

To: House of Commons Standing Committee on the Status of Women

Re: Study on Human Trafficking of Women, Girls, and Gender-diverse People in Canada

Date: April 2023

From: Drs. Tamara O'Doherty<sup>i</sup> and Hayli Millar<sup>ii</sup>

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## **Introduction**

On February 18, 2022, we submitted a brief to the Standing Committee on Justice and Human Rights to share some of the knowledge that we have gained over the past two decades of conducting empirical research in Canada on matters related to commercial sex, victimization, human rights, and human trafficking. That brief is available [here](#), and we provide a list of our peer- and non-peer reviewed publications below. Our joint research on these matters includes two<sup>iii</sup> significant and longitudinal studies on the development and enforcement of Canadian anti-human trafficking law (2001-2022) as well as the human rights implications of these Canadian legal efforts, both of which we hope members of the committee are able to review as a part of their current study. Our work complements a robust body of critical socio-legal scholarship and evidence in Canada consistently examining the differential impacts of anti-human trafficking and anti-sex work laws on groups already marginalized and presumed to lack agency in Canadian society; we therefore offer our expertise to support the following key points.

## **Key Findings as they relate to this Committee's objectives**

1. There is a significant gap in empirical, ethically-approved, evidence concerning those who have experienced human trafficking for the purpose of sexual exploitation.<sup>iv</sup> Anecdotal information can provide some important context, but we encourage the committee to take seriously its obligations to study this topic with as much rigour and attention to ethical obligations under the [Tri-Council Policies](#) governing research in Canada.
2. Due to a near-complete though erroneous conflation of human trafficking and sex work in the political and legal realms, there are serious definitional problems underlying all of the Parliamentary and public discussions of these topics. We encourage the committee to seek clarity on the definitions that they wish to employ and to seriously consider the legal implications of politicizing definitions to the extent that fundamental principles of justice are violated in Canadian prosecutions.<sup>v</sup>
3. The victimization connected to human trafficking is not limited to sexual exploitation and indeed the committee is leaving serious victimization out of its purview by focusing exclusively on sexual exploitation. Indeed, sexual exploitation occurs as a result of human trafficking in many realms of work conducted by marginalized people in Canada. By targeting law enforcement on the commercial sex industries, Canadian legal efforts are missing the mark and causing increased vulnerability for sex workers while seeming to ignore sexual and other forms of labour exploitation in a multiplicity of other contexts (e.g., ranging from the exploitation of international students to the hospitality and health service sectors in Canada to global supply chains abroad as highly select examples).

4. Canada has an extremely broad base for legal interventions relating to human trafficking, along with a significant range of penalties available. Before recommending increased criminalization of any type, we encourage the committee to consider the impacts of criminalization on Indigenous and Black People and Other People of Colour, as well as the impacts on Gender-Diverse and non-binary people, and those with precarious status in Canada. While increased legal intervention may be well-intentioned, we know the results of criminalization are consistently born differentially by the aforementioned groups. Rather than sustain these inequities, we encourage the committee to focus on prevention outside of the legal system via non-carceral alternatives, which requires civic inclusion and fundamental respect for all labourers in these colonized lands and the respect and guarantee of basic human, labour, and Indigenous rights.<sup>vi</sup>
5. Before turning to prevention, we encourage this committee to gain a more thorough understanding of the groups and experiences of those about whom they wish to govern and criminalize—whether directly or indirectly. Sex workers and their agencies have been participating in these reviews and ‘studies’ for decades. Their experiences are a part of several [legal cases](#), as well as well-documented in reports such as BC’s [Missing Women Commission of Inquiry](#), [the National Inquiry into Missing and Murdered Indigenous Women and Girls](#), and the recent report published as a part of the Canada/Nova Scotia Joint Mass Casualty Commission ([Part D](#) is particularly relevant). These governmental commissions of inquiry detail very well precisely how gender-based victimization is heightened in the context of intersecting oppressions relating to Indigeneity, race/ethnicity, gender-identity and expression, citizenship, and social and economic status. The reports also share vital information about relations between law enforcement and those targeted by law enforcement. None of the information presented in the reports is new—we know the impacts of criminalization under colonial governance structures. We encourage the committee to consider whether they wish their recommendations to simply reproduce the ongoing inequities, or whether they wish to consider measures to change these systemic inequities and provide non-carceral alternatives to these harmful structural oppressions.<sup>vii</sup>
6. If prevention of victimization such as violence or sexual exploitation is truly the goal (which is distinct from seeking to abolish the sex industries in Canada via some form of criminalization), then we encourage committee members to examine the structural factors that shape and allow victimization to occur. To begin, study exploitation in labour, with a particular focus on those in precarious labour in Canada. Consider how Canada’s immigration and economic policies allow exploitation of migrants and economically vulnerable citizens to flourish. Sustaining the myth that human trafficking is primarily experienced as sexual exploitation and primarily connected to commercial sex work broadly defined only serves to create barriers for investigations and prosecutions of all experiences of victimization and violation that occur in exploitative labour contexts. The standard of victimhood becomes an unrealistic, monolithic depiction of victimhood with significant racialized, gendered, classist, ageist, ableist, occupational, and geographic residency implications, among other intersectional oppressions.<sup>viii</sup> Awareness campaigns and ‘training’ that rely on these misrepresentations and that fail to incorporate the nuance and often conflicting experiences that lead to exploitation do ongoing harm.
7. Prevention of exploitation requires us to first create an effective definition of exploitation that is not limited to sexualized experiences. Then we must take heed of advice given by those

