



Trafficking of Aboriginal Women and Girls in Canada

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Abstract

Although Aboriginal women and girls in Canada are at a higher risk of being trafficked for the purposes of sexual exploitation, the types of acts perpetrated against them are often not viewed as “trafficking.” Historical representations of Aboriginal women, poverty, racism and criminalization of Aboriginal girls have worked together to cloak crimes committed against them in invisibility. Aboriginal women and girls do not fit the “picture” of the trafficked victim constructed by mainstream media and work that has been done to deconstruct this image has been largely unsuccessful. This article discusses the particular ways in which Aboriginal women and girls in the Prairie Provinces are recruited into the sex trade by third parties under exploitative circumstances and the ways in which these acts fit within the definition of “trafficking in persons” in Canadian criminal law. It speaks to “trafficking” of Aboriginal women not as a new phenomenon but rather a new name given to a subset of the exploitation that has been persistently perpetrated against Aboriginal women and girls.

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Introduction

In Canada the term “trafficking in persons” commonly evokes images of young Eastern European women deceived into sexual slavery in the back rooms of strip clubs in Toronto, or young Asian women forced into prostitution in seedy massage parlours in Vancouver. Media, law enforcement, and various levels of government have adopted and maintained these images in documentaries,¹ training programs² and educational materials,³ and all have been keen to be involved in addressing the issue of trafficking. However, the trafficking of persons within Canadian borders, or “domestic” trafficking, has not received similar attention, and the unique ways in which Aboriginal⁴ women and girls are being trafficked have not been put in the “trafficking” picture.

This invisibility translates into a lack of services available to address the trafficking of Aboriginal women and girls and a general apathy from the criminal justice system towards the types of trafficking they face. The attention that law enforcement and governmental departments have focused on international trafficking has given rise to a number of victim support programs,⁵ all of which are accessible only to select types of victims. Although these services are to be made available to “internally trafficked”⁶ victims as well, Aboriginal women and girls rarely fall within this “victim” ideal. Historical representations of the Aboriginal woman have often been linked to sexual availability and criminal activity. These images are then further compounded by the current overrepresentation of Aboriginal women and girls in the visible sex trade⁷ as a consequence of colonization, residential school trauma and overarching community breakdown.⁸ Thus, things that happen to her are not viewed as exploitation or trafficking in persons, but rather

¹ See e.g. Canadian Broadcasting Company, “Sex Slaves,” (2007), <http://www.cbc.ca/documentaries/sexslaves.html>. [The news article discusses a film by Ric Esther Bienstock].

² See e.g. Yvon Dandurand, *Human Trafficking: Reference Guide for Canadian Law Enforcement* (Abbotsford: University College of the Fraser Press, 2005), 9.

³ See e.g. Department of Justice Canada, *Don't Become a Victim of the Illegal Trade in People* (Government of Canada), <http://canada.justice.gc.ca/eng/fs-sv/tp/pub/brochure/eng-ang/eng-ang.pdf>.

⁴ “Aboriginal” is used to describe any person who identifies with Aboriginal ancestry. This includes status and non-status persons, those residing in First Nations communities and those in urban areas, as well as Métis. This also includes those who do not culturally identify with Aboriginal communities but may be subject to racialization as an Aboriginal person.

⁵ The Policy Centre for Victims Issues within the Department of Justice is working with provincial governments in order to support provincial initiatives providing appropriate responses to victims of trafficking. Additionally, some provinces, such as British Columbia, have created or are in the process of creating provincial direct assistance mechanisms for trafficked victims; BC has created the Office to Combat Trafficking in Persons under the Ministry of Public Safety and Solicitor General.

⁶ See e.g. British Columbia. Ministry of Public Safety and Solicitor General, “Human Trafficking in BC: What is Human Trafficking?” (n.d.), <http://www.pssg.gov.bc.ca/octip/definition.htm>.

⁷ “Sex work,” “prostitution,” and “sexual exploitation” are used variously throughout this paper. This distinction is intentional. Where the term “sex work” is used, I am referring to prostitution in which adult women engage, without being coerced by third parties, to undertake the work. I use “prostitution” more frequently throughout the paper as a neutral term for sexual acts performed in exchange for money, drugs, food, shelter or other benefit. Where “sexual exploitation” is used, it is intentionally employed to indicate situations where sex work is performed under coercive circumstances or the person performing the acts is under eighteen years of age. For the purposes of this paper, “sex trade” means involvement in any form of prostitution.

⁸ Melissa Farley, Jacqueline Lynne, and Ann J. Cotton, “Prostitution in Vancouver: Violence and the Colonization of First Nations Women,” *Transcultural Psychiatry* 42, no. 2 (2005), 242.



as a natural consequence of the life that she has chosen to occupy. The image of the trafficked “victim,” therefore, does not include her story.⁹

Notwithstanding that anti-migration and border security issues may have propelled governments to move on anti-trafficking legislation, initially these protections were promoted in response to an international acknowledgement that individuals in dire economic circumstances should not be forced into exploitative sexual or other labour for the benefit of another person.¹⁰ Given the history of Aboriginal peoples in Canada and the resulting economic and cultural circumstances in which many Aboriginal women find themselves, some of the exploitation of their labour or sexuality can be framed as trafficking.

In this paper, I explore the ways in which the intersection of race, gender and poverty faced by many Aboriginal women and girls is exploited by “traffickers” in Canada. I discuss how the history of the colonization of Aboriginal peoples by white settlers and the characterization of Aboriginal women as available sexual objects has led to an inability of the criminal justice system to acknowledge Aboriginal women and girls as victims of all forms of sexual exploitation, including particular types of trafficking in persons, and the consequent exclusion of Aboriginal women from the programs, services and campaigns designed to provide redress for these crimes. I also discuss how the use of the trafficking paradigm to address the sexual exploitation of Aboriginal women and girls is only one tool in the struggle, and should not be used as a “catch-all” issue within which to address all violence.

Throughout, it is imperative to understand that the trafficking that takes place against Aboriginal women and girls in Canada is unique and particular; the individuals involved do not tend to fit the stereotypical “victim” or perpetrator categories. Trafficking is one subset of a greater body of exploitation being perpetrated against Aboriginal women and girls, and must be viewed in this context. Given the recent attention devoted to trafficking by law enforcement and governments, there has been an explosion of agencies and advocates seeking to have particular groups

⁹ It is nearly impossible to undertake a discussion about trafficking without being clear about the orientation taken towards prostitution as a whole in the paper. I take the position in this paper that, while violence and degradation do play a significant role in some facets of the sex trade, to categorize all sex work as violence and advocate its continued illegality inappropriately excludes the voices of some sex workers from the debate. However, I also note that discussions around sex work must include *all* voices, including racialized women both currently and formerly involved in the sex trade. Women affected by racism and those working in precarious situations in street-based prostitution have not always been appropriately represented by sex work advocates. Issues of violence and substance abuse that significantly affect street-based prostitutes in many locations in Canada are approached as matters capable of being dealt with through occupational health and safety, with little recognition of the hierarchies within prostitution itself. In the struggle to have at least some sex workers’ voices legitimized, the most vulnerable voices are sometimes compromised. These women and girls are disproportionately vulnerable to being trafficked, and thus, in this paper, I focus quite specifically on street-based prostitution, and issues of addiction and violence faced by a specific group of women and girls involved in the sex trade. Such analysis does not necessarily conflict with the goal of other projects focused on advocating for appropriate employment standards and benefits for sex workers actively choosing their engagement in the trade, and I do not presume to speak on behalf of all sex workers. The purpose of this project is to de-mythologize the term “trafficking” and discuss the possible application of section 279.01 of the *Criminal Code* to specific situations within the greater body of prostitution that exists in Canada.

¹⁰ Janie Chuang, “Beyond a Snapshot: Preventing Human Trafficking in the Global Economy,” *Indiana Journal of Global Legal Studies* 13, no.1 (2006), 137 at 141.



categorized as “trafficked,”¹¹ when in fact there is little evidence that these specific groups have been exploited such that one would categorize their experiences as “trafficking.” Kidnapping, rape and murder have become fused under the guise of “trafficking” wherever sex trade work is involved. And while the goal of highlighting and eliminating violence and exploitation against Aboriginal women is highly necessary, the attempt to squeeze all exploitation, all kidnappings and all sexual abuse into the term “trafficking” has not succeeded in furthering this goal. Rather, this discourse has further alienated the exploitation of Aboriginal women from view by reinforcing the stereotypical “trafficked victim.” And further, given the almost unquestioned presumption that trafficking is the ultimate, and perhaps only, act of sexual exploitation worthy of prosecution, the vast majority of Aboriginal women and girls’ lives are disregarded.

