trafficking (participant 2). The same officer also attributed inadequate resourcing to the inability of the specialized anti-trafficking police to find and investigate international trafficking cases. The officer's belief is particularly noteworthy in the context of the significant amounts of funding that have been allocated to anti-trafficking policing efforts since the 2007 report by the Standing Committee on the Status of Women Canada, discussed above, which identified the very same reasons for police inability to effectively tackle human trafficking.

Trafficking arrest rates are a key variable in the competition between police forces for funding. To demonstrate the prevalence of human trafficking, one police force began collecting statistics, explaining that, "one of the biggest assets I had was I started collecting stats. I needed to show the chief and my boss that this [human trafficking] was an actual problem here in [location x]" (participant 1). Other officers expressed more direct pressure to arrest and charge accused with trafficking offences. As one officer noted, "*my boss essentially said, I don't care what you do, bring us some pimps and trafficking arrests*" [emphasis added] (participant 2). This is confirmed by the comment of another officer who explained that "obviously, there's the measurement tool of how many people you arrest or how many people have you helped successfully get out of the sex trade" (participant 3). These pressures were felt by police as early as 2006 as exemplified by the statement of a Vancouver police officer during a House of Commons debate: "Since the investigation involving Michael Ng, the first person charged in

Canada for human trafficking, the Vancouver Police Department has made it a priority to locate other victims of human trafficking” (House of Commons, Oct 31, 2006, Bill C-49). That officers felt pressure to make arrests and ‘find’ trafficking cases may be attributable to a number of factors, including the political context within which pressure from the international community, and most notably the US, trickles down to the municipal police, but also a need to justify increased funding for trafficking units, particularly at a time when police budgets are under scrutiny and/or in competition for further funding.

Expertise or Common Knowledge?

Interestingly, while members of anti-trafficking policing units emphasized the importance of proactiveness in anti-trafficking efforts and attributed it to recent increases in arrest rates, other police officers indicated they are too busy and lack sufficient resources to conduct proactive work. For instance, in response to a question on whether officers are proactively checking social media sites, one officer replied, “we don’t have a resource for someone, that’s all they do. No, if it’s a case where it involves it, they look at it but there’s no one proactively looking at it like, ‘hey we’ve identified this and identified that’, it’s not happening” (participant 2). In addition to funding issues, police also attributed their inability to be more proactive to already large workloads. The demand on police time is captured in one officer’s comments that the human trafficking unit is “really busy. We probably get a case every day” (participant 4). Another officer noted that the human trafficking unit, “is the busiest place I’ve ever worked. And I used to work at guns and gangs where we would break down a door every other day looking for guns. This is by far the busiest place” (participant 3). This demand on officers’ time comes, at least in part, from the expertise they are perceived to have on the issue of human trafficking, creating an impression of these units as an ‘elite’ force with special status, whose knowledge and

expertise are irreplaceable. As Reyhan Atasü-Topcuoglu contends, actors working within the anti-trafficking field compete for dominance, which allows them “more acceptance and more recognition” (2015, 23).

These efforts to earn a place as ‘experts’ on human trafficking are clearly evident among these anti-trafficking police squads. For instance, as one police officer explains:

the division will respond to a radio call and a victim would present themselves during that preliminary investigation they disclose being a victim of human trafficking, they call us whether we’re working or not, if we’re not working we go out, we have guys who are on call. What they’ll do is they’ll go from their home into the division and take over the investigation (participant 3).

The need to be on call and ‘take over the investigation’ demonstrates their specialization and importance at the scene of suspected trafficking cases. According to the police officers interviewed, their expertise is so highly in-demand that a mediator is required to facilitate:

my phone rings off the hook. My wife now knows how to answer many of the questions that I get from the field. It’s funny because when 4 o’clock in the morning rolls around and I get a call from a uniform officer in the middle of the night asking for advice on something that they’re dealing with, and my wife is like, ‘did they do this, did they do this, they should be calling you after they’ve done these things’ (participant 3).

The officer’s in-demand-expertise is thus displayed by his constantly ringing phone and the need of field officers for his expert advice. The belief held by the officer’s wife that front-line officers should take steps to avoid disturbing her husband prematurely, conveys not only the high workload but also a sense of importance that comes with being on a specialized team. Another officer confirms this suggesting that, those selected for human trafficking units must meet a higher standard, and so, “you can’t have crusty people doing human trafficking investigations looking at these girls saying derogative things” (participant 2). The seeming indispensability of these officers is further captured by another comment of the same officer, “you have to have a dedicated human trafficking team. I can grab another organized crime

enforcement team to supplement and to assist but I need my specialists, the expert guys there” (participant 2). The superiority of the human trafficking team thus largely stems from the expertise of the elite and carefully selected officers. As one Crown attorney adds, “I find that the specialized squad has a very good knowledge base about what constitutes human trafficking. They read the case law. Like, you know, these officers are very focused on human trafficking, so I find that they are very knowledgeable about the area” (participant 15).

Technological knowledge required to investigate and uncover trafficking cases contributes to the perception of expertise amongst specialized trafficking squads. Technology is seen as playing a big part in facilitating human trafficking. According to the UNGift report entitled *Technology and Human Trafficking*,

Trafficking in persons requires extensive coordination throughout the process of planning, recruiting victims, transporting them, meeting and transferring people at various times and locations; it is, therefore, likely that criminals are using new technologies or old technologies in more complex ways to facilitate their communications and avoid detection. It is not known whether the use of new technologies has increased trafficking in persons, but it is believed that increased use of technologies has made trafficking activities easier to perform (2008(a), 3).

The centrality of technology in trafficking investigations was also confirmed by my research. As one officer explained, technology is “extremely important, cause [sic] we’re dealing with cell phones, we’re dealing with the different [web] sites these girls are on, we’re dealing with technology pretty much with every case we deal with so it’s extremely important” (participant 4). Another officer confirms that “technology is everything because all of this is done over the internet. It’s all technology based. All of the texting is done phone to phone, computer to phone, computer to computer.... the advertisements that are posted on Backpages or other internet sites” (participant 1). This finding was also made by Mitall Thakor and danah boyd in the context of the US, who found that the many anti-trafficking experts they spoke with “were overwhelmed

with anxieties over a seemingly technologically enhanced network of traffickers”, which would “foster connectivity and speed of connection among potential exploiters that gives the network of traffickers heightened confluence” (2013, 287).

Police ability to detect and intervene in these technology-enhanced operations is seen as being of utmost importance as expressed by one officer: “some of these guys when they are on the phone, like if we seize it, they have the technology sometimes to delete everything so that’s why we have to grab the phone quickly and turn it off” (participant 4). In the case of *R.v. Byron* (2014), we also see a heavy reliance by the Crown on evidence produced through technology, including text messages between the accused and the complainant, hotel records, Facebook conversations and advertisements of the services offered by the complainant through Backpages.com website. As the Crown noted, “the police assembled the escort ads, the cell phone records and the hotel records to demonstrate where they [the accused and complainant] went and when” (*R.v. Byron*, Audio of Trial: May 6, 2013). In fact, technology was central in police ability to build a case against Byron. It even allowed the Crown to challenge the accused’s version of events:

Accused: Ok, was [sic] there any rooms rented after the 24th of July?

Crown: Not until the next month, it looks like you checked out of there on the 24th, there’s a gap but your cell phone records say you’re in Montreal and then the very next day on August 1st you’re renting a room in Barrie.

Accused: So, from Toronto to Montreal and then from Montreal to Barrie, that’s not possible cause [sic] I never went from Montreal to Barrie, so it’s - I dunno [sic], not possible.

Crown: *So, you disagree with the records?*

Accused: I’m telling you I never went from Montreal to Barrie, so.

Crown: For her part, [the complainant] – from July 25-27th there are ads posted from Montreal and the next ones are August 1 in Barrie. From August 1-7 you’re at the [name of hotel] in Barrie.

Accused: I don’t disagree but so what about 28, 29?

Crown: According to your cell phone records you are in Montreal July 25-30.

Accused: And then?

Crown: Barrie August 1.

Accused: Possible.

Crown: *So, I think that's one of those examples where what you're testifying to from your memory might not be accurate.*

Accused: Like I said when it comes to times and dates but what I say, I know what happened before. I know what I'm saying and I can tell you that up until this moment I don't recall ever going – I'm certain – from Montreal to Barrie [emphasis added] (R.v. Byron, Audio of Trial: May 16, 2013).

As the above exchange demonstrates, evidence produced through technology is crucial to the Crown's ability to corroborate the evidence, since this type of evidence is seen as irrefutable and even more reliable than witness testimony. The extent to which technology-based evidence is given weight is seen in a later exchange between the Crown and the accused in the same case:

Accused: Yeah, if you check the records I don't even think I was renting that room there for more than two nights and I can tell you I never even slept there.

Crown: Let's look at the records, Barrie 7-11, Toronto 11-13, [name of hotel]. Your cell phone records show August 11-12 in Toronto, back in Montreal August 13. So, you're in Toronto and near the hotel from cell phone towers.

Accused: It doesn't necessarily mean that I'm in the hotel. I'm in Toronto, but it doesn't necessarily mean I'm in the hotel.

Crown: *I'm suggesting to you that if you're renting the room and your cell phone is near the hotel then you are there. Are you disagreeing that you are there?* [emphasis added] (R.v. Byron, Audio of Trial: May 16, 2013).

As the above interaction shows, the fact that the accused's cell phone was located near the scene of the incident is taken as irrefutable evidence that the accused himself must have been there since the idea of anyone being separated from their cell phone is inconceivable. And so, while technology-based evidence provides support for case-building efforts of police and prosecutors, this evidence may also come with certain assumptions. For instance, an advertisement for sexual services accompanied with a contact number of a person other than the one whose services are being advertised provides police with grounds to suspect that trafficking is taking place. This is even so, when the advertisement is posted by the service provider him/herself, using another person's phone number. Suspicion based on these grounds is partly premised on the assumption

that everyone can afford their own cell phone and therefore using another person's cell phone for this purpose is suspect.

Similar reliance on technology is seen in the case of *R.v. Oliver-Machado (2014)*, where the Crown relies heavily on Facebook conversations and text messages between the accused and the complainants to make the case. The Crown also uses evidence from the accused's cell phone to argue that having a list of 'johns' phone numbers in her cell phone is an indicator that the accused was organized and ran a sophisticated 'human trafficking ring'.

Given that technology-based evidence presents such a significant component of trafficking investigations and in order to adequately deal with technological aspects of the crime, anti-trafficking police receive specialized training:

This is the stuff that all my team members are trained on. They have to be trained on. Cause [sic] that technology evolves every month. It's incredible how technology [snaps fingers] you know one day it's here the next day it's something totally different....so, it's very important for us to have the tools to assist us in investigating these types of crimes (participant 1).

In addition to training, the police in anti-trafficking units also "talk to computer companies all the time for tools" (participant 1). The specialized expertise and technological know-how required for police to combat human trafficking contributes to the notion of these anti-trafficking units as specialized teams with expert knowledge on the issue. Yet, the technology-based skill-set and know-how of the police seemingly fails to measure up to the technology used by accused. One officer explains it as follows,

a lot of traffickers are using certain apps on their phones, which gives them kind of them a temporary fake number so they can post these ads or, you know what I mean? Those Text-Me-Apps, unfortunately, we can't pull the information out because they're gone. So that makes it really difficult (participant 5).

The finding that anti-trafficking actors are behind the curb on technological advancements was once again made by Thakor and Boyd. Their research, which focused on anti-trafficking NGOs, found that “advocates are often less tech-savvy than their illicit counterparts” (2013, 287).

The impression that officers in trafficking squads have specialized technical skills and knowledge is also interrupted by their reliance on various tech experts as captured by one officer’s explanation:

The good thing about our section at sex crimes is we have that child exploitation unit. They’re provincially funded but they have a huge tech area. They have two technicians that deal with all of the tech stuff. I am going forward with a proposal to get one guy for me. For my team. Because when we do search warrants we have to get judicial authorization to get into phones and computers and stuff like that. That’s the easy part. It’s getting that information out because we have a tech crimes unit here in [name of city], but they’re so backlogged that we don’t get that information for 12 to 18 months (participant 1).

Evidence of this can be further seen in *R.v. Oliver-Machado* (2014) where the specialized trafficking team relied on the expertise of the high-tech unit within the police force to retract data from the technological devices confiscated from the accused. In one instance, an iPod retrieved from one of the accused was even taken to an outside repair person who retained the device for a period of time (*R.v. Oliver-Machado*, Audio of Trial: April 16, 2013). The status of ‘expert’ knowers achieved by police in specialized human trafficking units can then be, in part, attributed to the technological knowledge and skill they are seen as having— skills and expertise, which upon further investigation appears to be inadequate to deal with the situations they are faced with, requiring significant input from tech-experts in and outside the police force.

The officers’ knowledge of human trafficking is deemed as expert knowledge not only by the officers themselves, but also by courts. As one officer explains,

we weren’t experts in this at the beginning, you know, but I can tell you that they’re [specialized human trafficking officers] trained now as experts and they actually testify in court as experts. They’ve been deemed experts by certain courts in the province of Ontario,

which is great. That's what we need....we need human trafficking experts (participant 1). This expert knowledge gives these officers the authority to even transforms sex workers into human trafficking victims, as captured by the comment of a police officer: "at the end of the day, people still think a hooker is a hooker. They do!....and that's why we need experts to tell them...we need investigators to be experts, so they can explain the whole area to them. So, we've become a lot better at that in court now" (participant 1). Thus, the officers' ability to see sex workers as victims of trafficking is understood as requiring specialized knowledge only possessed by a few experts. Support for this is seen in the case of *R.v. Brighton (2016)*, where the judge accepts and sees value in the expertise of Detective Thai Truong from York Regional Police anti-trafficking unit on the topic:

Truong's evidence provides context, background and terminology used by the different players in the prostitution milieu. Truong is able to assist the jury in understanding methods of advertising, and how ' backpage', the pornographic website on which ads involving the complainant were placed, works. Truong's evidence explains methods employed by pimps in grooming and recruiting women into prostitution. It provides information regarding the types of women whom exploiters seek to recruit. It explains the dynamics between exploiters and prostitutes within the prostitution subculture, especially with respect to control issues, business issues and the money relationship. It also offers significant insight into the conduct of prostitutes in their dealings with exploiters and the police (para 33-34).

In particular, the judge draws a distinction between lay knowledge on sex work and the 'expert' knowledge of police in the field:

While lay people may have some popular and uninformed knowledge and opinions about pimps and their relationship to prostitutes, the task of the jury in this case will require the informed understanding that they can only gain through the assistance of the detail and comprehensiveness of the expert evidence. In addition, the complainant in this case is, or was, a prostitute, a figure that may not command much compassion or understanding from a lay person. Truong's opinion in the delineated area is absolutely essential for the jury to do its job properly (*R.v. Brighton 2016*, para 37).

Yet, this view of police as having 'expert' knowledge on human trafficking is not held by everyone. For instance, Justice Baltman in *R.v. McPherson (2011)* rejected the idea that expertise

was required to understand human trafficking. As the judge maintained “the proposed evidence is not unique or difficult for a jury to understand” (2011, para 22). He went on to note,

Although the subject matter of this case – prostitution, living off the avails thereof, and human trafficking – may not be personally familiar to the jury, it is clear from Professor Perrin’s report that the themes and dynamics associated with this world are common human experiences....and are not complicated technical issues but themes which juries and judges encounter on a daily basis in Canadian courts (*R.v. McPherson* 2011, para 22).

Thus, we see the same experiences of vulnerability and exploitation described as ‘common human experiences’ by one court, while simultaneously perceived by police and another court as needing expert evidence. The divergences in courts and police perception on whether specialized expertise is required in order to understand human trafficking can be attributed to the fact that the issue is a fairly recent addition to Canada’s legal context with ongoing changes and developments in the area, therefore the perceived need for expert evidence may have undergone a shift from the time of *R.v. McPherson* in 2011 to the time of *R.v. Brighton* in 2016. However, as demonstrated in Chapter 3, we see similar variances in criminal justice actors understanding what human trafficking means and particularly how, if at all, it differs from procuring offences. Despite the different beliefs on whether or not police have specialized expertise on activities classified as human trafficking, my findings indicate that police play an important role in creating the meaning of trafficking on the front-lines.

Creating ‘Knowledge’ on Human Trafficking

According to Richard Ericson,

police are at the forefront of definitional production. They are given organizational capacity to produce particular levels of crime and to produce particular types of crime to the relative exclusion of others...production also depends upon the collective ability of police force members to generate and use the information necessary to make crime (1983, 7).

In line with Ericson's explanation, specialized anti-trafficking police squads are effectively producing the meaning of human trafficking, first by deciding what human trafficking is and who the perpetrators and victims of this crime are and then 'finding' evidence to support this understanding of human trafficking. A 2004 study conducted by Drs Christine Bruckert and Colette Parent, on behalf of the RCMP on human trafficking and organized crime, found that criminal justice actors learned about the topic from other police officers who had experience on similar issues in the field, but also from documents produced by the police and conferences and courses put on by police forces (Bruckert and Parent 2004, 32). Some criminal justice actors also reported reading books and other materials on the topic and reviewing reports and documents produced by the UN. Notably, however, they found that the vast majority of the criminal justice actors gained knowledge of the topic from within the police force itself.

My questions about the ways in which police and legal actors learned about human trafficking supported the findings of Bruckert and Parent. In particular, I found that officers' understanding of trafficking comes largely from police experience with and knowledge on sex work related offences. Notably, officers also referenced popular culture and in particular hip-hop culture as a source of information to learn about trafficking. Evidence of the ways in which police produce knowledge of human trafficking is captured by the comments of one police officer,

I didn't know nothing about it [human trafficking]. So I read a book... "Somebody's Daughter"...that book takes place in the early 90s, late 80s. It's basically about the Toronto, Halifax pimping ring back then...I read that book that he read [his boss], and thought, holy, this stuff is happening from back then and we're not doing anything about it? So, I went almost immediately and we started changing the way we did things [emphasis added] (participant 2).

According to the officer then, the knowledge gap that existed on human trafficking at the outset was filled with historical 'knowledge' from 1980s and 1990s 'pimping' issues and stereotyped

understandings of ‘pimping’ circulating in popular culture. *Somebody’s Daughter: Inside the Toronto/Halifax Pimping Ring (1996)*, the book used by the officer and his superior to learn about human trafficking was written by journalist Phonse Jessom. Leslie Ann Jeffrey and Gayle MacDonald provided the following summary of it:

the book highlights the violence of the pimps by fictionalizing parts of the story and creating some characters to make the storyline more readable (and dramatic). Fact blends with fiction throughout to create a melodramatic story of innocent victims and evil predators (2006, 160).

Furthermore, as a sex worker interviewed by Jeffrey and MacDonald explained, the book “presented a lopsided view of prostitution and, in the end, such an approach fails to address the real issues” (2006, 160). And so, rather than accumulating information from research conducted by academics, the government or non-government organizations, police knowledge around trafficking stems, at least in part, from a sensationalist and partly fictionalized portrayal of the situation.

