



***JustResearch* Edition no. 13**

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Research in Profile

1. Miscarriages of Justice: The Impact of Wrongful Imprisonment^[2]

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INTRODUCTION

In recent years, the problem of wrongful conviction has become an accepted reality in most common law jurisdictions. High profile cases tend not only to draw our attention to the detrimental effects of a wrongful conviction on an individual, but also to point out how aspects of the criminal justice process have failed. Research has now amply demonstrated that a number of factors, generally occurring together to varying degrees, contribute to wrongful conviction and imprisonment. They include: erroneous eyewitness identification and testimony, police and prosecutorial misconduct, false confessions, over-reliance on in-custody informants, and unsound forensic science or its misuse. While the majority of this research has emanated from the United States (Huff 2004), it is, nonetheless, relevant in the Canadian context given our similar common law, adversarial systems. Furthermore, recent research has demonstrated that similar contributing factors occur in Canada as well (Denov and Campbell 2003).

What becomes apparent is that a great deal of research on wrongful convictions has tended to focus on the many systemic factors that contribute to these miscarriages of justice. Although this is highly important, little has been written from the perspective of the wrongly convicted. While some recent work from the United Kingdom has examined the experiences of the wrongly convicted from a psychological standpoint (Grounds 2004), no research to date has examined how wrongly convicted persons experience, define, and cope with a wrongful imprisonment. Thus, the objective of our study was to examine:

- the experiences of the wrongly convicted and imprisoned;
- how they coped with wrongful arrest, conviction, and imprisonment;
- the consequences of maintaining their innocence throughout the criminal justice process; and
- the long-term effects of the experience.

METHOD

Through the use of qualitative semi-structured interviewing, five males were interviewed for this study. Each respondent had been wrongly convicted and imprisoned in a Canadian federal institution. Respondents were all Caucasian males and at the time of interview ranged in age from 31 to 65 years. Their terms of imprisonment averaged five years (range = 3 to 8 years), and all, except one, have since been fully exonerated by the courts. Sam^[3] was wrongly convicted of murdering his wife, who accidentally choked to death, and he served over eight years in a maximum-security facility before being acquitted on appeal. Jason was convicted of sexual assault and served over three years in prison, much of it in solitary confinement. Jason was acquitted on appeal following his release from prison. Mark was wrongly convicted of sexual assault, served over three years, and was exonerated after his release through the conviction review process. Max was wrongly convicted of robbery and assault, served five years in prison and a further ten years on parole. Almost thirty years following his crime, Max was acquitted on appeal. Finally, Sean was wrongly convicted of murdering a shopkeeper and served over five years in prison. Once released on appeal, and fearful of a further miscarriage of justice, Sean pled guilty to a lesser charge, which he is currently attempting to overturn. The experiences of these individuals represent the worst-case scenarios of wrongful conviction, as they all endured long-term imprisonment.

Each participant was interviewed individually, with two respondents having been interviewed on several occasions. The interviews were audio-taped, transcribed, and through content analysis, both authors recorded consistent and concurrent themes. Given the qualitative nature of this study, no assumptions were made as to the generalizability of the findings to all persons wrongly convicted. However, the interviewees provided

information which was interpreted as evidence of their beliefs regarding their experiences. The results, discussed below, provide information about how these individuals coped with a wrongful imprisonment and the long-term effects of these experiences.

RESEARCH RESULTS

Coping with a Wrongful Incarceration

The deleterious effects of long-term imprisonment have been well documented in the literature (Flanagan 1995; Roberts and Jackson 1991). The special stresses that affect prisoners include: relationship difficulties, such as loss of crucial relationships outside of prison and problems in developing relationships within the prison; concern with mental deterioration; the indeterminate nature of sentences; and the prison environment itself (Flanagan 1995). While all prisoners must learn to cope with the 'pains of imprisonment', the impact of imprisonment on the wrongly convicted appears to have effects that go beyond those experienced by other long-term prisoners. These individuals are victims of miscarriages of justice, and the harmful effects of confinement are further exacerbated by the unjust nature of their incarceration. This section explores the varied coping strategies that the five participants used to adapt to their wrongful imprisonment. These strategies, including violence, cooperation, withdrawal, and preoccupation with exoneration, represent a resourceful means to ensure their well-being in the hostile environment of a prison.