This presumption and the image of the stereotypical “victim” both require interrogation and critique. Reframing some of the exploitative acts that are perpetrated against Aboriginal women as “trafficking” may serve to undermine the stereotypes that have so long been attached to them such as “prostitute” and “criminal,” and thus it is a reorientation that is worthy of pursuit. However, it is also important that such discussions are contextualized within the larger framework of exploitation, discrimination and violence to which Aboriginal women and girls are subject, and that there is recognition that the “trafficking” discussion is simply one tool in a larger struggle. Other forms of violence and exploitation against Aboriginal women may not be “trafficking,” but are no less heinous. We should not be required to mould them into a “trafficking” paradigm for their severity to be acknowledged.

Methodology

This paper stems from qualitative research conducted between September 2007 and June 2008. After canvassing national studies on trafficking in persons and specific community-based research dealing with prostitution and sexual exploitation in the Prairie Provinces,¹² interviews were conducted with 25 key informants in Winnipeg, 13 in Regina and 16 in Edmonton to determine the various types of sexual exploitation to which Aboriginal women and girls are subjected in the study locations. These locations were chosen based on the high numbers of Aboriginal women and girls in the sex trade in the areas and the lack of research specific to “trafficking in persons” in those areas. Interviewees were contacted based upon an internet search, and further referrals were made by key informants – generating a “snowballing sample.” The study was conducted as a phenomenological qualitative research project and does not purport to provide statistical representation of the sex trade or trafficking in the study locations. Given my lack of direct community involvement in the locations and my inability to provide appropriate benefit to women currently working in the sex trade, I chose not to seek their direct participation. However, a number of members of front-line service organizations interviewed were formerly involved in prostitution, and they relayed their individual stories as well as information relayed to them by others.

¹¹ See e.g. Aboriginal Women’s Action Network, “Statement against the Plans for Vancouver Brothel,” *Womennet.ca!* (2007), <http://www.womennet.ca/news.php?show&6300>.

¹² In this paper ‘Prairie provinces’ refers to Manitoba, Saskatchewan and Alberta. However, the findings apply to Alberta only with respect to the northern half of the province. Calgary and the southern region were excluded for not portraying the same demographic or geographical characteristics with respect to Aboriginal peoples.



I. Legislation and the Search for Definition

One of the key difficulties in addressing trafficking of Aboriginal women and girls is that the term “trafficking” is used inconsistently, even by persons currently working in the “anti-trafficking” field. The definition of “trafficking in persons” created at international law was a legal response to the existence of debt-bonded labour and cross-border exploitation of women.¹³ After significant negotiation, the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*¹⁴ (Protocol) was agreed upon, and Canada ratified the document in 2003. The resulting definition was the following:

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 the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (Article 3)

Since the focus has been primarily on cross-border activity, in much of the literature available for educational and promotional purposes this definition is used.¹⁵ Persons working on anti-trafficking initiatives are frequently not aware that this definition only applies in Canada insofar as it guides Canada’s overall response and is not applicable as a prosecution tool against any one individual. Thus, Canada introduced the concept of trafficking into its immigration legislation through section 118 of the *Immigration and Refugee Protection Act*¹⁶ (IRPA), using a definition similar, but slightly broader than the Protocol’s definition. Section 118(1) of IRPA states, “No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.”

Then in 2005, Canada introduced the offence of trafficking in persons into the Canadian *Criminal Code*, using yet another definition:

279.01(1) 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....

279.04 For the purposes of sections 279.01 to 279.03, a person exploits another person if they

(a) cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service¹⁷

¹³ Chuang, “Beyond a Snapshot,” 137 at 141.

¹⁴ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, 14 December 2000, G.A. Res. 25 (II), UNGAOR, 55th Sess. Supp. No. 49, UN Doc. A/45/49 (Vol. I) (2001). Entered into force December 25, 2003.

¹⁵ See e.g. Department of Justice, *supra* note 3. See also People’s Law School, *Human Trafficking in Canada* (Vancouver: People’s Law School, 2007), http://www.publiclegaled.bc.ca/snapfiles/Publications/2007_Human_Trafficking.pdf.

¹⁶ *Immigration and Refugee Protection Act, Statutes of Canada 2001*, c. 27.

¹⁷ *Criminal Code, RSC 1985*, c. C-46, s. 279.01.



Several points within these pieces of legislation require attention as a background to a discussion about cases of trafficking. For example, unlike when employing the definition provided in the Protocol, in the case of an offence under IRPA one is not required to show that the perpetrator was organizing the entry into Canada *for the purposes of exploitation*. Simply bringing someone into the country through means of abduction, fraud or other coercion is enough to constitute the crime of trafficking under IRPA. This offence is truly focused on cross-border activity, as it is written in the context of immigration law. Whereas unlike in the *Protocol* and *IRPA*, the trafficking provision in the *Criminal Code* does not require a perpetrator to use any specific *means*, such as fraud, deception or force, to accomplish the *actus reus* (the act) of recruiting, transporting, transferring, or controlling the victim's movements.

Another significant difference between the wording in the *Criminal Code* and that of the *Protocol* or *IRPA* is that the *actus reus* in the *Criminal Code* can be established by proving that a person “exercises control, direction or influence over the movements of a person.” Thus the perpetrator of the crime is not actually required to *move* a victim. This is an extremely significant distinction, as movement is commonly assumed to be an essential part of “trafficking.” However, a person in Canada can traffic someone simply by exerting control *over* the movements of a person. The *Criminal Code* also more narrowly defines the term “exploitation” than the *Protocol* by requiring that a victim reasonably believe that her safety is in jeopardy if she refuses to comply with the trafficker's requests. Also of note is the fact that none of the definitions require the presence of organized crime as an element in the offence. Though the common public perception of trafficking involves organized crime and very systematic, prearranged trafficking activities, none of the pieces of legislation specifically require it.

The authors of *Turning Outrage into Action to Address Trafficking for the Purposes of Sexual Exploitation in Canada (Outrage)* state that “despite the articulation of a United Nations definition of trafficking, there continues to be disagreement as to the elements that must be present in order for a particular situation to be considered as trafficking.”¹⁸ However, in fact much of the difficulty surrounding the interpretation of the term may stem precisely from the distinctions between the various definitions in the different pieces of legislation. Rather than interpreting the various pieces of legislation in light of the types of activities anti-trafficking measures were designed to prosecute—debt-bonded labour, the cross-border exploitation of women, slavery—attention has instead been focused on including or excluding particular groups of individuals into the wording of the offences. Are all persons who prostitute trafficked? Are Aboriginal women who leave reserves and prostitute in the city trafficked? Are pimps traffickers? Given the disparities between the various definitions, it is unsurprising that the effort to reach consensus about who will or will not be protected as a “trafficked person” through this form of dialogue has been largely unsuccessful.

¹⁸ Standing Committee on the Status of Women [Yasmin Ratansi, Chair], *Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada* (Ottawa: Communication Canada, 2007), 9.



II. The “Victim”

These disparities in definition are compounded by the differences in the underlying images of the trafficked “victim” with which any given agency may be working. Not only has focus been centred on the specific wording of the various offences, but the interpretation of this wording has become informed by particular pictures of the “victim” rather than the purpose of such legislation.¹⁹ Media reports highlighting Russian organized crime and Eastern European “strippers”²⁰ have contributed to this image, including the assumption that trafficking must involve organized criminal activity and the forced movement of victims across borders.²¹ While different agencies and individuals have begun to put forth alternative images of who the trafficked “victim” is, part of the difficulty in addressing trafficking is that the quintessential image still remains strong, guiding and directing the ways in which “trafficking” is interpreted.

According to all of the legal definitions of “trafficking,” the term means much more than the chattel exchange of human beings for prostitution; it can include the exploitation of any kind of labour or service in a way which benefits the exploiter. However, given that there have been no convictions of persons under section 279.01 of the *Criminal Code* and no reported cases, law enforcement and prosecutors have few legal interpretive tools with which to make decisions regarding the use of the criminal offence.²² Furthermore, the ways in which persons are trafficked across Canada can differ significantly, so that individual law enforcement officers and crown counsel may encounter considerably different scenarios from those faced by their counterparts in other cities and provinces. Without these appropriate guides, reference is sought in the publicized images of the trafficked “victim” as a source of information and interpretation.

Characteristics

This quintessential victim of trafficking is seen as someone entirely under the control of their captor, of “organized crime,” and completely devoid of choice or agency. It is thought that a victim in this situation should not be held responsible for engaging in sex work, and the understanding is that she should not be criminalized but should rather be assisted and made well again. The trafficked victim is thus extracted from the realm of strippers and street crime and catapulted onto the pedestal of victimhood. However, with that projection come certain requirements. The “victim” must be foreign, meek, subdued, usually bruised and beaten, constantly looking over her shoulder, and thrilled to be saved from her captor. In *Ng*,²³ the one

¹⁹ Jayashri Srikantiah, “Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law,” *Boston University Law Review* 87 (2007), 157 at 194.