According to the same officer, when he initially joined the human trafficking unit, “there was nothing [in terms of knowledge on the offence]. I was like, this is fucking terrible, no one knows what’s going on here. We’ve come a long way.” There was also “no formal training on human trafficking. There was none” (participant 2). To learn about the issue, the officer read “reports, studies, blogs, internet stuff. Everything I could. Pimping books, breaking down hip-hop culture, listening to lyrics, understanding what they’re saying. Realizing that it’s [knowledge on human trafficking] embedded in popular culture today”⁵⁷ (participant 2). The officer’s comments reveal not only the absorption of ‘knowledge’ from the 1980s and 1990s ‘pimping’ issues into current understandings of human trafficking (see also Chapter 4), but also the way in which popular culture and specifically hip-hop culture have become a part of the trafficking

⁵⁷ This quote is also used in Chapter 7 to demonstrate the racialization of knowledge related to trafficking.

matrix. Similar findings were also made by Lester et al. who, in the context of anti-trafficking policing efforts in France and Germany, found that “experience-based knowledge seems to be outranked by generalized knowledge on trafficking: Common knowledge, which includes personal experiences and bits of stories they come across while reading the news, watching television, reading books etc.” (2017, 24). Interestingly, while Lester et al. (2017) found that the media was a source of information for police officers learning about trafficking in France and Germany, according to the criminal justice actors in Bruckert and Parent’s study, the media is “an unreliable source that sensationalized issues” (2004, 33).

The argument that police produce knowledge on human trafficking based on popular culture, knowledge accumulated from other issues and on-the-job experience is also reflected in the case of *R.v. Oliver-Machado (2014)*. This defence attorney’s cross-examination of the investigative officer reveals ways in which police come to understand factors associated with the offence of trafficking:

Defence: In the course of your investigation a number of terms came up that were of interest to the court, terms like ‘shawdy’, ‘racked up’, ‘boss’.

Officer: Yes.

Defence: And, in coming to an interpretation of the meaning of those words you were relying on the work you had done as a police officer *but you’ve also consulted online sources such as the urban dictionary.*

Officer: Right.

Defence: *Urban dictionary is a web-based dictionary, this is a program that allows anyone to submit a meaning to a particular word, so it’s mediated by a group of online editors.*

Officer: Yes.

Defence: And, *people vote online as to whether the meaning should end up in the rankings.*

Officer: Yes.

Defence: *So, you might have 20-40 definitions of the word and depending on how many people vote, the meaning of the word changes.*

Officer: Yes.

Defence: And the meaning that has the most thumbs up, that word goes to the top of the meaning list.

Officer: I’m not sure about that.

Defence: *You would have used the urban dictionary during your investigation?*

Officer: *Yes.*

Defence: *There's nothing scientific about the meanings provided in urban dictionary, it's more of a popular reference.*

Officer: *Yes.*

Defence: I've got the screenshot of the meaning of the word 'ballin' – possible definitions are: to play basketball, living in affluence, + symbol. And I take it that this is a resource to you as an investigative officer but it may not be.

Officer: It can be but I prefer not to use this, I prefer to rely on my own experience.

Defence: You would have used it for some of the words used here, like 'shawdy' or 'racked up'.

Officer: 'Racked up' I used the urban dictionary (inaudible).

Defence: And 'shawdy' had been defined as a 'ho'.

Officer: I wouldn't use the word 'ho' but it was associated with the prostitution gang lifestyle (*R.v. Oliver-Machado*, Audio of Trial: April 16, 2013).

Urban dictionary, which the officer admits to relying on, is an online dictionary which provides slang and colloquial definitions for words, which can be crude and offensive. As the above exchange suggests then, the way in which meaning is assigned to words and phrases by police is derived from popular culture, rather than any specialized knowledge requiring training and expertise.

Partnerships, Collaboration and Education

The meaning produced by police then becomes a part of the human trafficking matrix and is disseminated through public education – a factor also prioritized by the *National Action Plan to Combat Human Trafficking (2012)*. As the one officer contends,

education is our biggest tool. Knowledge. The more people know about this the better off we are. That's one of the key components with us, we do a lot of presentations to a lot of groups, we are now approaching colleges to see if we can teach in their hospitality industry courses so they know. Knowledge is a great tool to have (participant 1).

The officer's statement exemplifies Garland's argument that there is a redistribution of the task of crime-control, "rendering others responsible, multiplying the number of effective authorities, forming alliances, arranging things so that crime control duties follow crime-generating behavior" (2001, 125). According to Garland, the simplest way to accomplish this is through

public campaigns conducted “through television advertising and the mass leafleting of households and businesses” (2001, 125). The importance of these public campaigns carried out through the media is reflected in police officers’ consensus that,

we need the media. The media is a great tool for us. They assist us in our investigations immensely. We get further victims, we get things like the guns, it assists us in our investigations. So, they’re great, they call us all the time. We have a great relationship with them (participant 1).

The positive relationship between anti-trafficking police and the mainstream media is also conveyed in the comments of another officer:

I personally have not seen anything negative come from the media when we, for example, do press releases because it’s pretty heart wrenching, this crime. Especially when they see the victims, how old the victims are, what they are made to do, what they are forced to do, what they endured (participant 5).

Confirmation of this is also seen in frequent media reporting on police arrests in trafficking cases and several investigative pieces which create an urgent and emotionally driven story of the horrors of trafficking while simultaneously constructing police officers as heroes who rescue victims (see, Carville 2015; Carville 2015 (b); Carville 2015 (c); Quinn and Crib 2013). Police praise for media’s frequent reporting on the issue of trafficking, while not surprising, is nonetheless noteworthy in the context of Bruckert and Parent’s findings noted above, where police saw the media as an unreliable source that sensationalized stories in order to sell papers (2004, 33).

In addition to the media, police also disseminate information to other criminal justice actors, as it is the officers in these specialized human trafficking squads that educate others on trafficking. As one police officer proudly announced, two of the officers in his unit “actually run the [human trafficking] course at the Canadian Police College” and, “that’s what I’ve been doing for the last two to three years, is education” (participant 1). The training, however, is not only

given to those in the criminal justice system and/or working with the issue directly, but is extended widely to include the hospitality industry, education system, non-government organizations and the public through media campaigns.

This knowledge dissemination by police is a form of responsabilization, which according to Garland is meant to “complement and extend the formal controls of the criminal justice state” (2002, 124). As Garland notes, the public campaign is the simplest and most widely spread as it is meant to “raise public consciousness, interpolate the citizen as a potential victim, create a sense of duty, connect the population to crime control agencies, and help change the thinking and practices of those involved” (2001, 125). The importance of educating the public is expressed by one officer:

We just trained the managers, executives, owners and security managers in the [municipality] Hotel Association. We did a presentation, and we gave them a power point presentation to show to their staff signs of human trafficking....But that's what we're doing. It's education (participant 1).

Educating the public and disseminating information on social media is a form of community policing, which “engages community members in the active and ongoing regulation of themselves and the community” (Pratt 2005, 193). In this way then, while local anti-trafficking policing units do not appear to be collaborating as effectively with other policing units as mandates and policies would have us believe, they do form partnerships and collaborative relationships with organizations in other industries. The information being disseminated by police through these avenues is crucial as it becomes an important part of the human trafficking matrix, shaping the definitions, indicators and characteristics of trafficking that are used by the public to determine the situations that warrant police attention.

This dissemination of information on human trafficking through media and other avenues creates public eagerness to report human trafficking. As officers reveal, many of their calls on potential trafficking cases come from the public,

because of the news. Because, we're putting out a press release every day, so people become more aware of it. We're educating officers, we're educating Crowns and so forth, and judges, and educating the public. Because they know this now, they call the police, and in turn we investigate (participant 4).

On this account, press releases on police raid-and-rescue operations as well as news articles on human trafficking arrests, discussed in Chapter 7, are having a notable impact on public perceptions of the prevalence of trafficking and creating vigilance around the issue. This is captured in my interviews with police who often observe that most trafficking cases are brought to the police by concerned citizens, including hotel staff, parents of girls who have gone missing, anonymous tips and sometimes complainants who come in contact with the police for other reasons. One officer added that, new cases are brought to the attention of the police through victims that "come forward on their own or through someone that has called on their behalf", crime-stopper tips or concerned parents (participant 5). Another officer maintained, "we get tips, we also get parents that call in. We'll get the public schools. Everyone is calling because now they realize, 'ok, you know, these kids are being trafficked'. So, they call us, they'll give us advice, they give us tips and then we follow up" (participant 4).

Yet, this 'public education' is also leading to hyper-vigilance with people too often assuming that human trafficking is taking place. In response to a question on how frequently a reported case turns out not to be a human trafficking offence, one police officer replied,

often it is, especially a lot of the girls that go missing. A lot of the parents automatically think it's trafficking, but we'll do some research. Some of the girls may be on Backpage. It all depends on their age as well, cause [sic] we'll get some people, they wanna [sic] do it, therefore it's not trafficking (participant 4).

The extent to which members of the public feel compelled to act is demonstrated in the case of *R.v. Burton (2013)*, where a ‘john-turned-do-gooder’ tried to save the two complainants from the accused despite the women’s continued rejection of assistance. According to his testimony at trial, the ‘john’, who came to believe that something was wrong with the situation the complainants were in, sent a series of text messages to the women warning them of the danger they were in. In an effort to persuade them to leave, he referenced a newspaper article, which described the controlling dynamics of a ‘pimp’/prostitute relationship. While the ‘john-turned-do-gooder’ insisted that the complainants were in grave danger, one of the complainants replied to his concerns in a text message which read, “I will leave when I want and if he says no I will call the cops. I swear to god I will not let myself get hurt” and “I appreciate what you are trying to do but I promise if I ever feel uncomfortable I won’t hesitate to text you”. Despite the seemingly clear message that she was acting on her own accord, the complainant’s assurances were dismissed by the ‘john-turned-do-gooder’ who continued to insist that the women were “both in a dangerous situation” and “in over your head” (*R.v. Burton*, Audio of Trial: Dec 17, 2014). And while the situation in this case was indeed defined as human trafficking by police and courts, we can see how the newspaper article intended to ‘educate’ the public on the dangers of human trafficking could create assumptions that trafficking is taking place when it may not be. This, in turn, increases the caseload for human trafficking units and contributes to the perception that trafficking is prevalent as captured by an officer’s statement,

Since we did that [educate the public], oh my goodness. We’re getting calls all the time. Which is great, cause [sic] that’s what we wanted. We’ve had a couple of cases now where it’s worked out. But it’s a lot of work. Like I said, there’s hundreds of hotels and motels in the city of [name]. We get calls all the time now. But it’s a good thing because you know, it might be that one time you call, will be the only time we can intervene with that girl. So, call us, that’s why we’re here. It’s not us that will go, we’ll get uniformed officers to go first and see what’s going on and if something pans out we go in and investigate. But that’s what we’re doing. It’s education (participant 1).

And so, while the police claim to need more resources in order to be proactive, their proactiveness comes from creating links with organizations in various industries where trafficking is suspected of taking place and by disseminating information through media. In addition to partnerships with businesses and the news media, police information also comes from NGOs.

Crime Fighters and the ‘Hugging Types’

NGOs play a significant role in anti-trafficking efforts by taking over witness care but also convincing women and girls to report the offence to the police and preparing them for court (Musto 2010; Lester et al. 2017). This is reflected by police officer responses:

we do have a really close connection with [name of shelter] because they deal with human trafficking, they have beds for human trafficking. [name of person] helps us. She’s in charge of the program because we remove our girls, they don’t have a place to go so she’s the first person we contact. We also have [name of shelter] and Victim Services (participant 4).

The importance of NGOs in assisting women and girls suspected of being victims of trafficking is also reflected in the response of another officer:

Something else we also utilize which I think is great: some of our girls especially if they used drugs, we send them to different places in the country. For example, some of them can go to B.C. We can’t necessarily let you know what the program is called because it’s a safe house. Some of them go to detox out there, and they enter in this human trafficking recovery center where they can deal with the physical and psychological impacts (participant 5).

In addition to the care work, NGOs also encourage those who come to them to go to the police.

As one officer explains it:

we also get them [complainants] from our non-government organization agencies if there’s some victims that aren’t prepared to go to the police right away and they’ll go to the [name of shelter] or some other support network group. Once they get the strength and confidence and the willingness to come forward, they’ll call us and we’ll meet with them and go from there (participant 3).

After the complainants have agreed to testify, NGOs also help ensure that they do not back out of testifying:

I think a big portion of our success is that we've been able to partner up with some great community partners like [name of shelter], [name of shelter #2], [name of shelter #3] victim services. And, we've been able to now get all the assistance for our victims. Because we've now been able to get those services right from the start, right from when we speak with the girl, it's helped us immensely in court (participant 1).

As these responses demonstrate, NGOs play an important role in the care of complainants, but also in assisting the police to find, investigate, arrest and successfully prosecute traffickers. In the context of anti-trafficking efforts in Vancouver, Julie Kaye (2017) found similar collaboration and indeed reliance of police on the support of NGOs. Yet, as she argues, this idea of police needing NGOs, which is presented as a novel development within anti-trafficking efforts more specifically, has been ongoing and essential in the formation of the settler-colonial Canada (2017, 129).

Victim protection is the second of four pillars set out by *Canada's National Action Plan to Combat Human Trafficking* (2012). As my interviews reveal, police take this goal seriously and have a passion for what they do. For instance, in response to a question on the most rewarding aspect of his job, one officer replied, "Dealing with the victims. Cause [sic] when they write you a letter, a heartfelt letter saying thank you. You saved my life. It sits with you" (participant 3). The same officer goes further to suggest that he would measure his own job performance through the interactions he has with complainants:

I would measure my successes on my interactions with my victims and my complainants. So, are they satisfied with the services they are receiving? So, they feel comfortable with proceeding to the next stages of the prosecution? Do they feel comfortable making further disclosures? So, I think that's how I'd measure it, in terms of how they feel on the other side of the table, as to the service we've provided them (participant 3).

Another interview participant stated,

In this work, you're here because you have a passion for it. So, you're not going to fail in any regard really. At the end of the day, I have a 14 year old daughter and one of my biggest motivations for me is that this could happen to my daughter....So that's a big motivational factor for me, is that I need to protect my daughter. I see these girls at their ages and I think, wow they could be my daughter and thank god me and my wife have a good relationship with my daughter and with my son. We talk and we have - it is a good relationship. But there are girls out there who don't have that with their parents, which is sad... So, I see these girls and I equate it to my daughter and I'm thinking, they need help. If I can just help one of them, I've done my job. (participant 1).

Interestingly, while all male police officers interviewed discussed their job-related motivation in the context of "protecting their families", this was not evident with female officers who made no mention of their families. The male officers' need to protect their families is a part of "the logic of masculinist protection", which "constitutes the 'good men' who protect their women and children in relation to other 'bad' men" (Young 2003, 227; see also Pratt 2008). Such protectionism extends further than individual law enforcement officers' desire to protect their families to take on the sentiments of Canadian nationalism and the need to protect Canada itself through protection of its women and children. As Durising explains,

Expressions of Canadian nationalism are interconnected with the politics of sex trafficking: the linking of subaltern masculinities with violence against women in the figure of the trafficker and sex purchaser, and the articulation of a Canadian masculinity embodied in the figure of the gender egalitarian national subject who protects women (2017, 39).

Consequently, the logic of masculine protectionism serves as a powerful motivator for individual officers within these anti-trafficking units.

Yet, while I found police to be emotionally invested in the cases they dealt with – a finding also made by Lester et al. 2017 in relation to anti-trafficking police work in Germany and France - officers in my study also tried to off-load some of the emotional work to, what one officer called, 'the huggers', who most commonly take the form of NGOs. Interviews with police officers suggest that they see their time as better spent elsewhere and believe that care work

should be delegated to those who specialize in it. This is captured by the comments of one officer:

The reality is when we show up and talk to the victim on day one, we need to have another team of people who aren't police officers, who are social agencies. The guy who gives them housing, the one who's going to get you your ID back in a week, some of these girls, the pimp's taken their driver's license, their passport, they've got no ID. Their Aboriginal card, which is a big deal, it's how they identify themselves. So, we have those people that come with us and once we finish taking the statement and have given the evidence are introduced to this team of people who are the huggers and the loving kind, and they'll take them (participant 3).

He further notes,

Like I've taken girls to get an ultrasound. Not that I mind doing it but I'd rather use that time to put somebody else in jail. There's people out there who go to school for these things, who love that. You know what, let's employ these people who know what to do. Cause [sic] I love putting people in jail. I want some other people who love, to do what they love to do. So, you get people who are good at what they do. We're picking up girls who are all over the place and driving them to court things of that nature, that's resources that I can't afford to lose (participant 3).

As the above quotes show and in line with the discourse of masculine protectionism, specialized anti-trafficking police see their role as first and foremost protecting society from 'bad guys' and rescuing victims, while leaving the after-care to others. To protect the vulnerable, specialized human trafficking police expressed a need to catch, arrest and prosecute perpetrators, as seen by the above noted comment by an officer that he 'loves putting people in jail'. Along similar lines, another officer noted, "I used to monitor sex offenders, what I do now is actually put them in jail" (participant 4). Police officers even appeared to take pleasure in successful arrests and prosecutions:

So [name of accused], who is a self-described 'pimp of all pimps'. He's a piece of work. He basically convicted himself. We had him anyways. Done like dinner!... We just laid more charges against him because he tried to intimidate a witness. So, we had it all. And just laid more charges. We just found out that it looks like he's going to plead hopefully soon. He's going to get 10 plus years. I hope.....He better plead or he's going to go to jail for a very long time (participant 1).

The officer's declaration that he was able to lay additional charges against the accused as a result of which the accused will be going to jail for 10 or more years and is 'done like dinner', demonstrates the pleasure and pride officers take in arresting perpetrators.

In contrast, when police are unable to capture and arrest traffickers, they are frustrated and humiliated:

The pimps have been laughing at us. That's one of the first things that bothered me when I started investigating in 2008. I'm like, k [sic], I'm spending my life investigating drugs, guns, firearms, the trading of commodities. I'm spending my life doing this and now I'm realizing holy smokes, these pimps are laughing at us, they're getting away with it. The smart ones are just trading girls. That's it. They've been doing this for how long? And the police have been behind the eight ball? Yeah, it's a huge problem (participant 2).

In response to these frustrations and feelings of humiliation and combined with significant pressures to arrest and charge suspected human traffickers, police in anti-trafficking cases take an aggressive approach. This is seen through proactive targeting of the sex trade and raid-and-rescue operations but also large-scale application of trafficking charges that cannot be substantiated in court, as seen by the high rate of withdrawn and stayed charges (see Appendix B) and at times, questionable investigation techniques.