Coping Through Violence and Cooperation

A prison sentence constitutes a "massive assault" on the lives of those imprisoned and such an experience is exacerbated for first-time inmates (Berger 1963). One participant, an electrician who had done some electrical work inside a prison prior to his wrongful conviction, recalls his first impressions of prison life:

I didn't like the experience [of working as an electrician in prison] ... You were working near the inmates and the guards. Then you saw the fights, or you'd be told stuff like "Oh, your tools, if you don't know what to do with them, I know what to do with them." Then you had inmates who would come up behind you, and you've got your tools to watch ... So I found it hard, but it was only a superficial part of what prison is all about. So it wasn't a good experience for me, going to work there ... I never thought that one day I would end up there myself. (Mark)

Once one is imprisoned, such perceptions of prison violence become a reality, as violence is part of daily existence inside. Two participants explained the importance of surviving prison violence and how they managed to cope:

You've got armed groups, armed different factions, freely walking around, high-medium and maximum-security institutions. Armed, concealing, chemical weapons, fire weapons, bludgeoning weapons, slicing weapons. [Did you ever fear for your life?] I made a vest out of eleven National Geographics ... I stole two rolls of duct tape from the Auto Body Shop, and I took eleven National Geographics off one of the reading carts. I made a kinda pseudo puncture-proof vest. I wasn't the only one. [I wore the vest] under my clothes, every damn day, every time I left my cell. And it was made that way, so that it wouldn't set off end control, where you walk through metal detectors. (Jason)

It's true that in prison, it's a world where survival comes before everything ... you have to try to survive in the jungle, and there's a lot of violence. So, you have to protect yourself, especially if you are accused of sexual crimes ... And so, you're always going around with a shiv or ... a fork in your pockets. Because when you're walking around, you never know where and when and how you'll be attacked. (Mark)

Finding a means to cope with prison violence was an unfortunate reality for many of our participants. More adaptive means of coping were also evident, including cooperation and belonging. Cooperation is a strategy used to avoid problems, conflict, and stress in the prison environment (Matthew 1999). Sean describes his involvement in a life-sentence inmate group where he provided support to and advocated on behalf of other long-term prisoners:

The lifer's group and helping out the guys was an escape. Was an escape completely! Because I'd worked on that, I give 'em community visits...there's a lot of people in there that were either drunk, or they were stoned...hearing their stories...I mean if they want to commit suicide and you're trying to help. I've always had a big heart, you know what I mean? I wanted to help these people. And also hearing their stories took me away from my... my situation I was in. You know what I mean? (Sean)

This strategy of cooperation enabled Sean to escape his own untenable reality by helping others cope with the prison experience. Similarly, Max, who had little formal education prior to his incarceration, coped with his wrongful imprisonment in large part through reading and learning. By taking advantage of his job in the prison library, Max taught

himself a second language, as well as studying philosophy and semantics. Through this strategy of cooperation, Max was able to survive, and to some degree, escape from the harsh reality of prison:

Fate is always operating out there somehow, for example sending me to work in the library, instead of the workshop where the majority of inmates were. So, I familiarized myself with the world of books and that is how I came to read a lot. All kinds of books, because I didn't have any knowledge at first...and I had tremendous difficulty, I have to say, even to read...A book could take me a week to read, and needless to say, I had enough time for that...sixteen hours and a half, seventeen in a cell...I discovered Sartre...Camus, authors that really bring you to understand... you know, we exist and that we are products of society...I learned [a second language]. I learned many different kinds of things. This was an excellent way for me to escape from prison. (Max)

Withdrawal, Isolation, and Suicidal Ideation

Matthew (1999) suggests that withdrawal, which can take a number of forms, is also an important prison coping strategy. Withdrawal may be manifest as physical separation from other prisoners through segregation, isolation, and minimal communication with other inmates. Both Jason and Max describe their conscious withdrawal from the prison population. For Jason, this isolation was to maintain his sense of sanity. For Max, it was simply because he felt that he was inherently different from the other inmates:

As my time progressed, I did two 8-months sentences, almost back to back, in segregation... I consciously, purposely, removed myself from that population...But, I purposely removed myself from everything. Not just the institution, but everything. And I put myself into a size of a normal house bathroom: vanity, toilet, mirror, tub. Turn the tub, and that's a cell. And I just lived there. Within me. I had to. I couldn't afford to lose my mind. (Jason)

I was always apart from the other inmates...criminals had nothing to offer me.
(Max)