who experience exploitation in all forms of labour to truly grasp the full parameters of the situation. We must also listen to those against whom our enforcement has thus far been targeted—where it is established that law enforcement is ineffective and even contributing to further marginalization and violence; we must not support continuing to do the same thing or advocating for more of a harmful practice. Instead, collaboration, civic inclusion, and the extension of fundamental labour and human rights to sex workers and others in precarious employment are all first steps towards the vital structural changes that need to happen to address and prevent labour exploitation.

### Millar & O'Doherty Relevant Publications:

- O'Doherty, T. & H. Millar. (forthcoming). 'Prosecuting Trafficking Persons Offences: Problems and Pitfalls in the Post-PCEPA Era' in K. Roots, A. De Shalit, and E. van der Meulen (eds.), *Trafficking Harms: Critical Perspectives on Human Trafficking in Canada*, Fernwood Publishing.
- Millar, H. & T. O'Doherty. (2020). *Technical Report: Canadian human trafficking prosecutions and principles of fundamental justice: A contradiction in terms?* (Vancouver: International Centre for Criminal Law Reform). Available: <https://icclr.org/wp-content/uploads/2020/06/Millar-and-ODoherty-Technical-Report-on-Canadian-Human-Trafficking-Prosecutions-1.pdf?x37853>
- Millar, H. & T. O'Doherty. (2020). 'Racialized, Gendered, and Sensationalized: An Examination of Canadian Anti-Trafficking Laws, their Enforcement, and their (Re)Presentation.' *Canadian Journal of Law and Society*, 35(1): 23-44. DOI: <https://doi.org/10.1017/cls.2020.2> Also available via CanLII [https://www.canlii.org/en/commentary/doc/2020CanLIIDocs3672?zoupio-debug#!fragment/\(hash:\(chunk:\(anchorText:"\),notesQuery:",scrollChunk:!n,searchQuery:'racialized,%20gendered%20and%20sensationalized',searchSortBy:RELEVANCE,tab:search\)\)](https://www.canlii.org/en/commentary/doc/2020CanLIIDocs3672?zoupio-debug#!fragment/(hash:(chunk:(anchorText:)
- Kaye, J., H. Millar & T. O'Doherty. (2019). 'Exploring Human Rights in the Context of Enforcement-Based Anti-Trafficking in Persons Responses' in J. Winterdyk and J. Jones (eds.) *The Palgrave International Handbook of Human Trafficking*. Palgrave International. Available: [https://link.springer.com/referenceworkentry/10.1007%2F978-3-319-63192-9\\_36-1](https://link.springer.com/referenceworkentry/10.1007%2F978-3-319-63192-9_36-1)
- O'Doherty, T., H. Millar, A. Clancey, & K. Mackenzie. (2018). 'Misrepresentations, Inadequate Evidence, and Impediments to Justice: Critical Reflections on the Human Rights Impacts of Canada's Anti-Trafficking Legal Efforts' in Durisin, E.M., van der Muelen, E. and Bruckert, C. (eds.), *Red Light Labour: Sex/Work: Regulation, Agency, and Resistance*. UBC Press. pp.104-120.
- Millar, H., T. O'Doherty & K. Roots. (2017). 'A Formidable Task: Reflections on Obtaining Legal Empirical Evidence on Human Trafficking in Canada', *Anti-Trafficking Review* No 8: Special