²⁰ See e.g. Barry Artiste, “Human Trafficking Lurks in Canada,” *NowPublic* (2008), <http://www.nowpublic.com/crime/human-trafficking-lurks-canada-1>. See also Susan Clairmont, “Some hope for victims of human trafficking,” *thespec.com* (2007), <http://www.thespec.com/article/200701>.

²¹ See e.g. Victor Malarek, *The Natashas* (New York: Arcade Publishing, 2003). See also Director David Cronenberg’s recent film *Eastern Promises*.

²² The 13 perpetrators convicted under section 279.01 have primarily been involved in “plea bargains” or trials at first-level provincial courts, such that judges have not had an opportunity to write decisions interpreting the section. For a breakdown of charges and convictions see U.S. Department of State, *Trafficking in Persons Report*, <http://www.state.gov/documents/organization/105656.pdf>.

²³ *R. v. Ng*, [2007] B.C.J. No. 1388 (QL).



case in which the trafficking offence under IRPA has been charged and decided, an expert witness was called to testify as to the “indicia” that someone has been trafficked:

109 Mr. Dandurand testified to indicia which help identify persons who are victims of trafficking. Some of these indicia are set out in a screening tool which was developed to assist authorities identify potential victims of trafficking. The indicia includes restriction on movement, for example, did the potential victim have a key to their accommodation or place of employment? Was there a denial of medical care, denial of food or clothing or other basic necessities? Was the victim paid? Who controlled the money? Were they allowed time off?

110 Mr. Dandurand said victims of trafficking are often young and single with no ties to community or family. He said controlling money was an important means of maintaining control over the trafficked person. It would be unusual for a victim to have independent access to their own bank account. Money would provide the victim a means of escape. Mr. Dandurand said it would be unusual for the trafficker to allow the victim freedom of movement within a community of similar language and background. He agreed it would be unusual for the victim to have regular contact with family.

The consequence of these characterizations is that if a person displays traits contrary to those outlined, she is dropped back into the realm of the hooker and the criminal.²⁴ This framework places trafficked “victims” in opposition to persons who willingly engage in sex work, and leaves no grey area in-between. Anyone whose situation deviates from this picture through displays of self-sufficiency, agency and ingenuity cannot be a “true” victim. In order to be identified as “trafficked,” individuals must portray such clear emblems of “victimhood” that almost no one falls within this category.²⁵ If she speaks the language, can move around or was “paid” with drugs, she is not a victim, regardless of the specific elements of her situation. And while some women who have been trafficked in these particular ways may indeed display the quintessential kinds of characteristics, the ways in which people migrate to and within Canada are complex and varied, and individual women will react in accordance with their particular situations.

History and Representation

This understanding has particularly harsh ramifications for Aboriginal women and girls in Canada. Not only do the discourses around trafficking highlight cross-border issues, but the images associated with it completely exclude Aboriginal women from view in the domestic sphere as well. Historical representations of Aboriginal women as sexually available and morally inferior to white settlers preclude the possibility that they would ever fit into such an image. With colonization, white settlers uprooted traditional spiritual and intellectual values accorded to Aboriginal women and replaced them with notions of inferiority, hierarchy and the paradigm of women as property.²⁶ Aboriginal persons were bought and sold as chattel in Canada until the abolition of slavery throughout the British Empire in 1834, and the legacy of slavery has endured with respect to Aboriginal women in a particular way. The assertion of ownership over Aboriginal women has manifested itself as a right for others (white male settlers) to determine

²⁴ The women in the *Ng* case did not display such characteristics and thus were not considered to be “victims.” See *Ng*, *supra* note 23 at para. 136.

²⁵ No temporary residency permits for victims of trafficking have been issued in any of the western provinces, including British Columbia, Alberta, Saskatchewan or Manitoba as of February 9, 2009.

²⁶ Anita Olsen Harper, “Is Canada Peaceful and Safe for Aboriginal Women?” *Canadian Woman Studies* 25, nos. 1-2 (2006), 33–34.



the appropriate “use” and value of Aboriginal women. Aboriginal women have been viewed as dirty, criminal, and sexually available²⁷ to those who choose to use them as sexual objects:

The portrayal of the squaw is one of the most degraded, most despised and most dehumanized anywhere in the world. The “squaw” is the female counterpart to the Indian male “savage” and as such she has no human face, she is lustful, immoral, unfeeling and dirty. Such a grotesque dehumanization has rendered all Native women and girls vulnerable to gross physical, psychological and sexual violence... I believe that there is a direct relationship between these horrible racist/sexist stereotypes and violence against women and girls.²⁸

This is particularly so where the Aboriginal woman was, or was deemed to be, a prostitute. Sherene Razack notes that media reports as far back as the 19th century “indicate that there was a near universal conflation of Aboriginal woman and prostitute.”²⁹ It thus becomes naturalized that Aboriginal women become prostitutes, and the violence and coercion they face in this occupation become regarded as a natural consequence of being a “squaw.” Such characterizations are rife with negative images about seduction and the tempting of “good” men into dark sexuality. Razack speaks about the consequences of such imagery on the relationship between Aboriginal women and law enforcement:

The negative images of these women, portrayed as licentious and bloodthirsty, helped to justify the increasing legal regulation of Aboriginal women’s movement and their confinement to reserves. As Carter demonstrates, “the squalid and immoral ‘squaw’” helped to deflect criticism away from the brutal behaviour of government officials and the NWMP, and it enabled government officials to claim that the dissolute character of Aboriginal women and the laziness of the men explained why reserve land was not used to capacity and were pockets of poverty.³⁰

Razack also discusses how the spaces in which prostitution and other “degenerate” activities exist become spaces defined by that activity, and thus violent and coercive activities are normalized when perpetrated within those spaces. She speaks to an ordering within the spaces in society of “how much we can care,” stating that: “We care less about the bodies in degenerate spaces and often define out of existence the violence enacted on those bodies... We do not ask what the spaces of prostitution enable or what happens in them. There are simply designated bodies and spaces where so called contractual violence can happen with impunity.”³¹

Criminalization

The bodies in those spaces of which Razack speaks are primarily racialized, and in the Prairie provinces they are primarily Aboriginal. Thus, the types of violence that happen within the bounds of the areas Aboriginal women and girls are deemed to inhabit are not addressed in the same ways as those that occur to those deemed to belong to more *respectable* neighbourhoods.

²⁷ Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women* (Amnesty International, 2004), 29, <http://www.nwac-hq.org/en/documents/amr2000304.pdf>.

²⁸ Emma Laroque, as cited in Native Women’s Association of Canada, *Violence against Aboriginal Women and Girls* (4), an issue paper prepared for the National Aboriginal Women’s Summit, Corner Brook, June 20-22, 2007.

²⁹ Sherene H. Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George,” *Canadian Journal of Law and Society* 15, no. 2 (2000), 91–99.

³⁰ Razack, “The Murder of Pamela George,” 99.

³¹ Sherene H. Razack, “Race, Space and Prostitution: The Making of the Bourgeois Subject,” *Canadian Journal of Woman and the Law* 10 (1998), 338–358.



Activities which take place in these degenerate spaces towards racialized bodies do not qualify as “trafficking,” but are rather seen as a natural consequence of belonging to those spaces. The spaces are criminalized as are the bodies within them. The women in the Winnipeg and Edmonton street trade who occupy these spaces are viewed as “criminal” rather than “victim” *because* they inhabit this space.

The history of colonization and the breakdown of Aboriginal communities as a result of Indian Residential Schools have resulted in the criminalization of Aboriginal women such that they more frequently enter into the sex trade or participate in other “criminal” behaviour, and thus their presence in this space has become normalized. As noted in *Aboriginal Women: Criminalization, Over-Representation, and the Justice System*, “The over-representation of Aboriginal women in the criminal justice system is linked to their victimization, which is rooted in colonization and is perpetuated by current state practices. Aboriginal women may be charged when they are reacting to abuse or when they are reacting to the poor social conditions in which the double discrimination against them has left them.”³²

For example, the criminalization of young Aboriginal girls often begins in the care facilities, which in turn facilitates their entry into the sex trade. Many girls’ first point of entry into the criminal justice system is a charge for an offence committed within a care facility. Girls may be charged with assault on a staff member or other “violent” offences and are then remanded to detention centres, where they come into contact with sexually exploited youth and recruiters. The histories of children involved in care may cause them to act out in aggressive or destructive manners. Thus, given the high rate of apprehension of Aboriginal children, their over representation in the child welfare system leads to their over representation in the criminal justice system, which in turn facilitates their entry into prostitution. Left with few employment options and a history of abuse and neglect, Aboriginal women and girls more frequently turn to drugs and prostitution as a means of survival, both physical and emotional. Kim Pate, Executive Director of the Elizabeth Fry Societies of Canada, writes extensively about the topic in *Advocacy and Activism*, noting that “by creating criminally low welfare ... many poor people are immediately relegated to the criminalized underclass. [This results] in the criminalization of poor women for welfare fraud, prostitution, drug trafficking or whatever other survival strategies are employed and the like.”³³

Viewing Aboriginal women and girls as perpetrators, rather than victims of crime, becomes a natural consequence of this criminalization, and the activities perpetrated against them are more likely to be viewed as criminal behaviour both on the part of the trafficker and the woman. Re-viewing some types of situations in which Aboriginal women and girls are sexually exploited as trafficking may work to undermine some of these associations and stereotypes.