Matthew (1999) argues that withdrawal may also reveal itself through forms of depression, self-mutilation, and suicide. Suicidal ideation and suicide attempts were a reality for many of the respondents. The prison literature indicates that those most likely to attempt suicide are those who are physically and socially isolated in prisons with few activities and with

little contact with home and family (Liebling 1992). For the wrongly convicted, the effects of such isolation are likely exacerbated, given that their imprisonment resulted from miscarriage of justices. The following excerpt describes Jason's suicide attempt subsequent to his bail hearing:

I had been denied bail...Denied. Didn't take too long to decide that I wasn't going to go through that again. So, I waited for my cellmate to pass out, for the nurse to come, for him to get his medication, that shift's guard to do his walk. I had already made the rope, earlier that day. Took the bed sheet, braided it. Tested the metal box that protected the smoke detector. Decided it would hold my weight. Made the knot. Waited for everything, lights went out. Put it up, went and stood on the stainless steel sink in the corner. Put the rope around my neck and stepped off the sink...In about the instant that I was hanging there, I decided that I didn't want to be there. But I didn't have enough strength to pull myself up. I just, I was spinning. If I wasn't spinning, I probably could, but... The jolt of making the rope tense made me spin, which was a good thing, I guess, because my feet started to kick the sink and it woke my cell-mate. (Jason)

Preoccupation with Exoneration

A further coping strategy that appears particular to the experience of the wrongly convicted is a preoccupation with the facts of their case. All of the interviewees described how they became completely absorbed with the details of their cases, pouring over court transcripts and legal files, writing letters, hounding legal officials and prison administrators for information, all in pursuit of exoneration.

I just poured over my transcripts... I was obsessed about the case. Kind of normal. I was wrongly convicted... I would always just get up in the middle of the night and start writing things down...I'd write everything down. That was my baby to save. And that's exactly what I did. (Sean)

All this time, I protested my innocence, I submitted an enormous amount of paperwork to the penitentiary authorities, first, and then to the Department of Justice...and also to Ottawa, and they would pass the buck to each other continually. Finally, I wrote to the Queen directly, that...obviously, didn't do anything. (Max)

However, this preoccupation with their case often worked to their detriment inside the prison as the prison administration tended to view these actions as evidence of their lack of remorse and inability to adapt to the prison environment:

I was obsessed about my case... I was wrongly convicted. [My case manager] kept on making reports, 'the guy just denies and denies and denies, he keeps talking about his case, case, case'... My classification officer told me, 'Jesus, you've got to stop doing this, you're never going to get out... The parole board takes this as if you're denying the crime... that you're not healed... you're not fixed... You have to admit to the crime in order to fix your problems' Sorry! I'm not guilty! I'm not denying. I'm just telling you the truth. (Sean)

The Long-term Effects of Wrongful Imprisonment

The difficulties encountered by the wrongly convicted did not end once they were released from prison. The following section explores the long-term effects of a wrongful imprisonment as identified by the respondents since their release from prison. These effects include issues of loss and effects on family, intense anger and aggression, an intolerance of injustices, and a continued sense of imprisonment despite their release.

Loss and Effects on Family

The losses experienced by those wrongly convicted were profound. These included loss of freedom and the loss of their former identity and sense of self:

I lost me, is what I lost... my identity, who I am... The way I viewed life. (Jason)

However, the most significant loss appeared to be the loss of family. Mark, whose two children were apprehended by child protection authorities when his wife suffered a breakdown during his incarceration, explains the devastation of losing his family:

What it affected was my nuclear family—wife and my children, my family. It completely devastated that. We lost our home... I lost my kids... I lost the care and guidance and companionship of my dad. We were extremely close. I lost that... the hardest part about being an inmate was the loss of the family. (Mark)

Furthermore, the hardships that accompany losing one's family through incarceration also affect the families themselves. Not only are they deprived of the emotional support of their loved one, and forced to deal with the reality of having a family member in prison, but they also may be deprived of an essential source of income (Ferraro et al. 1983). As Jason explains:

[My wife] she was left living with the reality of being single, with four children, a mortgage, hydro, the groceries and other accoutrements that go with having four young children: one in school, needing to work, needing to deal with baby-sitters and, oh yeah, my husband's in prison. (Jason)

Volatility, Anger, and Aggression

All of the respondents noted that their experiences have fuelled a generalized anger and feelings of aggression towards society, as well as a more specific hatred of the justice system. Max, who was wrongly convicted of robbery notes:

I am full of HATE [shouting]. Full of hate and this has lasted for years. I am full of hate against the administration of justice in this province. I also hate a society that accepts injustices as normal. (Max)