Issue—Where's the Evidence? Available:

<https://www.antitraffickingreview.org/index.php/atrjournal/article/view/225>

Millar, H. & T. O'Doherty in collaboration with the SWAN Vancouver Society. (2015). *Key Findings: The Palermo Protocol & Canada: The Evolution and Human Rights Impacts of Antitrafficking Laws in Canada (2002-2015)*. International Centre for Criminal Law Reform and Criminal Justice Policy. Available: <https://icclr.org/publications/the-palermo-protocol-canada-the-evolution-and-human-rights-impacts-of-anti-trafficking-laws-in-canada-2002-2015/>

### **Additional O'Doherty Publications relevant to this study**

O'Doherty, T. & Waters, I. (2019). Gender, victimization, and commercial sex: A comparative study. *Atlantis*, 40(1), 18-29.

O'Doherty, T. (2015). *Victimization in off-street commercial sex*. Doctoral Dissertation, School of Criminology, Simon Fraser University.

O'Doherty, T. (2011). Criminalization and Off-Street Sex Work in Canada. *Canadian Journal of Criminology and Criminal Justice*, 53(3), 217- 245.

O'Doherty, T. (2011). Victimization in Off-street Sex Work. *Violence Against Women*. 17(7), 1-20.

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<sup>iii</sup> The full reports of each study are available via the International Center for Criminal Law Reform and Criminal Justice Policy [website](#)

<sup>iv</sup> On the lack of empirical evidence, see De Shalit, Ann & Katrin Roots. (2016) Evidence that Evidence Doesn't Matter: The Case of Human Trafficking in Canada. *Atlantis: Critical Studies in Gender, Culture & Social Justice*. 37.2(1): 65-80.

<sup>v</sup> See Sibley, Marcus & Emily van der Meulen. (2022). Courting Victims: Exploring the Legal Framing of Exploitation in Human Trafficking Cases. *Canadian Journal of Law and Society*, 37(3), 409-429.

<sup>vi</sup> On civic inclusion, see Bruckert, Chris and Stacey Hannem. (2013). Rethinking the Prostitution Debates: Transcending Structural Stigma in Systemic Responses to Sex Work. *Canadian Journal of Law and Society*. 28(1): 43-63.

<sup>vii</sup> See Kaye, Julie. (2017). *Responding to Human Trafficking: Dispossession, Colonial Violence, and Resistance among Indigenous and Racialized Women*. Toronto: University of Toronto Press; Lam, Elene (2018). *Behind the Rescue How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers*. Toronto: Butterfly Asian and Migrant Sex Workers Support Network; Maynard, Robyn (2017). *Policing Black Lives: State Violence in Canada from Slavery to the Present*. Halifax: Fernwood Publishing; Sterling, Andrea and Emily van der Meulen. (2018). "We Are Not Criminals": Sex Work Clients in Canada and the Constitution of Risk Knowledge. 33:3 *Canadian Journal of Law and Society* 291-308

<sup>viii</sup> On the unidimensional victim narrative and its impact, see Kinney, Edith. (2015). Victims, Villains, and Valiant Rescuers: Unpacking sociolegal constructions of human trafficking and crimmigration in popular culture. In Gui, Maria Joao (Ed.) *The Illegal Business of Human Trafficking*. Springer:87-108.