Investigation of Trafficking Cases

According to Richard V. Ericson, "the definition of 'reasonable and probable grounds' for arrest is open to wide interpretive latitude and allows courts, who support the police, to easily justify decisions in their favour" (1983, 137). The liberties taken by the police with this broad interpretive ability and eagerness to charge is conveyed by one officer's response where he attributes the high number of withdrawn and stayed human trafficking charges to:

a number of reasons, like the complications with the victim's case, the quality of the police investigation, I'm critical of ours, *a lot of police services just want to lay a human trafficking charges but they don't go nowhere because they probably inappropriately did the investigation just to lay the charge* [emphasis added] (participant 2).

This is also confirmed by a defence attorney who noted that the police lay charges before they investigate human trafficking cases: “it’s not supposed to be like that at all. You’re supposed to arrest only after you investigate” (participant 13).

In addition to overzealous charging practices, there is also evidence that police are engaging in questionable investigation tactics likely attributable to the pressure police feel to bring forth trafficking cases. We can look to *R.v. Dagg (2015)* as one case where this is demonstrated. At the time of his arrest, Taylor Dagg was a 23 year old man who was accused of procuring a woman to engage in the sex trade, forcibly confining and threatening her and exploiting her labour. During the trial, a number of concerns emerged with the way the investigation was conducted by the police. First, the recording of police interview with the accused contained numerous gaps where the recording device had been turned off without explanation. This is captured in the following exchange between the defence attorney and the investigating officer (IO),

Defence: Was there a reason that recording was turned on or off?

IO: That’s really good question because I don’t know whether it was or wasn’t – I know that I had some troubles with it at some point but at no point did I deliberately turn it off or anything. I know when I was sitting by the bed, maybe I hit a button and then it was moved up to the side where the camera was and I can’t answer that.

Defence: So, if there was a point in the camera that was turned off, that was not deliberate, right?

IO: No, I would never turn it off.

Defence: You’d agree with me that it was turned off four to five times?

IO: I don’t know what happened to it so I can’t agree with you.

Defence: But you’ve had a chance to see the transcripts, when we had the *voir dire*⁵⁸, so you would have known about that, right?

IO: That’s a whole other thing, I didn’t testify there.

Defence: No, but you would have seen these transcripts, right? You were helping [another detective] and you were aware that there was [sic] transcripts, right?

IO: I never read the transcripts.

Defence: But you were aware there are multiple tabs?

⁵⁸ *Voir dire* is “a preliminary examination of a witness or a juror by a judge or counsel” (Dictionary.com).

IO: Tabs?

Defence: In the transcripts, you were aware there were multiple tabs?

IO: Yes.

Defence: The reason there were multiple tabs is because that was where the recording was turned off and turned back on.

IO: Like I said, I've never read the transcript ever, I haven't even looked at it so I can't answer the question about the tabs.

Defence: So, you never got the transcript for Mr. Dagg?

IO: I've never read it.

Defence: But I'm not asking you if you've read it, I'm asking you if you had it in your hand physically?

IO: I've answered the question several times like I said I never had it, I never read it, I've never looked at it.

Defence: So, you're aware that there was a video that was also taken of the interview, right?

IO: Yes.

Defence: That video was never disclosed to us until the *voir dire*, you're aware of that?

IO: I did hear that.

Defence: If I was to tell you that the video and audio statements that we received there is about 15 min and 30 seconds missing between what the audio recording was recording and what the video recording recorded, are you aware of that?

IO: I've heard that yes.

Defence: Is there a reason that the video was never disclosed?

BP: I can't answer that (*R.v. Dagg*, Audio of Trial: April 7, 2015).

As the exchange between the defence attorney and the investigating officer demonstrates, not only was the video of police interviewing the accused missing a significant portion of the recording, which the defence called "a very unorthodox way of conducting the interview" (*R.v. Dagg*, Audio of Trial: April 7, 2015), the video was also not disclosed to the defence at the outset. When questioned about it at trial, the officer replied that he had no knowledge of the video being turned off since he did not watch the video and did not read the transcripts from the *voir dire*.

Furthermore, as the transcript of the police interviewing the accused revealed, when the accused requested to speak to the police off the record, the officer encouraged it saying, "you can talk off the record all you want...if you want to talk off the record, feel free to talk off the

record” (Part 1 of interview, date unknown)⁵⁹. Despite this promise, however, the officers continued to record. The contradictory actions and promises of the investigative officers and their subsequent reluctance to address questions about their decision-making was summarized by the defence attorney as follows:

And then I asked [officer #1] who was holding the camera, he said he was. I said, you knew that there were different tabs in the book – I said the audio tape was turned off and on and he said, ‘I don’t know. It might have been a mistake. I don’t know’. But in the video, it clearly says, ‘here look, I’ll turn it on, off – it’s off’, so you clearly know you’re turning the audio off when you’re saying that. And at another time [officer #1] says, that he will never kill the recording because that ensures that they are doing their jobs properly – yet they do and at the *voir dire*, [officer #2] said that they would have only turned it off for 30 seconds, it was just a malfunction – someone accidentally turned it off. In fact, there was 15 min and 20 seconds missing (*R.v. Dagg*, Audio of Trial: April 7, 2015).

And so, the police first assured the accused that they had turned off the camera so he could speak off-record, when in fact it was still running, and later denied the same request providing the reason that the recording device ‘ensures that they [the police] are doing their jobs properly’. Nevertheless, as the defence pointed out, the recording device was turned off several times. When the defence questioned the second officer about the gaps in the recording, he replied that it was a malfunction - an answer that was in contrast with that of the first officer, who claimed that he had no knowledge of these recording gaps.

In addition to the questionable video recording, the defence noted that “the conversation [between the police and the accused in the interview] is not one that is free-flowing and on many occasions the question is asked and there’s never a chance for explanation” (*R.v. Dagg*, Audio of Trial: April 7, 2015). She goes on to explain that,

continuously, the police use his [the accused’s] willingness to take a polygraph as a tactic under questioning and sometimes they use it at the bail hearing, saying we offered it to him, he didn’t take it. Well, it doesn’t matter much, but in this case, Mr. Dagg

⁵⁹ Interview transcripts were a part of the trial exhibits, which form a part of the public record and were obtained with the judge’s permission.

continuously says, ‘I’ll do the polygraph right now’ and as soon as he says that, they say ‘we can’t do it, the guy doesn’t work here, it’s going to be complicated’....And when looked at as a whole, not only is there misleading evidence, when the audio tape is turned on and off by [officer #1] - I wanted to know one thing – to me their investigation was based on what [the complainant] had told them, there wasn’t much more there, there’s not much more corroboration (*R.v. Dagg*, Audio of Trial: April 7, 2015).

As the submission of the defence counsel suggests, by challenging the accused with a polygraph test, which they were unwilling to administer and promising him that the video is off, when in reality it was not, in an effort to obtain information, the police engaged in, what Ericson calls, trickery and deceit. According to Ericson, “detectives can be compelling in their tactics for gaining cooperation” and “many of the tactics they use are tacitly supported by the law of confession” in Canada (1983, 157).

One trick used by police, as Ericson contends, is to make the accused believe that they have or could obtain evidence that incriminates them (1983, 161). This approach was used by the officers in charge of *R.v. Dagg (2015)*:

Accused: You automatically said, oh, you’re going to jail for a long time, being ridiculed by cops, looking down upon...

Officer: You’re not being looked down upon. You’re not being ridiculed. *We’ve got pretty good evidence.*

Accused: *What’s the evidence?*

Officer: *Well, we’re not going to tell you that [emphasis added] (R.v. Dagg 2015, police interview, date unknown).*

The officer goes on to proclaim, “we have all the evidence we need. We have it all.

Okay....there’s way more than this, trust me....this is nothing” (*R.v. Dagg 2015*, police interview, date unknown). And yet, as the defence pointed out above, the case was held together almost entirely by the testimony of the complainant. This approach, as Ericson (1983) notes, is used by police in order to retract a confession from the accused. In this case, the confession was not forthcoming since the accused himself could not understand why he was charged with human trafficking and how his actions could be interpreted as such. Despite this, the use of trickery,

deceit and various other questionable tactics to extract a confession from the accused demonstrates the extent to which police go to achieve success in trafficking cases.

Another significant example of troubling investigation tactics by police is seen in the case of Courtney Salmon (*R.v. Salmon (Courtney)* 2011, 2013) where the Ontario Court of Appeal overturned Salmon's conviction for human trafficking due to police misconduct. In this case, the investigating officers testified in court that they had seized the complainant's fake ID from the accused's wallet, yet evidence later revealed that the ID was in the complainant's possession at the time of her contact with the police. This was captured in the cross-examination of one of the investigative officers:

Officer: Yes. But I wanted to bring something to the court's attention about my testimony at the preliminary hearing. I reflected after that, after the prelim and I believe that I have erroneously indicated on the exhibit list that two pieces of ID that I wrote were found in his wallet weren't found in his wallet.

Defence: and which pieces of ID were that?

Officer: The photo driver's licence of [complainant's name] marked as fake and the Canadian citizenship card that was marked as fake.

Defence: Okay. And when did you have this reflection?

Officer: It was shortly after the prelim because I remember your line of questioning was pretty focused on this area. I recalled later that day, after testifying, that the – that [complainant] had attended the station and had give - - Detective Sergeant had her – had, I believe, it was her Health Card.

Defence: Okay. You recalled that [complainant] had attended the situation and that Detective [name] had her Health Card?

Officer: That came to me after. I remember – I remember that detail after the testifying at the prelim.

Defence: So, after the prelim, you remembered that [name of detective] originally had her Health card?

Officer: Yes.

Defence: Okay. So, how does that fit in with the driver's licence and the Canadian Citizenship card that you now say you erroneously put in your notebook and you testified under oath erroneously about?

Officer: Sorry, it wasn't – it wasn't the Health Card. It was the two – the pieces of ID that were, were noted as, as false ID (*R.v. (Courtney) Salmon*, 2011: para 31)

At another time the same officer was again questioned by the defence attorney as follows:

Defence: Okay. And, it never occurred to you that maybe you should clarify what you had said under oath at the preliminary hearing prior to you getting on the stand again.

Officer: I thought this would be my opportunity to do that.

Defence: So, you thought you would just keep quiet about it, keep it all to yourself and just say it in court?

Officer: No, I was prepared to, to talk about this today. In fact, I – I'm the one that raised that – raised this today.

Defence: Okay. Did you ever tell anybody else up until prior to this five minutes ago?

Officer: No. No (*R.v. (Courtney) Salmon*, 2011: para 32).

In his written decision, the judge pointed out that the officer's erroneous testimony that the complainant's ID had been in possession of the accused resulted in four additional charges related to being in possession of a false identification (*R.v. (Courtney) Salmon*, 2011: para 139).

The judge went on to say that:

The fact that the documents were apparently found in his possession added considerably to the Crown's case on the other counts. If the documents were in Mr. Salmon's possession, it would go some way to showing a connection between Mr. Salmon and the complainant. It would also go some way to showing that Mr. Salmon had a degree of control over the complainant (*R.v. (Courtney) Salmon*, 2011: para 141).

As the judge indicated, there was significant gain to be made on the case if the complainant's ID was in the accused's possession. The judge concluded that "the false identification [of the complainant] had been turned over to the police by the complainant when she first attended the police station. Accordingly, it was impossible for the documents to have been found in Mr. Salmon's wallet at the time of his arrest" (*R.v. (Courtney) Salmon*, 2011: para 140). The defence attorney took the position that "the false identification of the complainant had either been planted on Mr. Salmon at the time of his arrest, or that the police had fabricated a scheme to allege that the documents were in Mr. Salmon's possession at the time of his arrest" (*R.v. (Courtney) Salmon*, 2011: para 11). The judge agreed with the defence attorney that such violations on the part of the police in conducting their investigations are severe and suggested that there are only three possible explanations for the situation:

- a) Incredibly sloppy police work on the part of [name of officer] and a number of other police officers;
- b) The planting of the false identification in Mr. Salmon's wallet at the time of his arrest; or
- c) The fabrication of evidence by [name of officer] and one more police officer to make it appear that the documents were in Mr. Salmon's wallet at the time of his arrest (*R.v. (Courtney) Salmon* 2011: para 143).

The judge further noted that, “on the balance of probabilities, it is more likely than not that [name of officer] and one or more police officers fabricated evidence to make it appear that the false identification was found in Mr. Salmon's wallet at the time of his arrest” (*R.v. (Courtney) Salmon* 2011: para 144). The biggest issue for the judge was that “the state actors [and] the police, have been prepared to fabricate a case, in part, in order to secure a conviction” (*R.v.(Courtney) Salmon*, 2011: para 192). As the judge wrote: “It would be difficult to conceive of conduct that would more distinctly shock the conscience of the community than the fabrication of evidence by the police” (*ibid*: para 193). While this has not been the first time the police were found to have fabricated evidence, police motivation to do so in this case must be seen in the context of anti-trafficking regimes and the significant pressures placed on police to produce trafficking cases. Incidentally, this was not an isolated incident and while in other cases police violations may not have been as severe, they continue to be troubling.

The extent to which investigation methods in trafficking cases continue to be troubling is captured by a defence attorney's experience whereby, “most of the time in my dealings with the IO's [investigating officers], they literally conducted the investigations with blinders on because it's a human trafficking charge....it's always a big sob story” (participant 13). The same defence attorney recalls one case where, upon reviewing the disclosure materials for a human trafficking case, she “realized that the cops were in constant communication with this witness....through their private cell phones,” recalling that, “we didn't have disclosure of any of the text messages”,

which is “extremely” unusual because “you never want to look like that cop that’s trying to hide evidence” (participant 13). After requesting copies of this communication, the court received only a portion of the messages in which the officers said to the complainant: “oh, don’t worry, we got him and he’s going to go down for this. Don’t you worry. It’s going to be fine” (participant 13).

As the same defence attorney further explains, in order to make sure the complainant made it to court to give her testimony, the same police officers drove to another city to pick up the complainant, who had used drugs the day before she was to take the stand. This information that was initially withheld from the court and was only revealed through text messages between the police and the complainant, which were eventually filed with the court. When the defence attorney questioned the police about this in court, the officer dismissed it, claiming he had forgotten about it. It was only after the defence entered the text messages into evidence that the officer “had no choice than to agree” (participant 13).

The defence attorney summed it up stating, “that’s what I mean when I say they do the investigation with blinders on and they don’t care if there’s shady stuff about the victim. They don’t tell you any of that” (participant 13). Reflecting on the investigating methods of the police in this trafficking case, the same defence attorney noted, “the investigation was extremely poorly done. There was no investigation” (participant 13). She further observes that “they [police] wouldn’t investigate anything that wouldn’t fit in the story they wanted to tell” (participant 13). The police ability to decide on these very important aspects of each case demonstrates the way in which their investigative methods shape the meaning of human trafficking and determine who is a trafficker and a victim.

Aggressive investigation methods are also revealed in the case of *R.v. Byron (2014)*, where the accused's continued insistence that he did not want to talk to the police were ignored by the police:

Crown: Looking at the transcripts of your police interviews, I'm going to suggest that you lied to the police on this.

Accused: Well, you can say that but what I'm going to say about that is, *I told the police that I didn't want to talk to them.*

Crown: Okay. But my question is, you lied to them – did you?

Accused: You can say that, yeah. Depends on what you're talking about.

Crown: Well, let's go through them. '[IO] says, if she's crazy and she wanted to do this [engage in sex work], I don't know, maybe you were just her boyfriend. And you say, you will find out bro, you will find out man, I wasn't her boyfriend either man. You'll find out man'. So, you're saying that you're not her boyfriend?

Accused: Yeah, I said that there, and I also said you'll find out, which I'm telling you now. Like I told you before, *I didn't want to talk to them* so if we're staring at a white wall and he tells me, you see that red wall over there, I'd say yeah, what about it?

Doesn't mean – it just means I didn't want to talk to them and *I'll tell them whatever so you can leave me alone.* Simple.

Crown: But it's not true. In your testimony today, you said she was my girl.

Accused: Yeah and I told you *I would have told the detective whatever. I just wanted him to leave me alone cause [sic] I clearly stated I didn't want to talk to them.*

Crown: So, it's a lie.

Accused: You can say it's a lie yeah *cause [sic] I didn't want to talk to them.* I told them to leave me alone [emphasis added] (*R.v. Byron*, Audio of Trial: May 16, 2013).

In the short exchange above, the accused stated four times that he did not want to talk to the police. Yet, the Crown's focus remained on the fact that the accused had lied to the police. The way in which the accused's continued requests to stop the police questioning were ignored was raised only once at trial. The defence argued that,

I would urge this court to carefully look at the transcript of [the accused's] interview. [The Crown attorney] talked about the different lies that were told at the interview. The reason why I urge the court is because reading that interview, I think, provides some context as to why [the accused] is saying what he is saying, he is telling this court I would say what I needed to say because of the fact that he is under pressure by the detective, as was the detective's right (*R.v. Byron*, Audio of Trial: May 17, 2013).

And so even here, the defence attorney undermined his own attempts at bringing the situation to the forefront by suggesting that it was the detective's right to put pressure on the accused.

The Crown, on the other hand, used the accused's reluctant responses to police questions to effectively argue that the accused is a liar:

Crown: And, you're lying to the police.

Accused: Yeah. I guess. Like I told you, I probably didn't even know what the police was asking me at that moment.

Crown: But you chose to answer.

Accused: Yeah, cause [sic] when I didn't answer like I told you, the detective was pushing pictures on me, pushing papers on me, provoked me. So, this was getting me upset so I answered. This wasn't by will (*R.v. Byron*, Audio of Trial: May 16, 2013).

Furthermore, as the Crown's comments below demonstrate, what is defined as excessive police pressure has a high threshold:

Crown: I don't want to sound rude but it's not like someone put a gun to your head and made you answer.

Accused: There was no gun, it was paper being pushed on my hand while I'm trying to ignore him. There was no gun, obviously (*R.v. Byron*, Audio of Trial: May 16, 2013).

The acceptability of such aggressive interrogation techniques by police is further captured by the Crown's comments,

[the accused] was forced to answer the questions. He was forced because the detective showed him pictures, is what it came down to. *He could not comment when the detective was pressuring him. But that's just what the police do. They are trying to investigate. And if he didn't want to talk to the police, [the accused] didn't have to lie* (*R.v. Byron*, May 17, 2013).

The Crown's statements also demonstrate the way in which the threat of legalized violence of the police, particularly for a racialized person, is dismissed and ridiculed.

Similar police pressure was also seen in *R.v. Leung* (2015). Like in the Byron case, the Crown in Leung also highlighted the lies told by the accused during police questioning. The accused explained that he didn't want to just sit there 'cause [sic] he [the police officer] could have gotten angry. That's what usually happens with cops' (*R.v. Leung*, 2015, participant observation). Thus, the responses of the two accused in the different cases were similar in that they chose to make false statements to avoid the consequences of staying silent. However, these

issues were not raised in meaningful ways by their defence counsel. Instead, in both cases, the focus remained on the false statements made by the accused.