³² Elizabeth Fry Associations of Canada, *Aboriginal Women: Criminalization, Over-Representation, and the Justice System* (Elizabeth Fry Associations of Canada), 5, <http://www.elizabethfry.ca/eweek06/pdf/aborig.pdf>.

³³ Kim Pate, “Advocacy, Activism and Social Change for Women in Prison,” *Canadian Woman Studies* 25, nos. 3-4 (2006), 81 at 82.



III. Trafficking in the Prairie Provinces

While significant research has been conducted on sexual exploitation and prostitution in the Prairie provinces,³⁴ little work has been done analysing the specific circumstances under which those activities could be called “trafficking,” and why. Exploitative sex work and sexual exploitation of youth is “trafficking” where the situation takes on the characteristics of bonded labour or slavery. Anti-trafficking measures are about prevention and protection against being subjected to those conditions. Where the conditions of someone’s history have created a situation that another individual is able to exploit her by requiring that she perform labour (including sexual services) such that she cannot refuse, or such that she has no control over the conditions of her work, we may call this trafficking. This goes to the heart of anti-trafficking work, and can be used as an interpretive mechanism through which to discuss specific legislation. Some forms of adult prostitution and some forms of youth sexual exploitation will have these hallmarks, as will some forms of labour exploitation. With regard to prosecution, the elements required to support charges under the *Criminal Code* and *IRPA* may also be interpreted in light of these considerations.

Thus, in order to determine what forms of “trafficking” exist, research was conducted generally into the sexual exploitation of Aboriginal youth and third parties who benefit from or engage adult Aboriginal women in exploitative sex work. It became clear that the “trafficking” of Aboriginal women and girls happens within a larger context of sexual exploitation and sex work, and instances of “trafficking” do not happen in isolation. Thus, the particular stories that possessed the hallmarks of “trafficking,” as described above, could be identified from within this wider pool of information. There was little indication in the initial research that severe exploitation of other forms of labour of Canadian residents is an issue such that it would have the hallmarks of “trafficking,” and thus the research focused on sexual labour.

Prior Studies – Literature Review

Antecedents to Prostitution

Although there are no nationally collected statistics on Aboriginal women in the sex trade, individual studies in Canada’s urban centres point to a disproportionately high number of Aboriginal women involved in prostitution, particularly in the Prairie provinces.³⁵ For example, studies have indicated that between 70 percent of sexually exploited youth and 50 percent of adult sex workers in Winnipeg are of Aboriginal descent.³⁶ These estimates are staggering, given that Aboriginal peoples only make up approximately 10 percent of the Winnipeg population.³⁷

³⁴ See e.g. Maya Seshia, *The Unheard Speak Out: Street Sexual Exploitation in Winnipeg* (Canadian Centre for Policy Alternatives, 2005), http://www.policyalternatives.ca/documents/Manitoba_Pubs/2005/The_Unheard_Speak_Out.pdf. See also Kendra Nixon and Leslie M. Tutty, “Selling Sex? It’s Really Like Selling Your Soul,” Kelly Gorkoff and Jane Runner (eds.), *Being Heard, The Experiences of Young Women in Prostitution* (Winnipeg: Fernwood Publishing, 2003), 29–32.

³⁵ Anupriya Sethi, “Domestic Sex Trafficking of Aboriginal Girls in Canada: Issues and Implications,” *First Peoples Child and Family Review* 3, no.3 (2007), 57.

³⁶ Seshia, *The Unheard Speak Out*, 16.

³⁷ Statistics Canada, “Aboriginal Peoples Highlight Tables, 2006 Census” (2008), <http://www12.statcan.ca/english/census06/data/highlights/Aboriginal/index.cfm?Lang=E>.



Poverty, physical and sexual abuse, homelessness, over-representation in the judicial system, racism and low self-esteem have all been highlighted as factors that contribute to the overrepresentation of Aboriginal girls in the sex trade.³⁸

The child welfare system has also been heavily implicated in creating the conditions for girls' entry into the sex trade, and surveys in Winnipeg indicate that approximately two thirds of the women involved in street prostitution had been taken into care as children.³⁹ The child welfare system has had particularly detrimental effects on Aboriginal children and youth as there are a disproportionate number of Aboriginal youth in care, and they are removed from their homes at a higher rate than non-Aboriginal children.⁴⁰ After interviewing sexually exploited Aboriginal youth across Canada for their *Sacred Lives* study, Cherry Kingsley and Melanie Mark indicated that “[f]or those ...who are placed into foster care, the cycle of cultural and familial fragmentation is perpetuated.”⁴¹ They also noted that girls who run away from their foster homes and care facilities are particularly vulnerable to being preyed upon by older males seeking to exploit them.⁴²

Coercion

Although studies identified some cases where women and girls were forced to enter or continue engaging in the sex trade through physical force,⁴³ the means by which individuals lure girls into prostitution were generally described as being more complex. Aboriginal women and girls become involved in the sex trade in a number of ways, particularly in the Prairie provinces, where most of them enter at a very young age. Although there were certainly women and girls who entered into the sex trade independently, the majority of youth interviewed in *Sacred Lives* indicated that they got involved in the sex trade in order to “please” another person.⁴⁴ Persons seeking to recruit these young women into prostitution for material benefit prey on their vulnerabilities, providing them with validation and a sense of acceptance, and thus they are rarely required to use force in order to control those they recruit. The means by which recruiters lure girls into prostitution are more insidious and more complex than brute force. Older “boyfriends,” peers, gangs and family members have all been identified as facilitators of girls' entry into the sex trade. Maya Seshia writes about “pimping” in her study of prostitution in Winnipeg, stating: “[P]imping almost certainly exists in this city but the relationship between the man or woman doing the pimping and the youth or adults who are exploited may not reflect the common definition of what a pimp is.”

³⁸ See especially Sethi, “Domestic Sex Trafficking of Aboriginal Girls in Canada,” 57.

³⁹ Seshia, *The Unheard Speak Out*, 17.

⁴⁰ Melanie Mark and Cherry Kingsley, *Sacred Lives: Canadian Aboriginal Children and Youth Speak Out About Sexual Exploitation* (Canada: Save the Children Canada, 2000), 26, <http://dsp-psd.communication.gc.ca/Collection/RH34-12-2000E.pdf>.

⁴¹ Mark and Kingsley, *Sacred Lives*, 26.

⁴² Mark and Kingsley, *Sacred Lives*, 20.

⁴³ See e.g. Kendra Nixon and Leslie Tutty, “That was my Prayer Every Night – Just to get home safe,” Kelly Gorkoff and Jane Runner (eds.), *Being Heard, The Experiences of Young Women in Prostitution* (Winnipeg: Fernwood Publishing, 2003), 69 at 74.

⁴⁴ Mark and Kingsley, *Sacred Lives*, 35.



For example, Tutty and Nixon write about an interview with a former sex worker who describes a common way in which girls are recruited: “For a ...woman who started at age eleven, the process did not have an obvious beginning: ‘I was just a kid. I didn’t know nothing. So, here was this nice guy who was twenty-five and like this older brother. At first nothin’ was going on. Then he started getting off on me bit by bit. Then he started bringin’ his friends over, to try me out. The next thing, I’m workin’ at his parties. I was too dumb to even know that he was makin’ money off me.’”⁴⁵

Frequently, women and girls are used to recruit others into the sex trade and are given benefits by the persons controlling them if they are successful in the recruitment.⁴⁶ In one case a woman recalls her entry into the sex trade by being recruited by a woman: “I was sixteen, I had just left home. I had nowhere to go and [another woman] said she could hook me up with a guy who’d get me onto the street and look after me. I didn’t have any other choice.”⁴⁷

In other cases, a person with whom the girl is in a relationship requests that she work as a prostitute in order to make money for rent or to purchase drugs to feed an addiction. One former sex worker interviewed by Tutty and Nixon related: “I really loved him. I thought, “I’ll work the street for this guy.” We’re doing drugs and life was perfect. I wanted to spend the rest of my life with him hooking and doing drugs. To me, that was utopia. But it was short-lived. I only hooked for two months and got arrested.”⁴⁸

Familial-based sex trafficking has also been identified in studies as a result of poverty and intergenerational abuse.⁴⁹ In some cases family members were reported to have facilitated girls’ entry into prostitution through receiving benefits from other people in exchange for allowing them to have sex with the girls. Older siblings have also been implicated in this form of facilitation.⁵⁰

Young Aboriginal girls are also increasingly gravitating towards gangs in order to seek acceptance, a sense of power and control over their lives.⁵¹ It is clear that gang influence is becoming an increasing factor in the sexual exploitation of youth in the Prairie provinces.⁵² Participants in Seshia’s study confirmed that “girls are forced to earn money through sexual exploitation and they are expected to recruit their peers to do the same.... A gang might have... several girls ...who are working and then the girls’ job is to get their friends involved.”⁵³ One study in Winnipeg indicated that several houses operated by gangs involved the sexual exploitation of girls.⁵⁴ Women interviewed in Tutty and Nixon’s study also spoke of incidents of rape and assault against girls whose gangs were intending to sexually exploit:

⁴⁵ Nixon and Tutty, “Selling Sex?” 32.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid., 38.