All of the respondents reported that their wrongful incarcerations have had an important impact on their level of aggression and overall temperament. In all cases, participants reported being more angry, aggressive, and impulsive than prior to their imprisonment:

There's no question that I had to learn to be tougher, harder. Without a doubt, I became more aggressive, more angry. It doesn't take much for me to blow up... [Before my incarceration] I was more patient, and it would take me a lot more to get angry. But now, it doesn't take anything. (Jason)

Intolerance of Injustice

Upon release from imprisonment, most prisoners experience a period of readjustment, in which they find new means to cope in society and adapt to increasing social and familial demands. Consistently found among the interviewees was an increasing intolerance for injustice. Specific incidents where an individual's rights were not respected or where the outcome of a situation was considered unfair had a profound effect on several of these men. The experience of wrongful conviction and imprisonment seems to have instilled in them a profound cynicism and mistrust regarding the fairness and legitimacy of authority

figures. This appeared to affect various aspects of their lives, whether it was an injustice perpetrated against themselves or against others. Sam describes this heightened sensitivity:

Well it's made me less tolerant of a number of things, including injustices and bureaucracies...so... I still, you know, its pretty emotional issue for me, I still react when I read about injustice. I have a heightened sense of awareness, I'm a little hypersensitive to somebody getting screwed around by the justice system. (Sam)

Continued Sense of Imprisonment Upon Release

Being wrongfully incarcerated has had a considerable effect on the respondent's behaviour, perspectives, and circumstances. However, in spite of being released from prison, many respondents do not feel that they are truly 'free,' and continue to feel constrained by a sense of imprisonment that prevents them from leading a normal or productive life:

When I'm asked how much time I did... I believe that I've been in prison for decades psychologically. (Max)

For Mark, seemingly simple daily tasks appear to take on enormous significance, often inciting panic and a self-consciousness concerning his former status as a prisoner. He describes an incident buying groceries:

My wife wasn't feeling well that day, and she asked me to go run an errand. I took the car and I went to [city], to run an errand. I was panicking. I was there with the [grocery] basket and I felt like everyone was staring at me. I wasn't yet pardoned. I was only freed [from prison]. I still had to report to a probation officer...I still felt like a prisoner. (Mark)

However, in spite of efforts to hide their pasts, many were unable to do so and were forced to live with the negative consequences. Mark, for example, was unable to escape the label and vilification associated with being a sex offender:

The label of 'rapist' follows you. Even if you were to dye your hair black and you'd have darker skin when you get out. Whether you like it or not, the label 'rapist' always comes out, because there's always someone, somewhere, whether it be a guard or a prisoner, who has seen you and who passes along the message (Mark).

When I would go out for a short walk... I'd get scared when [my family] locked the doors on me. When I hear the 'click' of a door that shuts loudly, like a prison door, I turn around and jump. It's lessened somewhat, but it's still there. I can be in the middle of shaving and I get a flash of something that happened inside [prison]...it comes back to me. So you have flashes every now and then. Sometimes when I'm sleeping, I'd dream that I was in prison. I'd wake up in a panic. (Jason)

Regardless of their newfound 'freedom' through exoneration, respondents continue to suffer upon release. Clearly, adaptation to life on the outside is fraught with painful, psychological difficulties.

POLICY RESPONSES: POST-CONVICTION EXONERATION

When a wrongful conviction has occurred, the wrongly convicted have few levels of recourse available to them in order to rectify the miscarriage of justice. Presently, the methods of redress include conviction review through the *Criminal Code*, commissions of inquiry, and compensation. Conviction review, under section 696.1 of the *Criminal Code*, allows individuals who maintain that they have been wrongly convicted to apply for a review of the circumstances of their case and conviction. This is undertaken through the Criminal Conviction Review Group of the Department of Justice Canada, which is staffed by legal counsel. The criteria for review require that individuals must have exhausted all appeals through the courts and that there are *new matters of significance* not previously considered by the courts. Given these strict criteria, few reviews are completed in any given year and the process is not only lengthy but quite costly.