The accused are not the only actors pressured by the police. As seen in Chapter 5, there is evidence to suggest that police also pressure suspected victims to testify and tell a particular version of events. In addition to the accused and suspected victims, police also pressure witnesses. This is evidenced in the case of *R.v. Rasool (2015)*, when a witness made the following statement, “I have to say something about this case, I ask Your Honour to listen to me. The police officer gave me very hard time, they gave me trouble and they were pushing me to say whatever they wanted me to say” (*R.v. Rasool*, Audio of Trial: Jan 26, 2015). Unsurprisingly, the issue was quickly dismissed by the Crown through verification that the witness had a chance to tell the truth on the stand (*R.v. Rasool*, Audio of Trial: Jan 26, 2015). These examples reveal the acceptance that exists around the pressure police put on witnesses, complainants and accused to tell a particular version of events. The only time police decisions in this regard are questioned is when they cross a very clear line, such as fabricating evidence, as was the case in *R.v. (Courtney) Salmon (2011, 2013)*. Even then, however, their troubling decision making often goes unpunished.⁶⁰

Conclusion

As this chapter demonstrates, the multi-level collaboration and coordination of anti-trafficking efforts emphasized at the levels of domestic and international policy is not apparent on the frontline of anti-trafficking policing. Instead, these efforts are led primarily by specialized

⁶⁰ As one news source reports, the Professional Standards Bureau was to conduct an investigation into the behaviour of the officers involved. Yet Peel Regional Police, the service involved with the investigation did not reply to the news source regarding the results of the probe (Grimbaldi, Sept 21, 2016).

anti-trafficking units within municipal police forces. The formation of these specialized units can be attributed, at least in part, to international pressures to show police and prosecutorial successes in Canada's anti-trafficking efforts. And while these units are primarily focused on the domestic sex trade, the crime-security nexus provides them with the support and urgency equal to fighting international organized crime syndicates. By gaining this elevated status, anti-trafficking police shape the on-the-ground definition of trafficking and characteristics and identifiers of accused and victims through knowledge produced from a compilation of sources, including a focus on individual harms from pre-existing issues, race-based stereotypes and the popular culture. The police also determine the technologies and strategies of application for combatting trafficking, including how investigations should be conducted, what evidence is required for conviction and how to best obtain it. And so, as this chapter has demonstrated, these policing units contribute significantly to the formation of the human trafficking matrix through what is effectively being established as 'specialized expertise' on the topic. Yet, the logics that form a part of the trafficking matrix, as this chapter has shown, also justify troubling investigation tactics and interrogation methods. These are guided not only by the urgency brought to it through the international discourses that link trafficking with organized crime, national security and masculine protectionist discourses which dictate a need to protect 'our women and children' at all costs, but also through mundane on-the-ground motivations of front-line police, including pressures to demonstrate effective anti-trafficking police work and competition with other police forces for arrest numbers and resources.

Chapter 9 –Conclusion

This dissertation has detailed the complex, varied and, at times surprising ways in which anti-trafficking schemas that are articulated at the level of laws, policies, discourses in Canada play out on the front-line of criminal justice and legal systems in Ontario. In order to trace these developments, the dissertation has focused on three intersecting processes: 1) the ways in which anti-trafficking strategies and efforts shape and are shaped by ‘the human trafficking matrix’ - a term I use to capture the range of factors that operate at multiple levels of governance and varying international and domestic sources; 2) the ways that the trafficking matrix is shaped by the ‘crime-security nexus’, a concept which captures the developments that have connected enabled fears about transnational organized crime and national security with various forms of small-scale criminality; and 3) front-line culture, organization and practices of legal and criminal justice actors, including police, Crown and defence attorneys and judges in Ontario.

In recent years, a small number of scholars have begun to study local anti-trafficking practices by police and legal actors in response to an observed gap in academic research in this area (Gallagher 2012; Gallagher and Surtees 2012; Millar and O’Doherty 2015; Millar et al 2017). In carrying out this research, scholars observed that researcher access to trafficking cases and information on prosecutions and policing efforts is often restricted. As I, and others have observed, these restrictions are a combined effect of various structural and cultural barriers of researching the operation of the criminal justice system, but also a result of overt policies that prevent criminal justice actors from participating in academic research studies (see Roots, forthcoming; Millar et al. 2017; Gallagher and Surtees 2012; Gallagher 2016). Nevertheless, and while acknowledging the limitations of this research (see Chapter 2), this dissertation begins to

fill some of these research gaps through a detailed and empirical study of discourses, laws, policies and front-line anti-trafficking practices of police and legal actors.

Until the development of the UN *Trafficking Protocol* in 2000, international trafficking conventions were embedded within a human rights framework. The *Trafficking Protocol (2000)* marked a shift from the human rights focus, instead prioritizing concerns about transnational organized crime. Since Canada's ratification of the Protocol in 2002, these international concerns that link human trafficking with transnational organized crime have blended with a variety of national domestic trafficking discourses that emerged in relation to longstanding racialized, gendered and moralized concerns about female sexuality and sexual violence, which gained momentum in the 1970s, but also fears around child sexual exploitation and youth involvement in the sex trade that emerged during the 1980s and 1990s. In particular, contemporary Canadian domestic trafficking discourses are premised on the existence of two contrasting composites of the trafficking victim: 1) 'the-girl next door' – imagined as the white, middle-class daughter of a Canadian family, and 2) the marginalized and racialized, often Indigenous woman or girl.

In order to capture the confluence of a variety of domestic and international factors, including domestic and international discourses, law and policy developments, front-line police and prosecutorial practices, NGO efforts and media coverage that have come together under a common concern over trafficking in persons, I have developed the concept of the 'human trafficking matrix'. The matrix is formed through a web of combined discourses, laws, policies, front-line criminal justice and legal practices and expert knowledges and technologies collected from a compilation of pre-existing issues noted above. Within the matrix, these factors intersect to assign new meaning and create new threats. For instance, as detailed in Chapter 7, the trafficking indicators used by front-line police and legal actors to define traffickers are class, age,

gender and race-based stereotypes of black men as ‘pimps’, which are re-framed within the trafficking matrix as characteristics of these new and dangerous traffickers. These diverse factors which make up the matrix and are re-configured by it contribute to the net widening of what can be categorized as human trafficking and therefore what actions and behaviours can be governed and surveyed through criminal justice anti-trafficking efforts. The urgency and gravity surrounding the issue of human trafficking and the consequences and penalties that come with trafficking charges and convictions, have made the effects of the trafficking matrix that much more serious and noteworthy.

This expansive and constantly changing matrix is also shaped by the developments captured by, what Anna Pratt refers to as the ‘crime-security nexus’ (2005). This nexus provides a framework through which to investigate how broader shifts in the governance of undesirables through crime (Simon 2007), have influenced how trafficking is understood and acted upon. In particular, the crime-security nexus provides a way to understand the (re)-conceptualization of human trafficking through the blending of concerns around organized crime and national security. As Pratt notes (2005), the concept of national security has been broadened from threats to the political state, to now also include threats to the economic state and public safety. This redefinition means that organized crime, which is seen as posing a monumental economic and public safety threat has also become understood as a threat to national security. In this way, human trafficking, through its connection to organized crime, can be conceptualized as a threat to national security.

The crime-security nexus has shaped the redefinition of trafficking as an organized crime threat and has fuelled the surge of political and popular support for criminalization reforms in Canada. The nexus also helps us to understand the changes that have occurred on the frontline of

the policing and prosecution of human trafficking. In particular, this has entailed the redefinition and targeting of small-scale domestic crimes, most commonly in the sex trade, as human trafficking. And yet, despite this, as detailed in Chapters 4 and 7, local police and prosecutors go to great lengths to demonstrate that the accused in human trafficking cases are linked to criminal organizations. And while these paltry attempts have rarely been realized, the mere efforts by criminal justice actors to construct these links display the influence and effects of the crime-security nexus and the associated spectre of organized crime. In this way then, reading the developments in anti-trafficking strategies through this framework helps us understand the international, national and municipal changes that have occurred in the domain of trafficking.

However, there is much more at play in the human trafficking matrix in Canada. Contemporary anti-trafficking discourses in Canada are also shaped by the socio-historical legacy of sexist and racist anti-prostitution campaigns fuelled by the ‘white slavery’, panics at the turn of the twentieth century as well as the more recent concerns over youth in the sex trade which emerged in the 1980s and 1990s. These trajectories continue to inform the constitution of the typical victim of trafficking as well as the typical offender. We can also see how the construction of low-level ‘pimps’ as members of ‘street gangs’ during panics over youth in the sex trade set the stage for the re-construction of ‘pimping’ activities as linked to organized crime, and therefore as key elements of the crime of human trafficking. The concepts of the crime-security nexus and the human trafficking matrix help us to understand the making of the crime of human trafficking and the effects of the anti-trafficking framework at the levels of international and national law and policy in Canada as well as on the frontline of police and the courts in Ontario more specifically.

The revamped international anti-trafficking discourses which emerged at the turn of the twenty-first century, have had some significant effects. In Canada, the ratification of the *Trafficking Protocol (2000)* led to the development of domestic laws prohibiting transnational trafficking through section 118 of the IRPA in 2002, a provision which thus far has been minimally used (Ferguson 2012). The criminalization of domestic trafficking took place through sections 279.01-279.04 of the Criminal Code in 2005. Although the use of these provisions was slow at the outset, they have been applied with increasing frequency since the 2013 Supreme Court decision in *R.v. Bedford (2013)* which deemed key provisions of Canada's sex work laws unconstitutional. In doing so, the Supreme Court allowed the (then) federal Conservative government a period of one-year to introduce new laws to govern sex work. In response, the government introduced Bill C-36, *Protection of Communities and Exploited Persons Act*, which re-focused Canada's sex work laws to criminalize 'johns' and, at least in theory, took the position that sex workers are victims to be protected, rather than criminalized. This revised strategy aligned Canada's sex work laws with human trafficking laws, which also take a protectionist approach towards those deemed as victims.

Anti-trafficking efforts have been further assisted by criminalization reforms to Canadian human trafficking laws. The Criminal Code laws governing human trafficking have been amended now four times since their initial enactment in 2005 (with a fifth revision in progress in the form of Bill C-38). Each amendment has expanded the meaning of human trafficking and has increased the severity of possible punishments associated with trafficking offences. As detailed in Chapter 3, Canada's legal definition of human trafficking differs from the definition established in the UN *Trafficking Protocol (2000)* in some significant ways. Most importantly, the definition of trafficking set out by the UN understands the activity as a combined effect of

coerced transportation and end practice (Gallagher 2010, 25). In contrast, Canada's anti-trafficking law follows the definition set out by the US, which separates component parts of trafficking such that recruitment, transportation and exploitation can each be deemed human trafficking in and of themselves. Specifically, Canada's legal definition of trafficking has become focused on the broad concept of 'exploitation', which according to the Ontario Court of Appeal in a precedent setting decision in *R.v. A.A. (2015)*, does not even have to take place. Instead, as I detail in Chapter 3, the Crown has to only prove that the accused had the *intent* to exploit. And while a wide range of activities can be categorized under the term 'exploitation', including those most commonly associated with employer-employee relationships, intimate domestic relationships and even parent-child dynamics, the sex trade has become the guiding focus of this legislation through front-line criminal justice and law enforcement efforts. Indeed, as this dissertation has recounted, the offence of human trafficking is continually made and remade through front-line practices of police and prosecutors in their day-to-day work.

A number of heterogeneous factors come into play in the shaping of the offence of human trafficking on the frontline. Some of these factors are novel and even surprising, while others are mundane and organizational, and yet others reflect continuing influence of historical pre-occupations. The varying combinations of these factors have diverging effects on the approaches of criminal justice actors to, and even their understanding of, the crime of human trafficking. As my evidence suggests, front-line police, defence and Crown attorneys and judges hold varying and sometimes contradictory understandings of the meaning of human trafficking. In particular, the opinions of these actors vary on whether and, if so, how human trafficking differs from procuring (under section 286.3 of CCC). In this muddle, front-line actors draw on class, race and gender-based stereotypes and knowledges from pre-existing concerns to, among

other things, (re)-construct a familiar scenario of sex worker and ‘pimp’ dynamics as human trafficking. That the activities being targeted are previously existing sex work related offences, rather than a menacing new crime, as it is often portrayed, is obscured by the dominance of both, the human trafficking matrix and the crime-security nexus.

The narrative of the ‘the (white, middle-class) girl next door’ - Canada’s ‘ideal trafficking victim’ invigorates the urgency of anti-trafficking efforts by raising the omnipresent threat of trafficking for all women and girls. By rendering the most protected group in Canadian society – the young, white, middle-class girl or woman – as the victim of trafficking, the ‘girl next door’ imagery works to escalate the urgency of anti-trafficking enforcement campaigns. And while this imagery is used as a fear tactic to responsabilize middle-class women and girls, it is not ‘the girl next door’ who is most commonly the complainant in human trafficking cases that come to the attention of the police and before Ontario courts. Alongside ‘the girl next door’ is the image of the marginalized, and especially Indigenous woman or girl as a victim of trafficking. Despite her youth, naiveté and often whiteness, she nonetheless departs from the ‘ideal victim’ image becoming racialized through her marginalization and frequently engagement in the sex trade. In light of this, the construction of her victim status is dependent on the existence of, what are known as vulnerability factors, including family history of abuse, drug and alcohol dependencies, mental health issues, involvement in the sex trade and poverty, amongst other things. Police and prosecutors rely on the presence of these factors in women’s lives to argue that they create vulnerabilities, which are then exploited by the accused. And so, we see the marginalized woman and girl, particularly one working in the sex trade emerging most frequently as the complainant in trafficking cases. Although the victimization of Indigenous women and girls by traffickers is frequently emphasized in the media and policy discussions, the

limited number of studies that exist on this, including the present one, do not confirm this, raising questions around who qualifies as a victim of trafficking.

And yet, this reliance on vulnerability factors to construct women and girls as victims of trafficking by police and prosecutors was criticized by UNODC (2013) for being too commonplace and therefore casting too wide a net. The UNODC argued that the focus should instead be on trafficker-created vulnerabilities, such as isolation, dependency, irregular migration, removal of documents and so on, but found that criminal justice practitioners failed to distinguish between trafficker-created vulnerabilities and pre-existing ones, such as age, illness, gender, poverty etc. (2013, 3-4). According to UNODC, reliance on these pre-existing vulnerabilities opens up the possibility that any situation where the accused benefitted from the actions or services of the individual labelled as a victim could be categorized as human trafficking, regardless of whether the accused recruited, coerced or seduced the labelled victim to engage in such activities or services. Relying on these vulnerabilities is a part of a risk-based approach which enables the police to construct marginalized women and girls in the sex trade as potential victims of trafficking and bypass the impossible task of finding complainants who abide by the 'ideal victim' standards. In this way, these vulnerability factors have become a part of the human trafficking matrix transforming a wide range of factors that are a normal part of many people's lives into trafficking vulnerabilities.

And yet, women and girls who are deemed by police to be victims of trafficking do not always see themselves as such. What is especially troubling is that if women refuse to accept this characterization of their role they can be subject to criminal charges or threatened with other punitive consequences. In this way, police place pressure on women and girls to take on the victim label and to tell a particular version of events, even scripting their story to fit the legally

required narrative of exploitation. As detailed in Chapter 5, the vast majority of these women and girls who are brought into the criminal justice system through anti-trafficking enforcement efforts and who are pressured to take on the victim label are poor (as indeed are the suspected offenders) and are engaged in some form of sex work. This focus on marginalized women and girls is enabled by the adaptation of pre-existing vulnerabilities into the trafficking matrix which transforms these characteristics, life circumstances and structural deprivations into risk factors that make women and girls vulnerable to exploitation by traffickers. The use of poverty as a vulnerability enables the police to focus on marginalized women and girls through pressure tactics and narrative scripting and demonstrates that anti-trafficking efforts on-the-ground have the effect of criminalizing poverty. The use of this class-based logic by police to target the sex trade through anti-trafficking efforts while criminalizing those women and girls who refuse to take on the victim label shows that the fine line between ‘at risk’ and ‘risky’ victim well-identified by scholars in sexual assault cases is alive and operational in trafficking efforts. Despite the criminalizing threats directed at girls and women suspected of being victims of trafficking, police nonetheless see themselves in the role of protectionists, whose job it is to save and protect women and girls from ‘bad men’.

At the trial stage, Crown attorneys also use these pre-existing vulnerability factors to construct complainants as subject to an increased risk of exploitation, which are important factors in building a case as one of human trafficking. Crown prosecutors’ approach to trafficking cases is once again enabled by the trafficking matrix which, in addition to the pre-existing vulnerabilities, employs a series of race, class, age and gender-based stereotypes through which women, often working in the sex trade, are constructed as vulnerable and therefore suspected of being exploited by the accused. The narrative of the accused, who is most often a

young, poor and racialized male, is built by the Crown through reliance on characteristics and activities stereotypically associated with ‘pimps’ and ‘pimping’ but recrafted to fit the legal requirements of human trafficking. These gender, class and race- based stereotypes have become a part of the human trafficking matrix, within which they have taken on new meaning as indicators. In particular, these indicators, including recruitment methods which include, what is called the ‘romeo tactic’ and ‘luring’, as well as control tactics, such as violence, drugs but also more subtle forms such as expressions of love, are presented as a new threat to women and girls. Yet, a closer examination of these indicators suggests that they, like the gender, class and race-based characteristics used to define the trafficker are similar to those used to target ‘pimping’ activities in the midst of the 1980s and 1990s panics around youth involvement in the sex trade and during the ‘white slavery’ fears prevalent at the turn of the twentieth century. As detailed in Chapter 8, the knowledges and tactics of the historical panics over youth in the sex trade have become embedded within the human trafficking matrix, in part through police efforts to gain knowledge about human trafficking by studying this pre-existing topic. And while the accused in trafficking cases usually operate independently within the sex trade, law enforcement and prosecution efforts go to significant lengths to link accused men with ‘street gangs’ – a loosely defined form of organized crime also applied to ‘pimps’ during the 1980s and 1990s panics over youth sex work. Using the term ‘street gang’ allows police and prosecutors to evoke the spectre of organized crime, which through the crime-security nexus, makes trafficking into a problem that poses a threat to national security.

Although a large number of trafficking charges are withdrawn or stayed by the Crown, the mere charge of human trafficking itself, as noted in Chapter 3, can have significant extra-legal consequences for those accused, including loss of employment, trouble obtaining future

employment, attacks from members of community and the social stigma of being associated with the crime. The heightened interest towards the issue from the public, politicians and criminal justice agents, means that the media frequently report on charges laid in trafficking cases. These media reports are often accompanied by pictures of the accused and unverified and often sensationalized stories of the events that led to the charges. And so, even before the case goes to court, the accused are convicted in the court of public opinion. As detailed in Chapter 7, the targeting of young, racialized men through anti-trafficking efforts is exacerbated by particularly aggressive police investigation tactics exemplified in the *R.v. Dagg (2015)* and especially *R.v. (Courtney) Salmon (2013)*, where the police went as far as to fabricate evidence in order to increase chances of conviction.