⁴⁹ Sethi, “Domestic Sex Trafficking of Aboriginal Girls in Canada,” 59.

⁵⁰ Nixon and Tutty, “Selling Sex?” 31.

⁵¹ Sethi, “Domestic Sex Trafficking of Aboriginal Girls in Canada,” 64.

⁵² Seshia, *The Unheard Speak Out*, 19.

⁵³ Ibid.

⁵⁴ See Volunteer Committee for the Monitoring, Supervision and Regulation of the Sex Trade/Prostitution in Winnipeg, *Final Report*, 20: “The committee goes on to report that ‘[t]hese 21 homes are unlicensed and they are



Several women spoke of recent changes in the way in which street prostitution is organized. They mentioned that gangs have become involved and there are increasing numbers of very young girls on the street buying addictive drugs: “The gangs are out now pimping the girls. They kidnapped one girl, took her to [a small town] and raped her. They had her for a week and finally she got away. I used to like gangs because they were fighting for their rights. But then later you realize what they’re into.”⁵⁵

It is also clear that there is a significant link between the influence of drugs and prostitution.⁵⁶ In some cases, sexually exploited youth had been forced to engage in drug use prior to their entry into the sex trade.⁵⁷ Other studies indicated that the facilitation of a drug habit happens more gradually and more insidiously: “Drug addiction ‘sucks Aboriginal girls in and keeps them there’. Traffickers lure young girls into taking drugs and then sexually exploit them.... Over time, the substance use develops into a chemical dependency, which forces girls to engage in prostitution in order to support their addiction.”⁵⁸

In this way drug providers—some of whom also use the drugs themselves—not only recruit women and girls into prostitution, but also maintain their continued presence in the trade by continuing to feed their addictions.

Mobility

One study indicates that there is evidence Aboriginal girls are moved between locations in the Prairies for the purposes of prostitution—for example, from Saskatoon to Regina to Winnipeg or between Edmonton and Calgary.⁵⁹ However, “transporting” girls for the specific purpose of prostitution has not been highlighted in the literature as a key issue with respect to the sexual exploitation of Aboriginal girls. Rather, moving from place to place has been identified as a situation creating girls’ vulnerability to being exploited.⁶⁰ Large urban centres such as Winnipeg, Regina and Edmonton attract a significant number of Aboriginal women and girls from surrounding communities since they are the major centres for health, education and family services. Once in the urban centres, they are then subject to the same forms of recruitment as those living in the urban centres, but are in even more precarious circumstances given their isolation from their home communities, lack of supports and lack of employment opportunities.

considered to be ‘the underground’ of the sexual exploitation of children and youth.” Prepared for the Standing Committee on Protection and Community Services, 2001, Cited in Kohm and Selwood, *Sex Work and City Planning: Winnipeg’s Red Light District Committee and the Regulation of Prostitution*, http://ius.uwinnipeg.ca/pdf/Kohm_Selwood_ResearchWorkingPaper42.pdf

⁵⁵ Nixon and Tutty, “Selling Sex?” 38.

⁵⁶ See e.g. Sethi, “Domestic Sex Trafficking of Aboriginal Girls in Canada,” 60.

⁵⁷ See e.g. Seshia, *The Unheard Speak Out*, 21.

⁵⁸ Sethi, “Domestic Sex Trafficking of Aboriginal Girls in Canada,” 63.

⁵⁹ *Ibid.*

⁶⁰ Jacqueline Oxman-Martinez, Marie Lacroix, and Jill Hanley, *Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector* (Research and Statistics Division of Justice Canada, 2005) at 11, http://www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_3/rr06_3.pdf.



The Current Study

Participants in my study indicated that the ways in which Aboriginal prostitution is facilitated is extremely varied across Canada and differs greatly even between prairie cities. They also stressed that prostitution in the region looks extremely different from the way it did even ten years ago. Most street-prostitution is fuelled by severe addiction and there are no longer “high tracks” on the street where women make significant earnings. Participants agreed with the published findings that Aboriginal women and girls are disproportionately represented in the sex trade, and that the sexualization of young Aboriginal girls through abuse, lack of economic and educational opportunities, and apprehension into the child welfare system all combine to make Aboriginal girls extremely vulnerable to sexual exploitation.

Antecedents to Prostitution

Participants in Winnipeg and Edmonton supported previous studies’ findings indicating that having been in the child welfare system was perhaps the most common feature among girls who entered into prostitution. The participants stressed that many care facilities are unable to effectively provide emotional support for Aboriginal children who have been emotionally or sexually abused or those who face other difficulties such as Fetal Alcohol Syndrome, and they frequently run away from these residences, getting labeled as “chronic.” Law enforcement and child service agencies referred to this phenomenon as the “revolving door” of care, and all participants indicated their concern that it increases girls’ vulnerability to exploiters.

Coercion

Participants raised concerns that police missing persons units and social welfare agencies pay less attention to the whereabouts of runaway girls once they reach the age of fourteen. Many noted that “chronic” runaways over this age are not deemed “missing” or “high risk,” particularly where they stay with “friends” or are thought to be just “hanging out.” The participants who worked with sexually exploited youth all indicated that these youth are actually at the greatest risk for being sexually exploited. It is in fact the “friends” who are luring them into prostitution when they are “hanging out” at the mall or at parties. Participants in Winnipeg and Edmonton indicated that girls put in care facilities—particularly emergency care facilities—also meet sexually exploited girls for the first time in the residences themselves. Girls in the facilities who are being sexually exploited by persons they consider “boyfriends” may receive benefit by involving other girls in the residences in the sex trade.

In addition to highlighting the role of boyfriend/pimps, participants supported previous research that indicated that many girls entered the sex trade through familial or peer relationships. In Regina, several participants reported young Aboriginal girls engaging in the sex trade while staying with extended family: some of them were being directed to prostitute by those family members. Many participants in the study locations spoke of sisters coercing or forcing younger siblings into the sex trade to make money. This featured more prominently in Winnipeg and Regina than in Edmonton, where primarily adults work in the visible street-based trade. In Winnipeg, the continuing decrease in the age of girls in the sex trade has meant that many older women are unable to survive through their sex trade earnings, and thus engage younger family members into the trade. In Edmonton, participants indicated that schools were a major ground



for recruitment, and that girls within the schools were doing the recruiting for their boyfriends or older brothers. Participants indicated that girls reported being invited to parties, or to go on “dates” with girls’ attractive older brothers, who then proceeded to facilitate their entry into prostitution. In Regina, participants indicated that peers were one of the major recruiting groups. Young persons living in particular neighbourhoods would turn to loosely associated “gangs” for acceptance, and engage in the sex trade as a way to “contribute” and gain that acceptance.

Nearly all participants noted the use of drugs in the recruitment of young Aboriginal girls into prostitution. Participants indicated that while they had heard rumours of exploiters forcing young girls to take drugs in order to get them addicted, none had personally worked with or knew girls to whom this had happened. Primarily, the stories relayed were of recruiters providing young, vulnerable girls with validation through compliments, presents and, eventually, drugs. In Winnipeg, participants indicated that, once girls were addicted, the “boyfriends” would then refuse to supply them with further drugs unless they prostituted themselves on the street or with persons the “boyfriend” brought into the home. In Edmonton, participants relayed stories where, after a certain amount of drugs had been provided to a young girl, they were told that they now owed the dealer money and that they were required to have sex with persons the dealer introduced them to in order to clear the debt. Additionally, drug houses and neighbourhoods where prostitution exists tend to overlap, making it easier for girls and women in the sex trade to become addicted.

The link between drugs and gangs was also confirmed by several participants. The facilitation of girls’ entry into prostitution through gangs was reported to be primarily through drugs rather than through force. Since gangs were reported to control much of the drug trade in Winnipeg and Edmonton, gang members reportedly facilitated girls’ addictions and then required them to work in the sex trade to earn money to feed the habit. Participants indicated that, in some cases, girls were told simply to go out and make money in order to pay the gang for drugs. In other cases, they were required to have sex with gang members in order to receive more drugs.