These aggressive anti-trafficking approaches by the police and more recently Crown attorneys are motivated by a variety of factors. While arrest rates remain a key measure of police performance in general, police working in specialized anti-trafficking units are under additional pressure to arrest traffickers in order to justify the continued existence of the unit and the large amounts of public funds directed to these units and to related anti-trafficking law enforcement efforts. Further, when arrest rates have increased, police use the increasing numbers of trafficking arrests to demonstrate a need for more resources because they claim that the extent of the problem is beyond what they can combat with existing resources. Yet, these requests for funding also place local anti-trafficking units in competition with each other, thus further increasing pressure to show productivity by laying charges. More recently, similar pressures have also been applied to Crowns through provincial anti-trafficking strategies, such as the one recently put into place in Ontario, which assigned six specialized human trafficking Crown attorneys. Finally, it is also the case that higher arrest rates for trafficking offences are needed to

demonstrate the success of Canada's law enforcement and prosecutorial efforts to the US Department of State which, as discussed in Chapter 1, monitors global anti-trafficking efforts.

In the absence of transnational trafficking cases, local anti-trafficking police and Crowns turn to easier cases, re-constructing what might have previously been rather common procuring cases into human trafficking cases. To do this, frontline police officers and prosecutors regularly draw from popular culture, as well as historically resilient and deeply moralized gender, class and race-based stereotypes. As such, the problem of trafficking is at least partially constructed by local front-line enforcement practices that enact the problem in their day-to-day work. These specialized human trafficking police and Crown attorneys are now widely regarded as experts on the issue of trafficking and are called on to share their knowledge on the topic with other police, legal actors, in court proceedings, with NGOs, the media and the public, therefore disseminating knowledge on human trafficking, which they themselves have generated. In doing so, the politicians, lawmakers, police and prosecutors are able to respond to the pressures of the US and the international community to arrest and prosecute trafficking cases and demonstrate their effectiveness in combating this crime.

And so, while anti-trafficking efforts in Canada are in full force with large scale and costly undertakings at many levels of government, my research has shown in specific empirical detail the ways in which the trafficking matrix and the broader developments captured by the crime-security nexus have resulted in some troubling effects of local criminal justice anti-trafficking efforts. These include: the aggressive targeting of the sex trade; the (re)victimization of those labelled as trafficking victims by police and legal actors in court; the criminalization of racialized, impoverished and other marginalized groups, and; a focus on small-time offenders but with increasingly tougher penalties. Similar patterns around localized anti-trafficking efforts

have also been observed in other jurisdictions (Gallagher and Surtees 2012; Gallagher 2016; Lester et al. 2017; Sweisten and Mogulescu 2016).

Directions for Future Research

As detailed in Chapter 3, a conviction for a human trafficking offence in Canada now comes with a mandatory minimum of four years' imprisonment. If the complainant is under the age of 18, the punishment increases from a minimum of six years to a maximum of life imprisonment. These tough sentences are particularly troubling given the wide range of conduct that can be categorized as trafficking, a concern also expressed by the court in *R.v. Finestone (2017)*. In this case, the court found mandatory minimum penalties in trafficking cases to be unconstitutional due to the wide range of conduct that can fall under the legal term human trafficking (see Chapter 3 for discussion). According to the judge in this case, "When I consider the broad range of conduct captured by this section [279.01], even taking into account the heightened *mens rea* [set out in *R.v. Beckford (2013)*], many reasonable hypotheticals can be constructed where a 5-year sentence would be grossly disproportionate to the fit sentence" (*R.v. Finestone 2017*, para 87). And while the provincial court judge was outside her legal authority to deem the mandatory minimums as a violation of the *Constitution Act*, she nonetheless felt compelled to reject the mandatory minimum in the case before her. Despite this rarity, we have seen significant penalties imposed for trafficking convictions, most notably in *R.v. Moazami (2015)*, where the Supreme Court of British Columbia imposed a sentence of 23 years' imprisonment for Mr. Moazami's role in the prostitution activities of 11 girls and women ranging between 14 and 19 years of age. Moazami's exceedingly high sentence was a result of the judge's decision to impose consecutive sentences for each incident, despite the federal Liberal government's determination that consecutive sentencing in human trafficking cases

would constitute cruel and unusual punishment and would violate the accused's right under section 12 of the *Canadian Charter of Rights and Freedoms*.

The penalties also come with additional consequences, including lifetime DNA order, registration with the sex offender registry (if the trafficking is for the purpose of sexual exploitation), and possibly long-term and/or dangerous offender designation. While long-term and dangerous offender designations are usually applied in extreme cases and/or in response to an extensive record of criminal offending, the Crown in *R.v. Burton (2013)*, brought an application to have all human trafficking convictions come with long-term offender designations. While the Crown's application for this sweeping change was unsuccessful, the mere attempt is alarming, particularly given the breadth of activities that can be defined as human trafficking and the focus on mundane crimes. Furthermore, the Crown can also ask for a section 161 (1) Order, which can be imposed for offences against persons under 16 years old. If granted, this order would, amongst other things, restrict the convicted person from being able to go to parks, swimming pools, be near playgrounds, daycare centers or school grounds where children may be likely to be, or have any contact with a person under the age of 16. The convicted person is also prohibited from using the internet, unless done so under court imposed rules (CCC, Order of prohibition 161(1)). The inability to engage in common everyday activities, such as using the internet, walking in the park or swimming at a public pool demonstrates the severity with which trafficking is treated. This is exacerbated for those who have children under the age of 16, as their ability to see and interact with their children would become severely hindered.

In addition to criminal penalties, non-Canadian citizens convicted of trafficking are subject to a mandatory and un-appealable deportation order, as has been the situation in a number of cases examined in this study. Changes to immigration laws have been designed to

enable the faster deportation of non-citizens convicted of serious criminality, including human trafficking. The *Faster Removal of Foreign Criminals Act (2013)* amended the IRPA to reduce the length of the sentence that allows non-citizens convicted of serious criminality to be deported without appeal, from two years to six months' imprisonment or a conviction of an offence that comes with a penalty of at least a maximum of 10 years' imprisonment. While non-citizens convicted of transnational trafficking are subject to deportation through section 37(1)(b) of IRPA, the vast majority of those convicted of domestic trafficking, particularly in recent years, receive sentences longer than six months' imprisonment, therefore making them subject to the same deportation without the possibility of appeal. This is significant, as it allows for the deportation of long-term residents of Canada for a crime that a decade ago was treated as a conventional domestic offence. Furthermore, as detailed in Chapter 7, many of those deported are black and specifically Jamaican men. The continuation of this trend under anti-trafficking efforts is a part of an ongoing pattern of criminality based deportations targeted at black men more than any other group in Canadian society (Burt et al. 2017; Maynard 2017).

In this context, the combined process of re-conceptualizing procuring offences as human trafficking and the use of racial tropes to construct racialized men particularly black men, as human traffickers by police and prosecutors is troubling. And, although the number of trafficking convictions in Canada remains low, there has been an upward trend in recent years, signalling a need to remain vigilant of these developments. While this research begins to provide some insights into front-line police and prosecutorial anti-trafficking efforts in Canada and in more specific ways in Ontario, it also indicates a need to investigate the full range of legal, administrative and extra-legal effects of domestic anti-trafficking measures, especially on marginalized people and those with precarious citizenship status. Furthermore, given the Ontario

specific focus of this research, studies examining anti-trafficking policing and prosecutorial efforts in other provinces of Canada would provide an important comparative to the current study.

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Appendices

Appendix A: Human Trafficking Cases: Race, Age, Gender and Visual Depictions of Accused in the Media⁶¹

Name	Age at the Time of Arrest	Gender ⁶²	Race ⁶³ /Ethnicity	Picture Released by Media
1. Tyrone Burton	28	M	Racialized/ Jamaican	Yes
2. Ferenc Domotor	48	M	Visibly White/Romani, Hungarian	Yes
3. Ferenc Domotor Jr.	21	M	Visibly White/Romani, Hungarian	Yes
4. Gyongyi Kolompar	40	F	Visibly White/Romani, Hungarian	Yes
5. Gizella Kolompar	41	F	Visibly White/Romani, Hungarian	Yes
6. Lajos Domotor	42	M	Visibly White/Romani, Hungarian	Yes
7. Ferenc Karadi	47	M	Visibly White/Romani, Hungarian	Yes
8. Attila Kolompar	35	F	Visibly White/Romani, Hungarian	Yes
9. Gyula Domotor	32	M	Visibly White/Romani, Hungarian	Yes
10. Gizella Domotor	42	F	Visibly White/Romani, Hungarian	Yes
11. Ferenc Domotor Sr.	68	M	Visibly White/Romani, Hungarian (Info from descriptions in newspaper articles)	No
12. Jozsef Domotor	43	M	Visibly White/Romani, Hungarian	Yes
13. Gyozo Papai	42	M	Visibly White/Romani, Hungarian	Yes
14. Zsanett Karadi	24	M	Visibly White/Romani, Hungarian	Yes

⁶¹ Accused from the same case are grouped together through highlighting. Varied shades of green are used to separate cases.

⁶² As noted on Court Information Sheet.

⁶³ Acknowledging that race is a problematic category, the efforts to identify the race of the accused were made in order to show that racialized people are more heavily targeted by anti-trafficking police and prosecutorial efforts on the ground.

15. Krisztina Csaszar	30	F	Visibly White/Romani, Hungarian	Yes
16. Janos Szanto	37	M	Visibly White/Romani, Hungarian	Yes
17. Robert Colangelo	33	M	Visibly White	Yes
18. Justin Zealand	21	M	Visibly White	Yes
19. Breanna Garrison	20	F	N/A	No
20. Kadeem Truadian Francis	23	M	Racialized/ Black	Yes
21. Jesse Scullion	22	M	N/A	No
22. Travis Savoury	36	M	Racialized/Black	Yes
23. Karim Cherestal	21	M	Racialized/Black (Info from description of accused in trial transcript)	No
24. Taylor Dagg	23	M	Racialized/Black	Yes
25. Steven McDonald	36	M	N/A	No
26. Kristen MacLean	32	F	N/A	No
27. Tyrone Smith	20	M	Racialized/Black	Yes
28. Lamone Smith	23	F	Racialized/Black	Yes
29. David D'Souza	26	M	N/A	No
30. Kailey Oliver-Machado	16	F	Visibly White/French Canadian	Yes
31. R.v. A.A.(1) (Oliver-Machado co-accused)	15	F	Racialized/Black (Info from description of accused in trial transcript)	No
32. R.v. A.A. (2) (Oliver-Machado co-accused)	17	F	Visibly White (Info from description of accused in trial transcript)	No
33. Richard Addis	54	M	N/A	No
34. Kareem Watson	30	M	N/A	No
35. Mohamed Ahmed	26	M	Racialized/South Asian (assumption made based	No

			on the name of the accused)	
36. Jerome Barron Dorsey	25	M	N/A	No
37. Merrick Anthony Dennis	27	M	N/A	No
38. Imani Nakpangi	26	M	Racialized/Black	Yes
39. Vytautas Vilutis	21	M	N/A	No
40. Jaimie Byron	24	M	Racialized/ Grenadines	Yes
41. Everol Powell	45	M	Racialized/Black	Yes
42. Correll Slawter	26	M	N/A	No
43. Shakib Gharibzada	26	M	N/A	No
44. Masood Hejran	26	M	N/A	No
45. Remington Needham	22	M	N/A	No
46. Daryn Leung	25	M	Racialized/Black (Participant observation at trial)	No
47. Cheng Ping Liu	40	M	East Asian (Based on a sketch by court sketch artist)	No
48. Christopher McCall	43	M	Visibly White	Yes
49. Mark Anthony Burton	42	M	Racialized/Black	Yes
50. Yul Styles-Lyons	25	M	Racialized/Black	Yes
51. Jerome Hines	28	M	Racialized/Black	Yes
52. Anthony Greenham	28	M	Racialized/Black (Information from description in trial transcript)	No
53. Stefan Ascenzi	28	M	Visibly White	Yes
54. Lisa M. Ascenzi	46	F	Visibly White	Yes
55. Vanessa Cachia	22	F	Visibly White	Yes

56. Myriam Robert	18	F	N/A	No
57. Derek Bissue	22	M	Racialized/Black	Yes
58. Goran Kakamad	19	M	N/A	No
59. Gregory Salmon	31	M	Racialized/Jamaican (Based on information from trial transcript)	No
60. Pawel Michon	42	M	Visibly White	Yes
61. Toofan Charmin	27	M	N/A	No
62. Zainab Rasool	38	F	Racialized/Malaysian (Information obtained from trial transcript)	No
63. Omar McFarlane	31	M	Racialized/Jamaican (Based on information from sentencing reasons <i>R.v. McFarlane (2012)</i>)	No
64. Jacques Leonard St. Vil	24	M	N/A	No
65. Ken Katalayi-Kassende	27	M	N/A	No
66. Andrew Lewis	23	M	N/A	No
67. Taylor Eibbitt	25	M	N/A	No
68. Solomon Houlder	20	M	Racialized/Black	Yes
69. Yasin Mohamud	26	M	N/A	No
70. Abdirahman Hussain	18	M	N/A	No
71. Lucas Gabrys	24	M	Visibly White	Yes
72. Anthony Putzu	26	M	Racialized/Black	Yes
73. Simeon Harty	21	M	Racialized/Black	Yes
74. Jamie Forbes	32	M	Racialized/Black	Yes
75. Dustin Macbeth	22	M	Visibly White	Yes
76. Ashor Anwia	19	M	Racialized	Yes
77. Jordan Michael Lynch	18	M	Racialized/Black	Yes

78. Aldain Alando Beckford	25	M	Racialized/Black (Information obtained from trial transcripts)	No
79. David Mackay Stone	24	M	Racialized/Black (Information obtained from trial transcripts)	No
80. Thomas Downey	20	M	Racialized/Black	Yes
81. Spencer Thompson	22	M	Racialized/Black	Yes
82. Anthony Roberts	21	M	Visibly White	Yes
83. Henok Mebratu	23	M	Racialized/Black	Yes
84. Shaun Butler	23	M	Racialized/Black	Yes
85. Jason Bartley	20	M	N/A	No
86. Anthony Talbert	21	M	Racialized/Black	Yes
87. Brian McKenzie	22	M	Racialized/Black	Yes
88. Tchello Whyte	25	M	Racialized/Black	Yes
89. Shanicka Providence	18	F	Racialized/Black	Yes
90. Aloma Shermin Providence	38	F	N/A	No
91. Markus Cole	20	M	Racialized/Black	Yes
92. Alia Alexandria Abdellatif	25	F	Visibly White	Yes
93. Natasha Robataille	18	F	Visibly White	Yes
94. Sage Finestone	21	M	Racialized/Black	Yes
95. Nicolas Faria	19	M	Racialized/Black	Yes
96. Nadine Brown	38	F	N/A	No
97. Yolanda Mohabeer	20	F	N/A	No
98. Rory Thomas Mitchell	29	M	Racialized/Black	Yes
99. Kelvin Earl McPherson	36	M	N/A	No

100. Courtney Salmon	39	M	Racialized/Black	Yes
101. Enoch Johnson	25	M	Racialized/Black	Yes
102. Jah-Tyius Joshua Williams	23	M	Racialized/Black	Yes
103. Renardo Cole	29	M	Racialized/Black	Yes
104. Nathan Turnbull	19	M	Racialized/Black	Yes
105. Deshawn Holmes	19	M	Visibly White	Yes
106. Camille Beausejour	19	F	Visibly White	Yes
107. Maziar Masoudi	23	M	Racialized/South Asian	Yes
108. Michael Hazel	22	M	Racialized/Black	Yes
109. Isaiah Omoro	27	M	N/A	No
110. Chanelle Espinosa	20	F	Racialized/Hispanic	Yes
111. Alexander Levi	20	M	Racialized/Black	Yes
112. Jerome Tyrele Belle	18	M	N/A	No
113. Hayley McBride	19	F	N/A	No
114. Marcus Cumsille	22	M	Racialized/Black	Yes
115. Joel Edwards	23	M	Racialized/Black	Yes
116. R.v. A.A. (3)	22	M	Racialized/ Barbados	No
117. R.v. A.A. (4)	16	M	N/A	No
118. Sahilan Surendran	24	M	N/A	No
119. Taylor Laughlin	23	M	N/A	No
120. Matthew Cosmo	28	M	Visibly White	Yes
121. Ricardo Spence	33	M	Racialized/Jamaican (Description from sentencing decision <i>R.v. R.R.S.(2015)</i>)	No

122. Brandon Fraser	29	M	Racialized/Black	Yes
123. Jordan Kimmerly	27	M	N/A	No

Summary of Chart

Total of 123 accused persons

24 women and 99 men.

Average Age: 27

women = 27 yrs; men = 27 yrs

Race of Accused:

12 visibly white women; 5 racialized women; 7 unknown

21 visibly white men; 51 racialized men; 27 unknown.

73 pictures released in the media.

14 pictures of women: 11 visibly white women and 3 racialized women.

59 pictures of men: 19 visibly white men and 40 racialized men.

Appendix B: Human Trafficking Charges and Outcomes⁶⁴

Name	Year Charged	Type of Human Trafficking	Outcome ⁶⁵	Sentence
1. Tyrone Burton	2012	Trafficking for the purpose of sexual exploitation.	Convicted by judge of the following: 1) Exercising control over victims 2) Trafficking in persons 3) Receiving a material benefit from trafficking in persons 4) Withholding the passports 5) Obstructing justice	Designated long-term offender. Dangerous offender hearings ongoing at the time of writing in 2018.
2. Ferenc Domotor	2010	Labour trafficking.	Pled guilty to human trafficking, participating in activities of a criminal organization and knowingly counselled a person to misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act.	Global sentence: 9 years (minus 2 years' credit in respect of the guilty plea ⁶⁶) Credit for pretrial custody for 30 months on the basis of two for one. *Deported to Hungary April 10, 2015.
3. Ferenc Domotor Jr.	2010	Labour trafficking.	Plead guilty to 1) conspire to commit an indictable offence of trafficking in persons (s. 279.01(1)(b)) 2) participated in the activities of a criminal organization to wit: an extended Hungarian family for the purpose of enhancing the ability of the said organization to facilitate the offence of trafficking in persons (s. 467.11(1)) and s. 279.01(1)(b); 36) knowingly counselled a person to misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act (s. 126 IRPA)	Count 1: 16 months in jail (pre-trial credit 1:2); s. 109 order for 10 years; s. 487.051 DNA order; count 2: 16 months concurrent to count 1; count 3: 6 months concurrent to 1 and 2 (from court docs) Note: Sentencing transcript has different info: 5 years' imprisonment - 2 years for guilty plea = 36 months-15 months for pre-trial custody = 21 months' jail time. *Deported to Hungary.
4. Gyongyi Kolompar	2010	Labour trafficking.	Plead guilty to count 36) knowingly counselled a person to misrepresent or withhold material facts relating to a	Count 36 (18 months of pretrial custody at

⁶⁴ Terms and language used in the chart reflect their use in court documents and are not filtered through a critical lens.

⁶⁵ This research was concluded in the summer of 2016. Outcome of any case that was ongoing at that time has been noted as 'outstanding'.