Mobility

Very few participants spoke to girls being moved in prostitution “circuits” anymore. They noted that, since so much of street-based prostitution is now addiction-related, women are not in a position to move away from familiar territory and the gangs with whom Aboriginal girls are involved are less likely to be connected to criminal organizations far from their home territories. More often, participants relayed stories in which people preyed on the mobility and transience of Aboriginal women and girls in order to facilitate their entry into the sex trade. Many noted that women and girls required to travel to urban centres for health or employment services were vulnerable to the advances of recruiters upon their arrival. One participant reported an incident of a young girl coming to Winnipeg with her family to obtain health services not available in her home community. When she arrived, she was recruited by an exploiter at a mall and was groomed to work as a prostitute. Participants also noted that young girls from First Nations communities come to larger centres for festivals such as pow wows, dances and other ceremonies, and are specifically recruited by individuals or gangs for the purpose of being prostituted.



Although rare, some participants did report stories of Aboriginal women and girls moved by exploiters for the express purpose of prostitution. One former sex worker in Winnipeg who participated in this study relayed her story, which involved a fairly classic example of “trafficking.” She stated that as a youth she was taken in by an older male posing as a friend, who offered her a job as a model. This man subsequently sold her to another man, who then put her on the street in Winnipeg to work, under threat of physical force. He then moved her across the country to Toronto and Vancouver in a continuing circuit of exploitation. However, most participants indicated that the trafficking “rings” moving Aboriginal girls between cities in the Prairie provinces do not exist in the same forms or to the same extent that they formerly did. This specific incident had taken place nearly fifteen years prior to the interview. Several participants cautioned that some research that has been conducted on “trafficking” has relied on such stories as current data, even though such occurrences are rare in the present sex trade. Such research, they warned, may not be reflective of the modern-day realities of the trade in the region.

One participant relayed a more recent case which is perhaps more reflective of modern day trafficking. Two youths who were living in a care facility were invited to attend a party in another city with two young male adults. During the trip the men changed license plates on the vehicle and began restricting the girls’ phone usage. They picked up another man, who stopped and purchased a large quantity of lingerie, and the girls were subsequently taken to a hotel room in a third city. The care facility was able to reach police in that city in time to prevent any sexual acts from occurring, but it was clear that the intention of the trip was for the purpose of sexually exploiting the girls.

In Edmonton, some participants indicated that girls have been taken to Calgary with members of gangs and have been prostituted in hotel rooms there against their will. Participants also indicated that they were aware of cases where girls were “traded” between gangs in payment of drugs or other debts, and were prostituted by the new gang who “owned” them. However, most of the ways in which gang members “recruit” or “transport” young girls in the Prairie Provinces are more complicated and intertwined with familial ties and “boyfriend” relationships. Participants indicated that, in some First Nations communities, many girls are related to members of gangs in the urban centres. While certainly not true for all or even many communities, participants did indicate that, in a few First Nations reserves in Manitoba and Saskatchewan, gang activity is widespread and intertwined with drug use and sexual exploitation. Where gang members move back and forth between urban centres and home communities, or communities in which they have relations, many girls get swept up in the movement, by being encouraged to come to the city for parties and becoming sexually exploited when they arrive.

Most front-line participants indicated they knew of some instances where persons who facilitated or benefited from the prostitution of women and girls did use physical force in order to compel them to continue working. But these cases were primarily categorized as abusive domestic relationships rather than the traditional “pimp-prostitute” relationship. Participants noted that individuals or gangs often exerted more subtle coercive pressures, such as withholding drugs, or unspoken understandings that there would be “trouble” if the girl tried to stop working. In Edmonton, participants stated that girls lured by Aboriginal gang members into using drugs and



prostitution are sometimes threatened that if they do not continue working and supplying the gang with money, their family members will be informed about the prostitution. In many cases, the gang members who lured the girls have ties to the girls' home communities and thus the threat is very real.

IV. Determining Whether Trafficking Has Occurred

From the scenarios described in the previous sections, different pictures of “trafficking” appear. Some fit more closely with the quintessential image of trafficking, and some do not. However, whether or not these activities should be addressed as instances of trafficking should not be determined by these images. Rather, reference should first be made in each situation to the conditions under which the woman or girl was exploited and the control she had over her actions. The relevant provisions of the *Criminal Code* can then be interpreted in this light, in order to determine whether or not such activities could be prosecuted using this legislation.

In determining the ways in which these instances may or may not be discussed under the umbrella of “trafficking,” it is important to take into account the histories of Aboriginal peoples and the particular ways in which Aboriginal women and girls find themselves in the sex trade. The poverty, unemployment, over representation in the child welfare system, and lack of sufficient access to education that provide the backdrop to many Aboriginal women and girls' lives resonate as the types of conditions that anti-trafficking measures were designed to address. Anti-trafficking work has been aimed at addressing individuals preying upon women and girls who have limited opportunities because of these conditions. Thus, when determining whether or not specific situations should be addressed within the context of “trafficking,” these conditions should be considered.

As well, the age of any victim identified must be a consideration, since the types of activities which may constitute exploitation of children may not necessarily apply to adults. In some of the unambiguous cases above, the analysis would likely pertain to both children and adults, since the “fear” generated to prevent the woman or girl from refusing to prostitute was a result of a clear physical threat. However, in many cases the age of the victim and their relationship to the trafficker is of paramount consideration. It is important to note that section 151 of the *Criminal Code*, “sexual interference,” makes it a criminal offence to touch someone under the age of sixteen⁶¹ for a sexual purpose unless the person is less than two years older than the child. Section 152 also makes an “invitation” to such touching a criminal offence. Section 153 specifically refers to “young persons” between the ages of sixteen and eighteen, and makes it illegal to touch them for a sexual purpose or counsel them to touch others for a sexual purpose if the person doing the counseling is in a position of “trust or authority” over the young person, is someone with whom the young person is “in a relationship of dependency,” or is someone who is in an exploitative relationship with the young person. The very fact that sexual activity between adults and children is prohibited indicates that, for the purposes of criminal law, such activity is automatically deemed exploitative because of the power differential between children and adults. While there is no differentiation between minor and adult victims in the *Criminal*

⁶¹ Bill C-2, *An Act to amend the Criminal Code and to make consequential amendments to other Acts*, 2d sess., 39th Parliament, 2007, cl. 58 (assented to 28 February 2008).



Code offence of trafficking, what would constitute “control” over the movements of a child, or an activity that would cause a young girl to fear for her safety, should be viewed in the context of the other offences prohibiting sexual relations with minors.

For example, while the facilitation of sexual exploitation of children by parents or older siblings has not been recognized by law enforcement as “trafficking,” when the age of the victim and the context of her family life and history are taken into account, the situation has the hallmarks of situations that anti-trafficking work was meant to address. It also falls within the purview of section 279 of the *Criminal Code*. Where a mother or older sister insists that a girl stand in a certain place on the street to perform sex work, or have sex with a specific person, the mother or older sibling is controlling the movement of the girl. The family bond, when used to manipulate, can be an intimidating and oppressive tool. This “request” (“exercising control over the movements”—the *actus reus*) is understood in the context of the unspoken familial relationship. The girl could certainly expect that not performing such acts could result in her ostracism from the family, the loss of shelter, food, clothing and the only caregivers she has known. The threat of withdrawal of the family unit can be perceived as quite a serious threat to both the *physical and emotional safety* of a child (the “exploitation”). Although the offence of “trafficking” has not yet been judicially considered, what it means to “reasonably fear for one’s safety” has been interpreted in the context of other sections in the *Criminal Code* to include fear for psychological as well as physical safety.⁶² Thus, not only does this act have the hallmarks of trafficking, it also has the specific elements required for a charge to be laid under section 279 of the *Criminal Code*.

Additionally, where a family member is also part of a gang, unspoken physical threats and the family bond work together to form a coercive force that can cause a girl to believe her physical and mental safety would be threatened if she were to refuse to comply with any requests made. Family involvement has traditionally been a trigger for law enforcement to deal with an issue as a “social” problem rather than a criminal one, and thus the manipulation of girls into the sex trade by family members has not been recognized as trafficking. However, within Aboriginal communities, the exertion of control by a family member—particularly when there is also gang association—can actually be more exploitative than the same control exerted by a third party. This fact requires acknowledgement where trafficking analyses are performed.

Where girls are “traded” between gangs and physically threatened, the inability of the girl to refuse to continue the exploitative labour is clear. Under pain of physical threat, she does not have control over her own body and the services she performs. This scenario clearly has the hallmarks of trafficking, but has rarely been categorized as such. It also falls within the purview of the *Criminal Code* in that a gang member (or several) is directing the girl to a particular activity. She has been sold and bought by people, and thus her movements are *controlled* (the *actus reus*) and she is prevented from refusing to participate in the activity for fear of physical repercussion (the “exploitation”). And in those cases where gangs reportedly *transported* girls to Calgary from Edmonton in order to sexually exploit them in hotel rooms by force (thereby causing the girls to fear for their safety), the situation was such that the girls had no control over their engagement in the activity and were therefore essentially in slave-like circumstances. All of the same elements for a charge of trafficking under section 279 of the *Criminal Code* were also present.