⁶⁶ Pre-trial detention credits are an eligibility not an entitlement.

			relevant matter that induces or could induce an error in the administration of this Act (s. 126 IRPA)	1:2 entitles her to 36 months served) *Deported to Hungary.
5. Gizella Kolompar	2010	Labour trafficking.	<p>Pled guilty to counts 1 and 2:</p> <p>1) conspired to commit the indictable offence of trafficking in persons to wit: unlawfully recruit, transport, transfer, receive, hold, conceal and harbour or exercise control, coercion or influence over the movements of various persons (s. 465(1)(s) 2) did participate in the activities of a criminal organization to wit: an extended Hungarian family for the purpose of enhancing the ability of said organization to facilitate the indictable offence of Trafficking in persons (s. 467.11(1)) and s. 279.1(1)(b)</p> <p>By direction of the Crown, count 3 withdrawn:</p> <p>3) did unlawfully recruit, transport, transfer, receive, hold, conceal or harbour or exercise control, coercion or influence over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01)</p>	<p>The accused is sentenced to a period of 2 years' incarceration on count 1 and a period of 2 years concurrent on count 2</p> <p>S. 109 order for 10 years after release from jail; s. 487.51 DNA order; s. 738; recommendation for early parole in preparation for deportation. (source: handwritten by judge in court file)</p> <p>*Deported to Hungary.</p>
6. Lajos Domotor	2010	Labour trafficking.	Pleads guilty to conspiring to commit human trafficking, being part of a criminal organization and four counts of possession of stolen cheques from a related mailbox theft ring in London. Died of stomach cancer (source: media)	<p>Sentenced to 6 years' in prison. After time served, had 25 months remaining.</p> <p>*Deported to Hungary.</p>
7. Ferenc Karadi	2010	Labour trafficking.	Plead guilty to conspiring to commit human trafficking, being a part of a criminal organization, coercing his victims to lie to immigration officials and fraud.	Sentenced to 6 years' imprisonment. 25 months remaining after credit for time served.
8. Attila Kolompar	2010	Labour trafficking.	Plead guilty to conspiring to commit human trafficking, being a part of a criminal organization, welfare fraud.	<p>Sentenced to 26 months' imprisonment in addition to 16 months he spent in pre-trial custody.</p> <p>*Deported to Hungary.</p>
9. Gyula Domotor	2010	Labour trafficking.	Plead guilty to conspiring to commit human trafficking, being a part of a criminal organization.	Global sentence 7.5 years. Paroled November 2013.
10. Gizella Domotor	2010	Labour trafficking.	Plead guilty to count 1, conspiring to commit trafficking and, count 2, participating in a criminal organization to commit trafficking.	Sentenced to time served (9 months: 18 months on 2 for 1 basis) and 1 day.

				Count 1: 18 months concurrent on count 2; DNA order: weapons prohibition s. 109 (2a) + (2b) for life. *Deported to Hungary.
11. Ferenc Domotor Sr.	2010	Labour trafficking.	Believed to have escaped to Hungary. Warrant outstanding.	N/A
12. Jozsef Domotor	2010	Labour trafficking.	Plead guilty to conspiring to commit human trafficking, being a part of a criminal organization.	Sentenced to 6 years' imprisonment. After pre-sentencing time served, 24 months remaining. *Deported to Hungary.
13. Gyozo Papai	2010	Labour trafficking.	Plead guilty to counts 1, conspiracy to commit the indictable offence of trafficking in persons to wit: unlawfully recruit, transport, transfer, receive, hold, conceal and harbour or exercise control, coercion or influence over the movements of various persons (s. 465(1)(s)); and, Count 3, unlawfully recruiting, transporting, transferring, receiving, holding, concealing or harbouring or exercising control, coercion or influence over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01). Count 2 withdrawn: 2) participating in the activities of an organized crime group.	Sentenced to 2 years, less time served on a 2 to 1 basis = 18 months. Leaving 6 months' sentence from the date of sentence. DNA order; weapons prohibition (s. 204(2b)). *Deported to Hungary.
14. Zsanett Karadi	2010	Labour trafficking.	Plead guilty to count 3, stealing \$20 from a victim. Count 1 and 2 withdrawn: 1) conspiring to commit human trafficking and 2) participating in the activities of an organized crime group withdrawn.	*Deported to Hungary.
15. Krisztina Csaszar	2010	Labour trafficking.	Pled guilty to being a part of a criminal organization, welfare fraud and obstruction of justice.	Sentenced to time served (spent 11 months in pre-trial custody). *Deported to Hungary.

16. Janos Szanto	2010	Labour trafficking.	Plead guilty to count 1, conspiring to commit human trafficking and count 2, participating in the activities of an organized crime group.	Sentenced to 2 years. Count 1: credit 68 days' jail at 2 for 1. s. 109 - life: DNA Order. *Deported to Hungary.
17. Robert Colangelo	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	
18. Justin Zealand	2014	Trafficking for the purpose of sexual exploitation.	All charges withdrawn.	
19. Breanna Garrison	2014	Trafficking for the purpose of sexual exploitation.	All charges withdrawn.	
20. Kadeem Truadian Francis	2014	Trafficking for the purpose of sexual exploitation.	All charges withdrawn.	
21. Jesse Scullion	2014	Trafficking for the purpose of sexual exploitation.	All charges withdrawn.	
22. Travis Savoury	2014	Trafficking for the purpose of sexual exploitation.	Found guilty of Counts 1, assault and Count 4, failing to comply with recognizance. All other counts withdrawn at the request of Crown. * no trafficking conviction (source: court does). Complainant did not want to testify.	Sentenced to 6 months in jail but was allowed to go free since he spent 10 months in custody.
23. Karim Cherestal	2013	Trafficking for the purpose of sexual exploitation.	Outstanding.	
24. Taylor Dagg	2013	Trafficking for the purpose of sexual exploitation.	Convicted of count 7: 7) steal a cellphone, value not exceeding \$5000 (s. 334(b)) Acquitted of counts 1-6: 1) did exercise influence over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01) 2) received financial or other material benefit, namely a sum of money, knowing that it resulted from the commission of an offence (s. 279.01) 3) without lawful authority confined a person (s. 279(2)) 4) did by word of mouth knowingly uttered a threat to cause bodily harm to a person (s. 264.1) 5) wrongfully and without lawful authority for the purpose of compelling a person to	For count 7 he is sentenced to 15 days to be credited against time served.

			do something that she had a lawful right to abstain from doing, namely to have sex with men and women against her will, intimidate by threats that violence would be done to, in Canada or elsewhere, that person (s. 423(1)) 6) did by word of mouth, knowingly utter a threat to cause bodily harm to a person (s. 264.1(2))	
25. Steven McDonald	2013	Trafficking for the purpose of sexual exploitation.	Outstanding.	
26. Kristen MacLean	2013	Trafficking for the purpose of sexual exploitation.	All charges against MacLean withdrawn.	
27. Tyrone Smith	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Outstanding.	
28. Lamone Smith	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Outstanding.	
29. David D'Souza	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Outstanding.	
30. Kailey Oliver-Machado	2012	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Verdict by judge [her two co-accused pleaded guilty]. 36 count indictment. Found guilty of 24 counts, including 3 counts of trafficking a minor 279.011(1) Also found guilty of: 279(2); 344(1); 266; 264.1(2); 212(1)(d); 279(2), 271(1), 264.1(2); 334(b); 172.1(2); 163.1(2), 163.1(4); 163.1(2), 163.1(4); 152; 163.1(2); 163.1(4), 264.1(2), 266, 279(2), 281 Charges stayed: 212(1)(d); 212(1)(d); 212(1)(2) Acquitted: 264.1(2); 267(b); 279(2); 271(1); 264(b)	78 months' custody [sentenced as an adult] Total sentence 6.5 years less PTC = 2 years +325 days + SOIRA lifetime order + s.109 weapons prohibition lifetime order + DNA order
31. R.v. A.A.(1) (Oliver-Machado co-accused)	2012	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Pled guilty to human trafficking.	N/A

32. R.v. A.A. (2) (Oliver-Machado co-accused)	2012	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Pled guilty to human trafficking.	N/A
33. Richard Addis	2014	Trafficking for the purpose of sexual exploitation.	Count 2 (assault) convicted. Counts 1, 3, 4, 5 withdrawn by Crown: 1) exercised control over the movements of a person in such a manner as to show that he was compelling that person to engage in prostitution (s. 212(1)(h) 3) for the purpose of gain, did exercise control over the movements of a person in such a manner as to show that he was compelling her to engage in prostitution 4) recruited or exercised control, direction or influence over the movements of a person for the purpose of exploiting them (s. 279.01) 5) unlawfully received financial benefit knowing that it resulted from the commission of an offence under s. 279.01(1)	Count 2: Total sentence 18 days (presentence custody 12 days at 1.5 to 1). Probation 12 months.
34. Kareem Watson	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	
35. Mohamed Ahmed	2014	Trafficking for the purpose of sexual exploitation.	Charged Feb 3, 2014. Charges withdrawn at the request of Crown Jan 13, 2015.	
36. Jerome Barron Dorsey	2014	Trafficking for the purpose of sexual exploitation.	Charges stayed half way through the trial.	
37. Merrick Anthony Dennis	2014	Trafficking for the purpose of sexual exploitation.	Charges stayed half way through the trial.	
38. Imani Nakpangi	2007	Trafficking for the purpose of sexual exploitation. *Living off the avails of a person under 18 years.	Pled guilty to count 1 and 6: 1) exercise control or direction over the movements of a person for the purpose of exploiting her or facilitating her exploitation (s. 279.01(1)) and 6) did live wholly on the avails of prostitution of a person under 18 years (s. 212(2)) Counts 2, 3, 4, 5, 7 withdrawn by Crown: 2) did live partly on the avails of prostitution of a person under 18 and for the purposes of profit did compel her to engage in prostitution and used violence in relation to her (s. 212(2.1)(b)) 3) did for the purposes of gain, exercise control over	Count 1: 2 years in jail; count 6: 3 years in jail to be served consecutively. Pre-trial custody of 404 granted.

			the movements of a person in such a manner as to show that he was aiding her to engage in prostitution (s. 212(1)(h)) 4) did in person, knowingly utter a threat to a person to cause bodily harm (s. 264.1(1)(a)) 5) assault (s. 266) 7) did for the purposes of gain exercise control over the movements of a person in such a manner as to show that he was aiding her to engage in prostitution (s. 212(1)(h))	
39. Vytautas Vilitis	2008	Trafficking for the purpose of sexual exploitation.	<p>Guilty on counts 1, 2, 5:</p> <p>1) did exercise control, direction over the movements of a person for the purpose of exploiting her and facilitating her exploitation (s. 279.01) 2) did unlawfully receive financial benefit knowing that it resulted from the commission of an offence under s. 279.01(1), contrary to s. 279.02 5) assault (s. 266)</p> <p>Counts 3, 4, 6, 7, 8 withdrawn by Crown:</p> <p>3) for the purposes of gain, exercise control over the movements of a person in such a manner as to show that he was aiding the person to engage in prostitution (s. 212(1)(h)) 4) did live wholly on the avails of prostitution of a person (s. 212(1)(j)); 6) knowingly utter a threat to a person to cause bodily harm to a person (s. 264.1(1)(a)) 7) utter a threat to cause bodily harm (s. 264.1(a)) 8) unlawfully possess a controlled substance (s. 4(1) of the Controlled Drugs and Substance Act)</p>	Count 1: 156 days of pre-trial custody, plus 417 days in jail. Count 2: concurrent to count 1; count 5: concurrent to count 1.
40. Jaimie Byron	2011	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	<p>Convicted by court's verdict on counts 2-9:</p> <p>2) lived wholly or in part on the avails of prostitution of another person who was under the age of 18 and for the purpose of profit aid that person to engage in prostitution with another person or generally use violence, intimidation or coercion in relation to the said person (s. 212(2.1)) 3) exercised control over the movements of a person who was under the age of 18 for the purpose of exploiting or facilitating exploitation of that person (s. 279.01) 4) received financial or other material benefits, namely a sum of money, knowing that it resulted from the commission of an offence (s. 279.011) 6)</p>	Count 2 - 1341 days in jail. Count 3 - 1341 days in jail concurrent. Count 4 - 1341 days in jail concurrent. Count 6 - 1341 days in jail concurrent. Count 7 - 1341 days in jail concurrent. Count 8 - 1341 days in jail. Count 9 - 1341 days in jail concurrent. SOIRA Order - 20 years. DNA Primary. Noncommittal order. Weapons order - 10 years.

			<p>committed assault (s. 266) 7) failed to comply with recognizance entered into (s. 811) 8) failed to comply with recognizance entered into (s. 145 (3)) 9) failed to comply with recognizance (s. 145(3))</p> <p>Counts 1, 5 stayed:</p> <p>1) for the purpose of gain, exercises control, direction, influence over the movements of a person in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution (s. 212(1)(h)) 5) procured, or attempted to procure and or solicit a person, to have illicit sexual intercourse with another person (s. 212(1)(a).</p>	
41. Everol Powell	2014	Labour trafficking.	Outstanding.	
42. Correll Slawter	2012	Trafficking for the purpose of sexual exploitation.	<p>Plead guilty to Count 1:</p> <p>1) exercised control over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01)</p> <p>Counts 2 and 3 withdrawn by Crown:</p> <p>2) received financial or other material benefits knowing that it resulted from the commission of an offence under s. 279.01(1), contrary to s. 279.02 3) did by threats of violence, without reasonable justification or excuse and with intent to obtain money induce a person to engage in prostitution and provide him with the money from said activity (s. 346)</p>	<p>Count 1 - 60 days' pre-sentence custody time served (1:1); 2 years less a day jail. Probation 2 years. S. 109 - life. DNA - 20 years.</p>
43. Shakib Gharibzadeh	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
44. Masood Hejran	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
45. Remington Needham	2014	<p>Trafficking for the purpose of sexual exploitation.</p> <p>*Trafficking of a person under 18 years.</p>	<p>Convicted of Count 4:</p> <p>4) did transfer the possessions of or otherwise deal with property with an intent to conceal or convert that property knowing or believing that all or part of that property was derived directly or indirectly from the commission of the offence of living off the avails of</p>	<p>Pre-sentence custody 106 days (1.5 for 1) = 159 days; custody 381 days; probation 2 years.</p>

			<p>prostitution of a person under 18 (s. 463.31(2)(a))</p> <p>Counts 1, 2, 3 withdrawn by Crown:</p> <p>1) exercise control, direction or influence over the movements of a person for the purpose of exploiting them (s. 279.011(1)(b)) 2) did live wholly or in part on the avails of prostitution of a person under 18 years (s. 212(2)) 3) did receive financial or other material benefit knowing that it results from exercising control, direction or influence over the movements of a person under the age of 18 for the purpose of exploiting them or facilitating their exploitation (s. 279.02).</p>	
46. Daryn Leung	2014	Trafficking for the purpose of sexual exploitation.	<p>Convicted of counts 1, 2, 4-16:</p> <p>1) did steal money of a value not exceeding \$5000 (s. 334) 2) did by deceit, falsehood or other fraudulent means defraud a person of money not exceeding \$5000 (s. 380(1)) 4) sexual assault (s. 271) 5) sexual assault (s. 271) 6) sexual assault (s. 271) 7) procurement (s. 212(1)(d)) 8) did exercise control over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01(1)) 9) did receive financial or other material benefit knowing that it resulted from the commission of an offence (s. 279.01(1), contrary to s. 279.02) 10) did by word of mouth and texting knowingly uttered a threat to cause death (s. 264.1(1)(a)) 11) assault (s. 266) 12) assault (s. 266) 13) assault (s. 266) 14) assault (s. 266) 15) assault causing bodily harm (s. 267(b)) 16) robbed a person of a sum of money (s. 343)</p> <p>Acquitted on count 3:</p> <p>3) sexual assault (s. 271)</p>	Sentence: 8.5 years' imprisonment. With 3 years served, 5.5 years remaining (source: media).
47. Cheng Ping Liu	2012	Trafficking for the purpose of sexual exploitation.	All charges against accused withdrawn by Crown.	
48. Christopher McCall	2012	Trafficking for the purpose of sexual exploitation.	Accused acquitted on all charges.	
49. Mark Anthony Burton	2011	Trafficking for the purpose of sexual exploitation.	Plead guilty to count 18 (possession of stolen property), 21 (breach of court order).	Count 17 (procuring)- 2 years in jail; count 20 - 2 years concurrent; count 21

			<p>Guilty on charges: 17 (attempt to procure), 20 (breach of court order), 23 (Breach of probation).</p> <p>Not guilty of counts: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16:</p> <p>1) procured a person to become a prostitute (s. 212(1)(d)) 2) for the purpose of gain, did exercise control, direction or influence over the movements of a person in such a manner as to show that he was compelling her to engage in prostitution (s. 212(1)(h)) 3) did live partly on the avails of prostitution (s. 212(1)(j)) 4) committed assault on a person (s. 266) 5) did by word of mouth knowingly utter a threat to a person to cause serious bodily harm to her, contrary to (s. 264(1)(a)) 6) did by word of mouth knowingly utter a threat to a person to cause the death of another person (s. 264.1(1)(a)) 7) did commit a sexual assault on a person (s. 271) 8) did unlawfully recruit, or exercise control, direction or influence over the movements of a person, for the purpose of exploiting her, or facilitating her exploitation (s. 279.01) 9) did unlawfully receive a financial or other material benefit, knowing that it results from the commission of an offence under s. 279.01(1), contrary to s. 279.02 10) procured a person to become a prostitute (s. 212(1)(d)) 11) did live partly on the avails of prostitution (s. 212(1)(j)) 12) for the purpose of gain, did exercise control, direction or influence over the movements of another person in such a way as to show that he was aiding, abetting or compelling her to engage in prostitution (s. 212(1)(h)) 13) did procure a person to have illicit sexual intercourse with unknown males (s. 212(1)(a)) 14) did commit a sexual assault on a person (s. 271) 15) did unlawfully recruit, or exercise control, direction or influence over the movements of a person, for the purpose of exploiting her, or facilitating her exploitation (s. 279.01) 16) did unlawfully receive a financial, or other material benefit, knowing that it results from the commission of an offence (s. 279.01(1)), contrary to s. 279.02</p> <p>Count 19 withdrawn by Crown:</p>	<p>- 1 year concurrent; count 22 - 1 year concurrent; count 23 - 1 year concurrent; count 18 - 1 year concurrent. Pre-trial custody 23 months. 3 years' probation. DNA registry. Mark Burton is not permitted to communicate directly or indirectly with his victims, or anyone under 18, except his daughter.</p>
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			19) did have in his possession property, to wit: a license plate, of a value not exceeding \$5000, knowing that all of the property was obtained by the commission in Canada of an offence punishable by indictment (s. 354(1))	
50. Yul Styles-Lyons	2012	Trafficking for the purpose of sexual exploitation.	All charges withdrawn by Crown.	
51. Jerome Hines	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	
52. Anthony Greenham	2014	Trafficking for the purpose of sexual exploitation.	<p>Guilty of mischief charge *charge not on court documents nor read out in court (<i>R.v. Greenham 2015</i>, Audio of trial).</p> <p>Not guilty of all other charges:</p> <p>1) procure a person to have illicit sexual intercourse with another (s. 212(1)(a)) 2) procure a person to become a prostitute (s. 212(1)(d)) 3) for the purpose of gain, exercise control, direction of influence over the movements of a person in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution (s. 212(1)(h))4) assault (s. 266) 5) recruit a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01(1)) 6) received financial or other material benefit, knowing that it resulted from the commission of an offence (s. 279.01(1)) 7) steal money of a value not exceeding \$5000 (s. 334(b))</p>	The sentence is time served (15 days pre-trial custody) plus one day, which is deemed served by your appearance here today. 90 days to pay the victim fine surcharge.
53. Stefan Ascenzi	2012	Trafficking for the purpose of sexual exploitation.	All charges withdrawn by Crown.	
54. Lisa M. Ascenzi	2012	Trafficking for the purpose of sexual exploitation.	All charges withdrawn by Crown.	
55. Vanessa Cachia	2012	Trafficking for the purpose of sexual exploitation.	Charges dismissed.	
56. Myriam Robert	2014	Trafficking for the purpose of sexual exploitation.	All charges withdrawn.	
57. Derek Bissue	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	

58. Goran Kakamad	2015	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Outstanding.	
59. Gregory Salmon	2013	Trafficking for the purpose of sexual exploitation.	<p>Guilty by verdict on counts 3, 7, 8, 12, 13, 14:</p> <p>3) assault using a weapon, namely knife (s. 267(a)) 7) assault (s. 266) 8) assault with a weapon, namely a shoe (s. 267(a)) 12) violation of peace agreement 13) violation of peace agreement 14) violation of peace agreement</p> <p>Not guilty of 1, 2, 11:</p> <p>1) exercised control over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01) 2) received financial or other material benefits knowing that it resulted from the commission of an offence under s. 279.01(1) or 279.011(1), contrary to s. 279.02; 11) violation of peace agreement.</p> <p>Counts 4, 5, 6, 9, 10 withdrawn:</p> <p>4) utter a threat (s. 264.1) 5) assault with a weapon, namely a plastic spatula (s. 267(a)) 6) assault (s. 266); 9) utter a threat to cause bodily harm (s. 264.1) 10) assault (s. 266).</p>	<p>Count 3: jail 143 days (pre-trial custody: 1.5 days to 1); DNA Primary: OPS - 10 years; Probation 18 months; Count 7: jail time served 143 days (1.5 to 1); probation 18 months concurrent; Count 12: jail time served 30 days; probation 18 months; jail 1 day; Count 13+14: jail time served 30 days; jail 1 day; probation 18 months concurrent.</p>
60. Pawel Michon	2011	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	<p>Counts 1, 2 withdrawn by Crown:</p> <p>1) unlawfully recruit, exercise control, direction, influence over the movements of a person under 18 years of age (s. 279.011(1)) 2) unlawfully received financial benefit knowing that it results from the commission of an offence (s. 279.01), contrary to s. 279.02</p> <p>Counts 3-6 - not guilty:</p> <p>3) did procure a person to become a prostitute (s. 212(1)(d)) 4) for the purposes of gain did exercise control over the movements of a person in such a manner as to show that he was aiding that person to engage in prostitution with unknown persons (s. 212(1)(h)) 5) did live partly on the avails of prostitution (s. 212(1)(j)) 6) with intent to obtain \$2400 induced a</p>	

			person by threats to cause harm to her or her 2 year old daughter (s. 346(1.1))	
61. Toofan Charmin	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
62. Zainab Rasool	2012	Labour trafficking.	Day 2 of trial accused entered into a peace bond, in turn the Crown withdrew all charges. *Complainant filed a civil suit against accused.	
63. Omar McFarlane	2012	Trafficking for the purpose of sexual exploitation.	Pled guilty to 2 counts of kidnapping using a firearm, human trafficking and dangerous operation of a motor vehicle.	Sentence: 8 years' imprisonment. Prohibited from having a firearm for 10 years; prohibited firearm, restricted firearm, prohibited weapon, prohibited device, prohibited ammunition for life. Sex Offender Registry order for life. DNA order.
64. Jacques Leonard St. Vil	2007	Trafficking for the purpose of sexual exploitation.	Pled guilty to count 1 and count 9: 1) did exercise control, direction over the movements of a person for the purpose of exploiting her and facilitating her exploitation (s. 279.01); 9) did live wholly on the avails of prostitution of another person (s. 212(1)(j)).	On counts 1 + 9 = 1 day, in addition to the 18 months and 17 days' pre-sentence custody, for which he is credited 37 months. 36 months' probation; DNA order.
65. Ken Katalayi-Kassende	2013	Trafficking for the purpose of sexual exploitation.	Outstanding.	
66. Andrew Lewis	2015	Trafficking for the purpose of sexual exploitation. *exercise control, direction or influence over the movements of a person under 18 (s. 286.3)	Outstanding.	
67. Taylor Eibbitt	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
68. Solomon Houlder	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Outstanding.	

69. Yasin Mohamud	2014	Trafficking for the purpose of sexual exploitation.	All charges withdrawn by Crown.	
70. Abdirahman Hussain	2014	Trafficking for the purpose of sexual exploitation.	All charges withdrawn by Crown.	
71. Lucas Gabrys	2014	Trafficking for the purpose of sexual exploitation.	All charges withdrawn by Crown.	
72. Anthony Putzu	2014	Trafficking for the purpose of sexual exploitation. *Living on the avails of a person under 18.	All charges withdrawn by Crown.	
73. Simeon Harty	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	
74. Jamie Forbes	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Pled guilty to counts 10 and 11: 10) did commit an assault on a person (s. 266) 11) assault (s. 266) All other counts withdrawn by Crown: 1) assault on a police officer (s. 270(1)) 2) receive financial or other material benefit, namely a sum of money, knowing that it resulted from the commission of an offence (s. 279.01) contrary to s. 279.01 1 3) did receive financial or other material benefit, namely a sum of money, knowing that it resulted from the commission of an offence under s. 279.01, contrary to s. 279.02 4) procure a person to become prostitute (s. 212(1)) 5) procure a person to become a prostitute (s. 212(1)(d)) 6) for the purpose of gain, exercised control, direction or influence over the movements of a person, in such a manner as to show he was aiding, abetting or compelling that person to engage in prostitution (s. 212(1)(h)) 7) for the purpose of gain, exercise control, direction or influence over the movements of a person, in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution (s. 212(1)(h)) 8) did live wholly or in part on the avails of prostitution of a person that was under 18 years (s. 212(s)) 9) did live wholly or in part on the avails of prostitution of another person who was under 18 years old (s. 212(2)) 12) assault an officer (s. 270(1)(b)) 13) assault an officer (s. 270) 14) assault an officer (s. 270) 15) recruit a person under	Suspended sentence and 18 months' probation in view of 115 days' pre-trial detention @ 1 to 1.5 days).

			the age of 18 for the purpose of exploiting or facilitating the exploitation of that person, contrary to s. 279.011 16) recruit a person under the age of 18 for the purpose of exploiting or facilitating the exploitation of that person (s. 279.011) 17) exercised control over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01) 18) exercise control over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01) 19) without lawful authority confined a person, contrary to section 279 (2); 20) did without lawful authority confine a person contrary to section 279(2).	
75. Dustin Macbeth	2015	Trafficking for the purpose of sexual exploitation.	All charges stayed by Crown.	
76. Ashor Anwia	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	
77. Jordan Michael Lynch	2012	Trafficking for the purpose of sexual exploitation.	<p>Pled guilty to counts 8 and 9:</p> <p>8) committed assault (s. 266) 9) stole property to wit, a laptop computer, of value not exceeding five thousand dollars, (s. 334(b))</p> <p>All other counts withdrawn by Crown. Human trafficking charges were dropped at the preliminary hearing:</p> <p>1) procure a person to become a prostitute (s. 212(1)(d)) 2) did live wholly or partially on the avails of prostitution (s. 212(1)(j)) 3) did for the purpose of gain, exercise control, direction or influence over the movements of a person in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution (s. 212(1)(h)) 4) sexual assault (s. 271) 5) utter threats, attempt by use of hands, to choke, another person contrary to s. 246(a) 6) did by word of mouth knowingly utter to cause death (s. 254(1)(a)) 7) without lawful authority confined a person (s. 279(2))</p>	Count 8: 3 months' pre-trial custody, resulting in time served and suspended sentence: 1 year probation with terms and conditions. DNA order. Section 110 for 10 years. Concurrent suspended sentence for count 9 with same terms and conditions on the 1 year probation order.
78. Aldain Alando Beckford	2012	Trafficking for the purpose of sexual exploitation.	March 7, 2013 - mistrial declared; Nov 15, 2013 - Crown directs a stay of proceedings based on the amended condition of the complainant, making her unable at present	

		*Trafficking of a person under 18 years.	to testify. It is the position of the Crown that a reasonable prospect of conviction remains. In accordance with the position taken by the Crown, all counts on this indictment are stayed.	
79. David Mackay Stone	2012	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	March 7, 2013 - mistrial declared. March 26, 2013 - Crown withdraws all charges against David Stone.	
80. Thomas Downey	2008	Trafficking for the purpose of sexual exploitation.	Jury found Downey guilty of kidnapping, unlawful confinement, sexual assault, assault, sexual assault with weapon and aggravated sexual assault. Acquitted of count 3: trafficking in persons; count 4: theft of identity documents; count 6: sexual assault with another person; count 7: sexual assault with weapon.	Sentenced to 10 years on count 1; 14 years on count 10 to be served concurrently. He is to be credited with pre-sentencing custody of 5 years and 4 months, leaving approx. 8 year and 8 months to serve. DNA order and lifetime weapons prohibition under s. 109.
81. Spencer Thompson	2008	Trafficking for the purpose of sexual exploitation.	Jury found him guilty of kidnapping, unlawful confinement, four counts of sexual assault, one count of sexual assault with weapon, assault and aggravated sexual assault. Acquitted of count 3: trafficking in persons; count 4 - theft of identity documents; count 7 -sexual assault with weapon.	Sentenced to 10 years for kidnapping, 10 years concurrent for sexual assault; 14 years concurrent for aggravated sexual assault; 10 years concurrent for sexual assault; DNA order: life-time weapons prohibition. He is credited with pre-sentencing custody of 5 years and 5 months, leaving approx. 8 years and 7 months to be served.
82. Anthony Roberts	2008	Trafficking for the purpose of sexual exploitation.	At the conclusion of the Crown's case, Roberts brought a motion for a direct verdict of not guilty on all counts. For written reasons released Oct 30, 2009 the motion was granted and he was found not guilty on all charges.	
83. Henok Mebratu	2015	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Outstanding.	

84. Shaun Butler	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	
85. Jason Bartley	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Dec 15, 2014 - charges stayed at the request of the Crown.	
86. Anthony Talbert	2014	Trafficking for the purpose of sexual exploitation. *Living on the avails of and prostitution of a person under 18 years.	Charges stayed at the request of the Crown.	
87. Brian McKenzie	2014	Trafficking for the purpose of sexual exploitation. *Living on the avails of and prostitution of a person under 18 years.	Charges stayed at the request of the Crown.	
88. Tchello Whyte	2014	Trafficking for the purpose of sexual exploitation.	Convicted of count 4: 4) did for the purpose of gain, exercise control, direction or influence over the movements of a person in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution (s. 212(1)(h)) Counts 1, 2, 3, 5, 6, 7 withdrawn by Crown Aug 13, 2014: 1) sexual assault (s. 271) 2) did with part of his body, for sexual purpose, directly or indirectly touched the body of a person under the age of 16 (s. 151) 3) procured a person to become a prostitute (s. 212(1) 5) made child porn in the form of photograph (s. 163.1(2)) 6) possess child porn (s. 163.1(4)) 7) failed to comply with probation order (s. 733.1(1))	Count 4: 1 day jail (70 days pre-trial custody), 12 months' probation.
89. Shanicka Providence	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Outstanding.	
90. Aloma Shermin Providence	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	
91. Markus Cole	2014	Trafficking for the purpose of sexual exploitation.	Charges withdrawn by Crown.	

92. Alia Alexandria Abdellatif	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Charges stayed.	
93. Natasha Robitaille	2015	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Ms. Robitaille has entered a plea of guilty to two counts of receiving a material benefit from the sexual services of two minors pursuant to s. 286(2) of CCC.	Sentence: eight months' incarceration, concurrent on both counts. Ms. Robitaille spent one month in pre-trial custody. Properly credited for this time, at 1.5:1, six and a half months are left remaining in her sentence.
94. Sage Finestone	2015	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	On June 30, 2016, Mr. Finestone pled guilty to one offence of trafficking of a person under the age of 18 contrary to <u>section 279.011(1) of the <i>Criminal Code</i></u> .	Sentence of 4 years is imposed. Taking into account the 3 ½ weeks spent in pre-trial custody, calculated at 1.5:1 for a total of 36 days Mr. Finestone is sentenced to three years ten months and twenty four days.
95. Nicolas Faria	2015	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18 years.	Outstanding.	
96. Nadine Brown	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
97. Yolanda Mohabeer	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
98. Rory Thomas Mitchell	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
99. Kelvin Earl McPherson	2009	Trafficking for the purpose of sexual exploitation. *Living on the avails of a person under 18.	He was found guilty by a jury of 2 prostitution related offences under s. 212 of CCC. The convictions were for a) procuring a person to become a prostitute (s. 212(1)(d) and b) controlling her movements with a view to aiding or compelling her to engage in prostitution (s. 212(1)(h)). He also pled guilty to one charge of uttering threats against another female complainant.	Sentenced to 3 years for offences under s. 212 and 6 months for uttering threats (s. 264) to run concurrently.

100. Courtney Salmon	2013	Trafficking for the purpose of sexual exploitation. *Living on the avails of a person under 18.	All charges stayed because police fabricated evidence: 1) did unlawfully recruit, transport, receive, hold conceal or harbour or exercise control, direction or influence over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01(1)) 2) procurement (s. 212(1)(d)) 3) did unlawfully receive financial benefit or other material benefit knowing that it resulted from the commission of an offence (s. 279.01(1), contrary to s. 279.02) 4) did live partly on the avails of prostitution of an underage person (s. 212(2)) 5) did live partly on the avails of prostitution of a person under the age of 18 and the purpose of profit did aid, abet or counsel her to engage in or carry on prostitution and threaten to use or attempt to use violence, intimidation or coercion (s. 212(2.1)) 6) for the purpose of gain, did exercise control, direction or influence over the movements of a person in such a manner as to show that he was aiding, abetting that person to engage in prostitution (s. 212(1)(h)) 7) did in person knowingly utter a threat to a person to cause death or bodily harm to them (s. 264.1(1)(a)) 8) did unlawfully commit an assault with a weapon to wit a hanger to a person (s. 267(a)) 9) did possess a counterfeit mark, to wit Ontario Drivers' License in the name of the victim (s. 376(2)) 10) did possess a counterfeit mark to wit, a Canadian citizenship card in the name of the victim (s. 367(2)) 11) did cause or attempt to cause a person to use, deal with or act on a forged document as if it were genuine (s. 368(1)(b)) 12) did cause or attempt to cause a person to use, deal with or act on a forged document as if it were genuine (s. 368(1)(b)) 13) did have in his possession property obtained by or derived from crime, the value of which did not exceed \$5000 (s. 354) 14) did have in his possession property obtained by or derived from crime, the value of which did not exceed \$5000 (s. 354) 15) did have in his possession stolen property the value of which did not exceed \$5000, (s. 354) 16) did commit theft of property of the victim, the value of which did not exceed \$5000	
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			(s. 334(b)) 17) theft not exceeding \$5000 (s. 334(b))	
101. Enoch Johnson	2009	Trafficking for the purpose of sexual exploitation.	The accused is found not guilty on all counts in the indictment: 1) did unlawfully recruit, exercise control, direction or influence over the movements of a person for the purpose of exploiting them (s. 279.01) 2) did unlawfully receive a financial benefit knowing that it resulted from the commission of an offence under s. 279.01(1) contrary to s. 279.02 3) did unlawfully recruit, exercise control, direction or influence over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01) 4) procurement (s. 212(1)(d)) 5) did unlawfully receive financial benefit knowing that it resulted from the commission of an offence (s. 279.01(1), contrary to s. 279.02) 6) did for the purpose of gain, exercise control over the movements of a person in such a manner as to show that he was compelling, aiding or abetting her to engage in prostitution (s. 212(1)(h)) 7) did live partly on the avails of prostitution (s. 212(1)(j)).	
102. Jah-Tyius Joshua Williams	2012	Trafficking for the purpose of sexual exploitation. *Living on the avails of a person under 18.	Pled guilty to count 1 on 1st day of a 10-day trial: 1) exercise control over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01) Counts 2-12 withdrawn by Crown: 2) live wholly or in part on the avails of prostitution of another person who was under the age of 18 (s. 212(2)) 3) receive a financial or other material benefit, namely money, knowing that it resulted from the commission of an offence (s. 279.01) 4) procure a person to have illicit sex with another (s. 212(1)(a)) 5) by threats, without reasonable justification or excuse and with intent to obtain money include a person to engage in sexual act (s. 346(1.1)) 6) without lawful authority confined a person (s. 279.2) 7) with a part of his body, for a sexual purpose, directly touched the body of a person under the age of 16 (s. 151) 8) for sexual purposes, invite, a person under the age of 16 to directly touch with a part of her body the	Sentenced to imprisonment for 1031 days. DNA Primary ordered for 20 years. 529 days pre-trial custody considered at 1.5 = 794 days. Has to register with sex offender registry.

			body of a male (s. 152) 9) with a part of his body, for a sexual purpose, directly touched the body of another person under the age of 16 (s. 151) 10) commit assault (s. 266) 11) by word of mouth, knowingly uttered a threat to cause death to a person (s. 264.1(2)) 12) willfully damaged personal effects of a person of value not exceeding \$5000, and thereby commit mischief (s. 430(4))	
103. Renardo Cole	2014	Trafficking for the purpose of sexual exploitation.	Outstanding.	
104. Nathan Turnbull	2016	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18.	Charges withdrawn.	
105. Deshawn Holmes	2016	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18.	Outstanding.	
106. Camille Beausejour	2016	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18.	Charges withdrawn.	
107. Maziar Masoudi	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
108. Michael Hazel	2014	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18.	Charges withdrawn.	