⁶² See *R. v. McCraw*, [1991] 3 S.C.R. 72; *R. v. Leasak*, [2006] A.J. No. 431; *R. v. Gagnon*, [2002] A.J. No. 1097.



In the case where the girls from the care facility were transported between cities, a similar analysis applies. Particularly, given the fact that these girls had lived in Ministry care, where Aboriginal children are egregiously over represented, and were vulnerable to inducement and exploitation in the exact ways that anti-trafficking measures were designed to counter. This case is also relatively clear, because once they were transported over the border, they were no longer allowed to use their cell phones, were essentially confined to the vehicle, and then forcibly confined in the hotel room. Held essentially in slave-like conditions, they physically could not refuse to engage in whatever labour the traffickers decided. These individuals could also have been subject to charges of trafficking under the *Criminal Code*, in that they “transported” the girls (the *actus reus*) for the purposes of having sex with at least one man, giving the girls no option to refuse (the “exploitation”).

With regard to both children and adults, the power that a drug provider can wield over someone who has a severe addiction is tantamount to a physical power. The means of control and direction a drug dealer has over a woman or girl’s movements is more complex than is generally indicated in analyses of “trafficking.” It is difficult for many people to see how someone facilitating an addiction actually trafficks a person with a substance dependency, since much of drug use is seen as a “choice.” In fact, this new complexity in the ways in which women and girls are exploited actually provides a shield for exploiters, who prey upon the vulnerabilities that are created by women’s histories, the breakdown of community, poverty and lack of opportunity. They no longer need to physically threaten the woman or girl in order to ensure her continued engagement in prostitution: the withdrawal of drugs provides that level of threat. Anti-trafficking discourse may be particularly relevant where individuals forcibly or coercively facilitate the addictions of vulnerable young girls for the purposes of engaging them in sex work. Aboriginal women and girls who struggle with drug use do so against a backdrop of communities facing higher than average substance addiction issues. Individuals preying on that circumstance by purposefully facilitating women’s or girls’ addictions essentially create a debt-bondage situation based on that vulnerability. When that debt situation is then exploited for the purposes of continuing a woman or girl’s engagement in the sex trade, the hallmarks of trafficking begin to appear.

The elements required to support a charge under section 279 of the *Criminal Code* also appear in these cases. In cases where drug suppliers, whether they be individuals, gangs or associations, purposefully facilitate a woman’s addictions in order to profit off her labour, and the addictions are such that the woman has no control over the conditions of her work, all of the elements are present for a charge of trafficking. The woman or girl is *directed* to prostitute herself in a particular place or with particular people (the *actus reus*), sometimes *transported* to a particular location in order to do so, with the threat that if she refused she would either be denied the drugs necessary to feed her addiction, or be physically harmed if she was unable to pay the “debts” she owed (the “exploitation”). Depending on the severity of the addiction, the threat of having to suffer withdrawal from a chemical substance could be as intimidating a threat as the threat of physical punishment. The experience of withdrawal is physically painful, as well as mentally distressing, and the accompanying violence from drug providers can be ever-present. Thus, the threat held over a woman in these circumstances that she must continue prostituting or suffer



withdrawal from drugs or physical violence can be viewed as a threat to her safety in the context of section 279.01 of the *Criminal Code*.

V. “Victim”izing and the Search for Trafficking in Canada

Although the cases described above do have the hallmarks of “trafficking” and the elements necessary for criminal prosecution in Canada, no charges have been laid for the trafficking of Aboriginal women or girls. The inability of the Canadian criminal justice system to view Aboriginal women and girls as “victims” of sexual offences contributes to the inability to recognize them as having been trafficked, and consequently prevents them from receiving the assistance and care that would accompany that recognition. This is unsurprising, given that an acknowledgement of the vulnerabilities of Aboriginal women and girls to these forms of trafficking would require an acknowledgement of the historical acts that created these vulnerabilities and Canada’s overall failure with respect to addressing violence against Aboriginal women and girls. Additionally, the ways in which these women and girls are trafficked adds further complexity to the issue, given that the acts do not occur in isolation but rather happen within a broader context of sexual exploitation. An acknowledgement that these cases were “trafficking” would also require an acknowledgement of the overwhelming presence of sexual exploitation in all its forms against Aboriginal women and girls, particularly in the Prairie provinces, and recognition of the failure of the child welfare system that has played such a large role.

Where the relationship between the woman or girl being trafficked and the individual doing the trafficking is more nebulous—for example where a girl may be related to members of the gang who trafficks her—members of the criminal justice system are even less able to identify what happens as trafficking. However, the ways in which the terms “control” and “exploitation” have been interpreted by the justice system in the context of trafficking offences also do not adequately reflect the types of coercion and exploitation that Aboriginal women or girls in street-based prostitution face. It has been difficult to have the criminal justice system recognize non-physical forms of coercion in trafficking analyses because the criminal law focuses only on the immediate actions of individuals.⁶³ Criminal law is naturally framed in this manner, with a perpetrator being held responsible for his actions, and his actions alone. However, where racism, poverty and colonization intersect to create the conditions in which Aboriginal women are so severely over represented in the street sex trade, a more comprehensive conception of “exploitation” needs to frame discussions around trafficking crimes against Aboriginal women. Sherene Razack speaks to this issue in her book *Looking White People in the Eye* where she notes: “What is absent here is any acknowledgment of how the history and present-day legacy of colonization has affected Aboriginal women, rendering them as the victims of sexual assault. This is how gender and race conflate to produce an absence of the realities of Aboriginal women.”⁶⁴

Additionally, many of the perpetrators of “trafficking” offences against Aboriginal women are other Aboriginal persons, and thus these crimes are further hidden from view. Aboriginal

⁶³ Chuang, “Beyond a Snapshot,” 140.

⁶⁴ Sherene Razack, *Looking White People in the Eye* (Toronto: University of Toronto Press, 1998), 71.



communities understandably fear condemnation if they are implicated in such crimes and the fear of further marginalizing Aboriginal males is certainly present. It is often difficult to speak about race in the context of gender, since it is easy for such discussions to support dominant racist notions⁶⁵. However, it is also easier for those who do not wish to acknowledge the oppression created by the intersection of racism and gender that has occurred through settlement and colonization practices to shift blame to the Aboriginal men perpetrating the abuse and to the Aboriginal gangs and families who facilitate exploitation. In this way one does not need to recognize the perpetrators of historical and ongoing racist practices who are ultimately responsible for the conditions that both Aboriginal men and women face today.

The New Victims

As a result of the attention recently focused on trafficking, and the exclusion of Aboriginal women and girls from generally being viewed as “victims” of sexual violence, attempts have been made to draw attention to this group as persons who could also be trafficked. To this end, several non-governmental agencies have attempted to reorient the trafficking “image” to include Aboriginal women and girls.⁶⁶ However, while this reorientation may be useful for undermining some of the negative stereotypes associated with Aboriginal women and girls, simply replacing one “victim” image with another has not served to further the understanding of trafficking of Aboriginal peoples in Canada. Rather, the myths and stereotypes that surround the trafficked “victim” are simply transferred to Aboriginal women, and the reality of the particular types of exploitation they face is still ignored.

Authors and organizations supporting Aboriginal women have focused on highlighting cases where Aboriginal women and girls have been subjected to the same forms of trafficking as the traditional “victim.” In this way they intimate that “Aboriginal girls can be victims too.” For example, we frequently see allusions to “circuits” through which Aboriginal girls are taken in order to be prostituted.⁶⁷ However, front-line workers who participated in my study indicated that, given the increased involvement of drugs such as crystal meth and crack, girls no longer move in such circuits but tend to stay closer to their drug suppliers, who may also be their exploiters. Given the low amounts of money that street-based prostitution currently brings in, such grand movements and organization are no longer profitable for exploiters. While, certainly, women and girls do sometimes travel and become more vulnerable to being exploited in the process, it is not this movement that makes such exploitation “trafficking.” In *Outrage* one participant noted: “Of course, we meet a lot of Aboriginal women, Inuit, in our work. Are they victims of trafficking because they want to come to Montreal? Do they run away from the reserves because the living conditions are disgusting? Because they suffer all kinds of violence, abuses of all sorts? They take a chance and come to Montreal, and once there, things don’t go so well.”⁶⁸

Frequently, because of the attempt to *fit* Aboriginal women’s experiences into the traditional picture of the trafficked “victim,” all of the different forms of exploitation become conflated, and

⁶⁵ Razack, *Looking White People in the Eye*, 59.

⁶⁶ See Aboriginal Women’s Action Network, “Statement against the Plans for Vancouver Brothel.”

⁶⁷ Sethi, “Domestic Sex Trafficking of Aboriginal Girls in Canada,” 59.

⁶⁸ Standing Committee on the Status of Women, *Outrage*, 8.



characteristics associated with one become associated with all. One study on trafficking in Canada states: “It was noted that Manitoba was a crucial point for trafficking in Aboriginal youth and that Aboriginal women were transported both across the Pacific coast between Canada and the US, and across Canada. ‘Experiential workers’ report that some Aboriginal women and children are trafficked out of Canada, ending up in Japan, Mexico, or elsewhere.”⁶⁹

However, the types of trafficking associated with Aboriginal women and girls in Manitoba are significantly different from those suffered by those trafficked out of Canada. The legacies of colonization, residential schools and Aboriginal community breakdown have created a vulnerability to the kinds of trafficking perpetrated by family, community and drug providers, which are particularly prominent on the streets of Winnipeg and Edmonton. However, this vulnerability is then taken to create vulnerabilities to cross-border trafficking and other more recognizable forms, such as the prostitution “circuit,” where there is little evidence that Aboriginal women and girls are more susceptible than non-Aboriginal females. Focus on such movements or the presence of organized crime running girls through “circuits” actually further supports the current image of the “victim” as someone pure and innocent who was kidnapped into “forced” prostitution. The problem then becomes shifted to the outsider, the organized criminal enterprise, or the “pimp.” Because of this focus, where women and girls are subject to less recognizable forms of exploitation, they are not “trafficked.” Instead of focusing on whether or not the perpetrator took advantage of someone in a vulnerable situation for the purposes of exploiting their labour, the deciding factor about whether someone is “trafficked” becomes the presence or absence of organized crime, “pimps,” or cross-border movement.

Cases have been identified where young Aboriginal girls have been lured by strangers and forcibly moved for the purposes of prostitution, as have some non-Aboriginal girls. However, the types of trafficking to which Aboriginal women and girls are subject *because they are Aboriginal* are the types associated with discrimination, racism, poverty and breakdown of community. Family members, relations within Aboriginal gangs, drug providers and street “friends” were pointed to as the primary exploiters preying on the particular vulnerability of Aboriginal women and girls in the Prairie provinces. Attempts to raise the level of significance of this exploitation through adding elements of *movement* or other characteristics traditionally associated with the trafficked “victim” only serves to further remove the reality of women and girls’ lives from view. When we focus attention on the fact that some Aboriginal girls also fall prey to individuals who lure them into the prostitution “circuit,” we simply reinforce the notion that other types of experiences are not *really* trafficking. Women and youth who are subject to trafficking at the hands of less traditional “traffickers” are simply relegated back into the world of the criminal and the “runaway.” Thus, ultimately, the attempt to fit Aboriginal women and girls’ experiences into the trafficking picture has further marginalized those who do not fit.

The focus on movement has also conflated the issues of trafficking in persons and the over 500 missing Aboriginal women that have recently drawn media attention. In *Outrage* the authors note: “According to the Department of Justice and other witnesses, Aboriginal girls and women are at greater risk of becoming victims of trafficking within and outside Canada. Erin Wolski from the Native Women’s Association of Canada (NWAC) supported that conclusion, noting

⁶⁹ Oxman-Martinez, *Victims of Trafficking in Persons*, 14.



that ‘as more Aboriginal women go missing and a huge majority of the cases are not being investigated ... trafficking must be looked at as a possible source for information.’”⁷⁰

With regard to Aboriginal women and trafficking, Anupriya Sethi also notes: “The discourses on sex trafficking of women and girls in Canada continue to highlight international trafficking thus positioning Canada more as a transit and destination country than an origin country. Notwithstanding the fact that 500 Aboriginal girls and women (and maybe more) have gone missing over the past thirty years, domestic trafficking has not received the attention it deserves.”⁷¹

The backdrop of poverty and community breakdown that creates a situation of vulnerability for Aboriginal women and girls to exploitation at the hands of gangs, drug providers and families is the same backdrop against which Aboriginal women and girls go missing at an alarming rate. It is also the same backdrop against which law enforcement services have been impugned for failing to investigate.⁷² However, to conflate the two by speaking about them interchangeably does an injustice to both issues. Where the two issues are spoken of in the same breath, trafficking again becomes associated with individuals who are “missing” or kidnapped, and the reality of the forms of exploitation to which aboriginal women and girls are most vulnerable again is erased. Exploitation that does not contain an element of kidnapping goes unnoticed, and girls who are susceptible to exploitation because of having “run away” from care facilities are held responsible for their own exploitation.

This conflation also suggests that the topic of the “missing” becomes somehow more important when the “trafficking” label is attached. It may be possible that some of the women who have been missing were in fact lured into cross-border sexual exploitation, either overseas, in Mexico or through the “circuit” in the U.S. and Canada. However, focusing on this one group and this one activity signals that the others are less important. The heinous nature of the crimes that have been uncovered through the search for the “missing” stands alone as a testament to the failure of Canada to protect Aboriginal women and girls. Attaching a label of “trafficking” is unnecessary. It also, once again, draws attention to the foreign, exotic nature of organized crime, diverting attention away from the colonial legacies that have created a situation in which so many women *can* go missing.

Conclusion

While the legal definitions of “trafficking” are required in order to frame specific action and funding, interpretation of the language of the definitions cannot simply rest in the images created by media. And attempting to replace these images with other “victims” has not served to further

⁷⁰ Standing Committee on the Status of Women, *Outrage*, 9.

⁷¹ Sethi, “Domestic Sex Trafficking of Aboriginal Girls in Canada,” 57.

⁷² Cherry Kingsley and Melanie Mark (2000), *Sacred Lives*, 38-40: “The rates of conviction for those who have murdered sex trade workers are less than half the national average. Police state that murders of persons involved in prostitution often remain unsolved, as there is usually insufficient evidence to prosecute.” See also Amnesty, *Stolen Sisters*, 29: “Numerous studies of policing in Canada have concluded that Indigenous people as a whole are not getting the protection they deserve ... families described how police failed to act promptly when their sisters or daughters went missing.”



our understanding of the issue. Rather, interpretation must hearken back to the reasons for the anti-trafficking movement and the reasons for which the legislation was conceived. Some forms of exploitation that Aboriginal women and girls suffer should be viewed within this trafficking paradigm. Others do not have the characteristics of trafficking, and do not fit within the legal definitions constructed within Canada. These issues need to be addressed in their own right as critical problems affecting Aboriginal communities and Canadian society at large. Within the greater context of exploitation and violence against Aboriginal women and girls lies sexual exploitation, and within that exploitation lies trafficking. The focus on trafficking to the exclusion of all else has meant that the greater body of exploitation has been ignored. Moreover, the images that accompany that term largely exclude the very types of trafficking to which Aboriginal women and girls are subject.

Potential Preventative Measures

Reframing some of the exploitative acts that are perpetrated against Aboriginal women as “trafficking” may serve to undermine the stereotypes that have so long been attached to them, such as “prostitute” and “criminal,” and thus it is a reorientation that is worthy of pursuit. However, it is also important that such discussions are contextualized within the larger framework of exploitation, discrimination and violence to which Aboriginal women and girls are subject, and that there is recognition that the “trafficking” discussion is simply one tool in a larger struggle. Overall, a shift is required away from interpreting legislation in the light of preconceived notions of what trafficking “victims” look like, and a move towards protecting vulnerable people in dire economic circumstances from having their labour exploited.

Law enforcement, non-governmental organizations and prosecutors in various regions across Canada should discuss and clarify the elements required to classify an act as “trafficking,” and identify the specific types of trafficking taking place against Aboriginal women and youth in their areas. Law enforcement and prosecutors should also acknowledge the inclusion of psychological harm within the concept of “safety” in section 279.01 of the *Criminal Code*. The term “safety” in this context should explicitly include the potential withdrawal of the necessities of life by a person upon whom a victim is dependent.

Programming should also be created within the child welfare system to address the specific needs of sexually exploited youth. “Trafficking” of Aboriginal women and girls in the Prairie provinces is not a new phenomenon. The acts of “trafficking” described above are simply a subset of the sexual exploitation perpetrated against Aboriginal women and girls more generally. Thus programs designed to address only “trafficking” fall short in that they fail to recognize the broader context of exploitation in which the trafficking of Aboriginal girls takes place. Programs should include appropriate, separate and staged housing that addresses all of the coercive factors that lead Aboriginal youth into situations in which they are “trafficked,” including the influence of family members and drug use. Guidelines should also be created within child welfare systems for the involvement of law enforcement or the laying of criminal charges for acts committed within the context of child welfare residences and foster homes. These guidelines should be created with a view to preventing youths’ contact with the criminal justice system.

Finally, law enforcement, prosecutors and members of the judiciary in the Prairie provinces should be trained on interacting with sexually exploited Aboriginal youth, including components



on recognizing and addressing associated criminal activity in a way that does not further exacerbate the conditions that make youth vulnerable to trafficking. Youth should be given every opportunity to meaningfully participate and be heard as credible witnesses in judicial processes, and their “reasonable apprehension of fear” should be contextualized in their personal, familial and cultural histories.



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