109. Isaiah Omoro	2013	Trafficking for the purpose of sexual exploitation.	Counts 1-5 withdrawn by Crown: 1. assault 2. Confinement (279(2)) 3. exercise control for the purpose of sexual exploitation (279.01) 4. received financial benefit knowing it resulted from commission of offence under 279.01, to wit: sexual services (279.02) 5. exploit to wit by threatening physical harm if she failed to engage in prostitution contrary to s. 279.04 Convicted on counts 6-7: 6. procure victim to become prostitute contrary to s. 212 (1)(d) 7. procure victim to wit: by being habitually in her company while engaging in prostitution contrary to section 212(i)(j)	Count 6: 6 months' conditional sentence; 12 months' probation; DNA primary for 5 years; Count 7: 6 months' conditional sentence concurrent; 12 months' probation concurrent.
110. Chanelle Espinosa	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
111. Alexander Levi	2015	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18.	Outstanding.	
112. Jerome Tyrele Belle	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
113. Hayley McBride	2015	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18.	Outstanding.	
114. Marcus Cumsille	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
115. Joel Edwards	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
116. R.v. A.A. (3)	2012	Trafficking for the purpose of sexual exploitation.	Convicted of 2 counts of trafficking in persons. Plead guilty to two counts of breach of court orders, one fail to comply with recognizance. Acquitted of 2 counts of procuring under section 212.	Total sentence 27 months. Count 1: 2 years less a day. Count 2: three months consecutive to count 1. *Deportation order under appeal.

117. R.v. A.A. (4)	2011	Trafficking for the purpose of sexual exploitation. *Trafficking of a person under 18.	Outstanding.	
118. Sahilan Surendran	2015	Trafficking for the purpose of sexual exploitation.	Outstanding.	
119. Taylor Laughlin	2015	Trafficking for the purpose of sexual exploitation. *Communicating with a person under 18 for the purpose of committing an offence under section 212(1)(j).	Guilty of count 6: 6. uttering a threat All other counts withdrawn: 1) did live wholly or in part on the avails of prostitution (s. 212(1)(j)) 2). Same as 1 3) did by means of telecommunication, communicate with a person under 18, for the purpose of facilitating the commission of an offence under s. 212(1), contrary to s. 172.1(2) 4. possession of child porn (s. 163.1) 5. distribution of child porn (s. 163.1)	Conditional sentence order 12 months. Probation 12 months. DNA secondary order. Section 490 Order of Return. Victim surcharge \$200.

<p>120. Matthew Cosmo Deiaco</p>	<p>2015</p>	<p>Trafficking for the purpose of sexual exploitation.</p>	<p>Plead guilty to counts 2, 3, 7, 10, 11:</p> <p>2) did transport or conceal or exercise control, direction or influence over the movements of the victim for the purposes of exploiting or facilitating the exploitation of the victim contrary to s. 279.01 3) did receive financial or other material benefit a sum of money, knowing that it resulted from the commission of an offence, contrary to s. 279.02(1) 7) kidnapping with intent to cause the victim to be confined against her will (s. 279(1)(a)) 10) assault causing bodily harm (s. 267(b)) 11) using imitation firearm to commit indictable offence (s. 85(2)(a))</p> <p>Withdrawn count 1, 4, 5, 6, 8, 9, 12, 13, 14:</p> <p>1) did for the purpose of facilitating an offence under s. 286.1(1) recruit, hold, conceal or harbour the victim who offers or provides sexual services for consideration, contrary to s. 286.3(1) 4) assault (s. 267) 5) did by word of mouth utter death threat (s. 264.1(1)(a)) 6) robbery with a weapon (s. 343(d)) 8) confinement (s. 279(2)) 9) confinement (s. 279(2)) 12) did knowingly advertise an offer to provide sexual services for consideration by posting advertisements for sexual services to be provided by victim (s. 286.4) 13) did receive financial or other material benefit, namely money, knowing that it was obtained by the commission of an offence (s. 286.2(1)) 14) sexual assault (s. 271)</p>	<p>Global sentence of 8 years, less credit for presentence custody. Count 2 - 5 years concurrent to Count 7. Count 3 -3 years concurrent to Count 7. Count 7 -7 years in custody less 3 years, 7 months, 14 days for a remaining sentence of 3 years, 4.5 months to be served. Count 10 -3 years concurrent to Count 7. Count 11 - 1 year consecutive to Count 7.</p>
<p>121. Ricardo Spence</p>	<p>2013</p>	<p>Trafficking for the purpose of sexual exploitation.</p>	<p>Guilty of counts 1, 3, 4, 6, 8, 9:</p> <p>1) exercise control over the movements of a person for the purpose of exploiting them s. 279.01(1) 3) received financial or other material benefit knowing that it resulted from the commission of an offence s. 279.01, contrary to s. 279.02 4) withheld the documents of a person for the purpose of committing an offence under s. 279.011, contrary to s. 279.03 6) assault s. 266 8) utter death threat s. 264.0(2) 9) fail to keep the peace in accordance with peace bond s. 145(5.1)</p> <p>Not guilty of counts 5 and 7:</p>	<p>Global sentence 5 years'. Concurrent sentences as follows: Count 1 – 5 years Count 3 – 3 years Count 4 – 6 months Count 6 – 1 year Count 8 – 6 months' Count 9 – 6 months'</p>

			<p>5) confinement s. 279(2) 7) assault with a weapon s. 267(a)</p> <p>Count 2 stayed:</p> <p>2) live wholly or in part on the avails of prostitution of another s. 212(1)(j)</p>	
122. Brandon Fraser	2014	Trafficking for the purpose of sexual exploitation.	<p>Plead guilty to counts 2, 7, 10, 11, 13:</p> <p>2) receive a financial or other material benefit, namely a sum of money, knowing that it resulted from the commission of an offence under section 279.01 (1), or s. 279.011(1), contrary to s. 279.02 8) procured another person to become a prostitute (s. 212(1)(d) 10) willfully damaged clothing and electronics, the value of which did not exceed \$5000, and thereby committed mischief (s. 430)(4)) 11) attempted to dissuade a person by threats from giving evidence in a judicial proceeding (s. 139(2)) 13) compelled another person to recant her police statement by use of threats of violence (s. 423(1)(a)) 14) failed to comply with restraining order.</p> <p>Counts 1, 3, 4, 5, 6, 7, 9, 12 withdrawn by Crown:</p> <p>1) confine a person (s. 279(2) 3) exercise control over the movements of a person for the purpose of exploiting or facilitating the exploitation of that person (s. 279.01(1)) 4) for the purpose of gain, exercise control, direction, influence over the movements of a person in such a manner as to show that he was aiding, abetting or competing that person to engage in prostitution (s. 212(1)(h)) 5) knowingly uttered threats to cause bodily harm (s. 264.1(1)(a)) 6) committed an assault (s. 266) 7) live wholly or in part on the avails of prostitution of another person (s. 212(1)(j)) 9) for the purpose of committing or facilitating an offence under s. 279.01(1) or s. 279.011(1), withhold document, namely driver's license, birth certificate, health card belonging to another person, which established that person's identity or immigration status (s. 279.03) 12) telephoned knowingly utter a threat to cause bodily harm (s. 264.1(1)(a))</p>	<p>Sentenced to 4 years.</p> <p>Count 2 - 2 years+118 days of jail; count 7 - 1 year concurrent; count 10 - 2 years concurrent; count 11 - 2 years concurrent; count 13 - concurrent. DNA order for life. No contact with victim. Pre-trial custody = 408 days -credited at 1.5 days = 612 days served.</p>

123. Jordan Kimmerly	2013	Trafficking for the purpose of sexual exploitation. *Living on the avails of a person under 18.	Pled guilty to count 8: 8) procurement s. 212(1) Charges 1-7; 9-13 withdrawn: 1) exercise control over the movements of a person for the purpose of exploiting them s. 279.01 2) received financial and other material benefit from the commission of an offence under s. 279.01, contrary to s. 279.02 3) communicate with a person under 18 for the purpose of facilitating the commission of an offence under s. 163.1 contrary to s. 172.1(2) 4) possession of child porn s. 163.1(2) 5) make child porn s. 163.1(3) 6) was in a relationship with a young person that was exploitative of that young person with a part of his body, for a sexual purpose, directly or indirectly touched the young person s. 153(1.1) 7) communicate with a person under 18 for the purpose of facilitating the commission of an offence under s. 212(2.1), contrary to s. 172.1(2) a) 9) procurement s. 212(1)(d) 10) did for the purpose of gain exercise control, direction or influence over the movements of a person in such a manner as to show that he was aiding, abetting or compelling that person to engage in prostitution s. 212(1)(h) 11) did apply or administer or cause a person to take a drug with intent to stupefy or overpower that person in order thereby to enable a person to have illicit sexual intercourse with that person s. 212(1)(i) 12) lived on the avails of prostitution of a person under 18 s. 212(2.1) 13) sexual assault s. 271	Count 8: 28 months in jail, less 10 months for pre-trial custody.
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SUMMARY OF DATA

Charges According to Year

- 2016 – 3 (2.4%)
- 2015 – 24 (20%)
- 2014 – 41 (33%)
- 2013 – 10 (8%)
- 2012 – 18 (15%)
- 2011 – 4 (3%)
- 2010 – 15 (12%)
- 2009 - 2 (1.6%)
- 2008 – 4 (3%)
- 2007 – 2 (1.6%)

Total: 123 charges

Outcome of Cases

Outstanding: 39 (32%)

The percentage of remaining outcome is calculated from 84 cases where case results are known.

Stayed: 9 (11%)

Withdrawn: 23 (27%)

Convicted of human trafficking: 7 (8%)

Convicted of other offences but not trafficking: 13 (15%)

Pled guilty to trafficking: 21 (25%)

Pled guilty to other offences but not trafficking: 7 (8%)

Acquitted: 3 (4%)

Miscellaneous: 1 (1%).

Total: 123

Type of Trafficking

Labour trafficking: 17 (14%)

Sex-Trafficking: 106 (87%)

 Trafficking of a person under 18: 26 (21%)

 Underage sex work related charges: 10 (8%)

Total: 123

Appendix C: Interview Participants

- Participant 1 – Police officer (anti-trafficking policing unit)
- Participant 2 – Police officer (anti-trafficking policing unit)
- Participant 3 – Police officer (anti-trafficking policing unit)
- Participant 4 – Police Officer (anti-trafficking policing unit)
- Participant 5 – Police Officer (anti-trafficking policing unit)
- Participant 6 - Crown Attorney
- Participant 7 – Crown Attorney
- Participant 8 – Crown Attorney
- Participant 9 – Judge
- Participant 10 – Defence Attorney
- Participant 11 – Defence Attorney
- Participant 12 – Defence Attorney
- Participant 13 – Defence Attorney
- Participant 14 - Defence Attorney
- Participant 15 – Crown Attorney

Appendix D: Interview Questions

Crown Attorney Questions

Your Experience:

- How long have you worked as a Crown Attorney?
- What, if any training have you received on human trafficking? What does that entail?
- Do Crowns receive any mandates when it comes to prosecuting trafficking cases? If so, what are they?

Understanding Human Trafficking:

- Many people assume human trafficking is about migration, is that a misunderstanding? What do you understand human trafficking to mean?
- How extensive is the problem and why?
- In your opinion, what is the most troubling aspect of the problem of trafficking? Why is it such a pressing problem?
- To what extent is the work that you do related to international developments/ human rights regimes relating to trafficking?
- Why is this issue important to you?

Legal Framework:

- What are the elements the Crown must prove to secure a conviction for trafficking? What challenges may arise in proving these elements?
- What role does exploitation play in human trafficking? What do you understand exploitation to mean?
- Charter issues?
- What might explain the recent law enforcement successes with human trafficking offences? i.e. Legal changes? Development of specialized units? Better intelligence gathering? Targeted enforcement?

Prosecutions:

- Are there any cases that you have worked on that were particularly meaningful, challenging? Can you tell me about it?
- Is there anything that surprises you about this domain of criminality?
- What kinds of evidence is required before proceeding with trafficking charges?
- What, if any, interaction takes place between the Crown and the police in prosecuting trafficking cases?
- What are some of the challenges of prosecuting trafficking?

Victims/Offenders:

- Who are the victims of trafficking?
 - Are there common patterns, demographics, characteristics, situations?
 - What dynamics, situations, characteristics make some victims more vulnerable than others?
 - Do victims struggle with talking about their experiences?

In the context of domestic violence, dealing with victims can be difficult, are there similar challenges that arise in trafficking cases? If so, how do you deal with them?

Who are the offenders in trafficking cases?

Are there common patterns, demographics, characteristics, situations when it comes to offender types?

Likes/Dislikes/Wishlist

What is the most difficult part of your job?

What is the most satisfying part of your job?

If you could wish for anything relating to human trafficking prosecutions, what would it be?

Defence Attorney Questions

What is your understanding of human trafficking? What, in your understanding are the key elements of trafficking? What do you understand to be the ‘means’ by which one is trafficked?

What are the elements the Crown must prove to secure a conviction for trafficking? What kind of defense would you mount for these elements and/or the charge of trafficking? What are the challenges that may arise in these defence strategies?

In Canadian law, exploitation is defined as a central component of trafficking. Section 279.04 (1) of the *Criminal Code*, defines exploitation as causing another person to “provide or offer to provide, labour or a service by engaging in conduct that in all circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service”. What role do you see this concept of exploitation playing in Canada’s human trafficking cases?

‘Pimping’ has also been established in legal cases as an exploitive activity that often leads victims to fear for their safety, how, if at all, do you understand this offence as being different from trafficking?

In your experience who are the complainants in human trafficking cases?

How often, if ever, is your legal strategy informed by the goals of the *Palermo Protocol*?

Human trafficking has been deemed a violation of the victims’ most basic human rights. What role do you see this concept of human rights playing in Canada’s trafficking cases?

In your opinion are human trafficking laws in Canada necessary? Are they doing what they should be doing? If so, why/how? If not, what changes would you suggest?

Questions for Judiciary

Does the judiciary receive training on the offence of human trafficking? If so, what does that entail?

What is your understanding of human trafficking? What, in your understanding are the key elements of trafficking?

What are the elements the Crown must prove to secure a conviction for trafficking?

In Canada's human trafficking law, exploitation is defined as a central component of trafficking. What role do you see this concept of exploitation (both physical and emotional) playing in Canada's human trafficking cases?

How is exploitation in the case of trafficking differ from exploitation in other such situations, including labour exploitation or abusive intimate relationship?

What is the role of consent in human trafficking cases? In your understanding, are there situations where the elements of trafficking are indeed present but the consent asserted by the 'victim' is so meaningful that it should not be disregarded?

'Pimping' has also been established in legal cases as an exploitive activity that often leads victims to fear for their safety, how, if at all, do you understand this offence as being different from trafficking?

Human trafficking has been deemed a violation of the victims' most basic human rights. What role do you see this concept of human rights playing in Canada's trafficking cases?

In your experience, who are the victims/accused in human trafficking cases? Do you recall a case where the victim/accused did not fall in line with your understanding of a trafficking victim/trafficker?

Have you seen a rise in the number of trafficking cases coming through Canadian courts in recent years? If so, what might explain this rise?

In your experience, what types of cases are prosecuted under human trafficking legislation? Are these cases consistent with your understanding of human trafficking? Why or why not?

Has your understanding of human trafficking changed since the enactment of Canada's human trafficking laws in 2005? If so, how?

Do international anti-trafficking laws, such as the *Palermo Protocol* inform your understanding of and decision making in human trafficking cases? If so, how?

In your opinion are human trafficking laws in Canada necessary? Are they doing what they should be doing? If so, why/how? If not, what changes would you suggest?

Police Interview Questions

Your Experience

- How long have you worked in the human trafficking unit?
- What did you do before this?
- How does this work differ from what you did before?
- Did you have to apply to the unit or were you selected for it?
- What kind of training, professional development have you received in this unit?
- How is your job performance evaluated?

Human Trafficking

- Many people assume human trafficking is about migration, is that a misunderstanding? What do you understand human trafficking to mean?
- How extensive is the problem and why?
- In your opinion, what is the most troubling aspect of the problem of trafficking?
- Why is it such a pressing problem?
- To what extent is the work that you do related to international developments/human rights regimes relating to trafficking?
- Why is this issue important to you?

The Unit

- Does the unit have a mandate? What does that look like?
- Why was the unit created? One of many? Do all police departments have one?
- How many people are in the unit? Are there different tasks/positions/duties within the unit?
- Are there male and female officers on the unit? Do you think gender make a difference in your field of work?
- Resources? Staffing? Personnel? Other?
- Are there geographic boundaries that restrict your work? Are their jurisdictional limits?
- Are there other limits?
- Does the work of the different units vary in relation to their geographic location?
- Does the problem of trafficking vary across the country?

The Legal Framework

- To what extent is your work shaped by legal developments? What are the specific laws that are relevant to your work? Have the amendments to the human trafficking law since its initial enactment had any impact on your job? Are their bits of the legal provisions that complicate enforcement?
- What role does exploitation play in human trafficking? What do you understand exploitation to mean?
- Charter issues?

What might explain the recent law enforcement successes with human trafficking offences? i.e. Development of specialized units? Better intelligence gathering? Targeted enforcement? Community cooperation?

Day-to-Day Enforcement

What does your typical day at work look like?
Where does your intelligence on human trafficking come from?
What resources do you use?
Who do you connect with on a daily basis?
 Other police units? Departments?
 What other Canadian and/or international authorities and agencies do you interact with in the course of doing your job?
 Is information shared by provincial and national security agencies?
 Interactions between national, regional and district authorities?
 Other countries? Transnational policing agencies? The United States?
 Community based advocates and agencies?
What kinds of networks are most important to you?
To what extent do you rely on information that comes from communities?
Do you interact with Crown Attorneys in your daily work?
What changes would enhance enforcement? What resources?

Technology and Information Sharing

How important is technology in your job?
To what extent does technology make your job easier, more difficult?
To what extent has technology improved information sharing?
What other forms of information sharing do you use? Informants? Undercover officers? Surveillance technologies?
What kinds of information, information systems, would make your job easier?
What are the gaps, what are the missing links?

Case Discovery

What are the ways in which human trafficking cases get discovered?
Are there any cases that you have worked on that were particularly meaningful, challenging? Can you tell me about it?
Is there anything that surprises you about this domain of criminality?
What kinds of evidence do you have to have before laying human trafficking charges?
Do you consult with Crown Attorneys before laying charges?

Victims/Offenders

Who are the victims of trafficking?
 Are there common patterns, demographics, characteristics, situations?
 What dynamics, situations, characteristics make some victims more vulnerable than others?
 Do victims struggle with talking about their experiences?

In the context of domestic violence, dealing with victims can be difficult, are there similar challenges that arise in trafficking cases? If so, how do you deal with them?

Who are the offenders in trafficking cases?

Are there common patterns, demographics, characteristics, situations when it comes to offender types?

Decision Making

How wide is your capacity to choose between different courses of action in individual cases?

What kinds of decisions do you make on a day-to-day basis in your job?

What other factors influence the choices you make and the decisions you take?

Are there any situations where you have no choice at all over the decision that you must make?

What kinds of considerations inform your decisions?

Are there limitations to this discretion? If so, what are they?

Does politics play a role and/or interfere with your work? Municipal? Provincial? National?

What is the impact of the media? Visibility of your work? Impact of advocacy? Public attention?

Likes/Dislikes/Wishlist

What is the most difficult part of your job?

What is the most satisfying part of your job?

If you could wish for anything relating to human trafficking enforcement and regulation, what would it be?

What changes would make your job easier?

Is there anything that you require in the course of your work that you do not have?