Commissions of inquiry are also considered a means of redress for miscarriages of justice. In theory, they have been used towards this end, but in practice they are not particularly accessible as they tend to occur infrequently, take many years to complete, are only available at the behest of provinces, and to date have been restricted to high profile cases. Such commissions are chaired by seasoned judges and involve investigations that result when questions raised concerning the administration of justice are of sufficient public importance or concern to justify an inquiry. To date, three commissions of inquiry have occurred in Canada to address the circumstances surrounding miscarriages of justice, and at the time of writing this article, two more are in progress.^[4] The recommendations that emanate from these inquiries generally address police and prosecutorial practices and how to prevent such miscarriages from occurring in the future. However, the extent to which provincial governments have implemented them into criminal justice practice is less clear.

The final means of recourse involves financial compensation to individuals who have been victims of miscarriages of justice. The Canadian government adopted a set of federal-provincial guidelines in 1988, which assign the necessary conditions for compensation to be awarded to the wrongfully convicted and imprisoned and address the rationale for compensation, the conditions of eligibility for compensation, and the criteria for quantum of compensation. Nonetheless, the awarding of compensation is far from automatic and is a small consolation for the devastation to family, credibility, livelihood, and mental health engendered by a wrongful conviction.

POLICY IMPLICATIONS: PREVENTING MISCARRIAGES OF JUSTICE

Earlier this year, the Department of Justice Canada released a document entitled *Report on the Prevention of Miscarriages of Justice (2005)* which contains a comprehensive set of recommendations aimed at preventing future miscarriages of justice. It outlines preventive practices that specifically address the factors repeatedly found to contribute to wrongful convictions, including tunnel vision, eyewitness identification and testimony, false confessions, in-custody informers, DNA evidence, forensic evidence, and expert testimony. These policy recommendations are, without question, an important first step towards a more transparent and fair criminal justice process. What is needed is further study as to how these recommendations can be implemented in everyday criminal justice practices, as well as their impact on the wrongfully imprisoned. As our research has highlighted, given the profound long-term psychological, social, and economic implications of wrongful convictions — both for the wrongfully convicted and their families — greater attention to prevention and to meeting the needs of those implicated is crucial to assuring justice at all levels.

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2. Trafficking in Persons in Canada: The Need for Research

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PROBLEMS AND RESPONSES

Trafficking in persons involves the recruitment, transportation, or harbouring of persons for the purpose of exploitation and may occur across or within borders. Traffickers use various methods to maintain control over their victims, including force, and threats of violence. Victims are forced into prostitution or forced to work in quarries and sweatshops, on farms, as domestics, as child soldiers, and in many other forms of involuntary servitude. Trafficking in persons is a multi-dimensional problem, encompassing aspects of migration, human rights, gender equality, and transnational organized crime.

Trafficking in persons, in particular the trafficking of women and children, has been growing rapidly in the past decade and has become an issue that requires attention in Canada and internationally. The U.S. Department of State (2004) estimates that 600,000 to 800,000 people are trafficked across international borders each year, with over half of all victims trafficked for sexual exploitation. Domestically, the RCMP (2004) estimates that each year approximately 800 people are trafficked into Canada and 1,500 to 2,200 persons are trafficked through Canada into the United States. Trafficking in persons often involves extensive organized crime networks and generates an estimated \$9.5 billion annually, making it the third largest illegal revenue stream in the world (U.S. Department of State 2004).

In response to the growing problem of trafficking in persons, the United Nations adopted various protocols including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)*, which obliges signatory nations, including Canada, to criminalize the organization, assistance, or participation in the trafficking of persons. The *Trafficking Protocol* also addresses the needs of victims and the importance of prevention.

Canada ratified the *Trafficking Protocol* in May 2002. In June of that same year, the adoption of the *Immigration and Refugee Protection Act* made trafficking in persons an offence. In addition, trafficking in persons is prosecuted through *Criminal Code* offences such as kidnapping, extortion, forcible confinement, conspiracy, and controlling or living off the avails of prostitution, as well as organized crime offences.

The approach adopted by the UN and the Canadian government to combat trafficking in persons, however, is the subject of considerable critique by international and national non-governmental organizations. It has been claimed that such strategies of repression not only fail to address the root causes of irregular migration but also obscure the labour exploitation of irregular migrants in host countries. Moreover, according to Bruckert and Parent (2004), trafficked persons are often subject to punitive intervention, and there are few commitments to meet their needs.

EXISTING RESEARCH

Despite the complexity of the problem and the need to understand it, there has been little research conducted in Canada on trafficking in persons, and most of the research that was done was funded by the federal government. In 2004, the RCMP produced the first assessment of the extent and scope of trafficking in persons in Canada. Although the report (Royal Canadian Mounted Police 2004) examines the issue from a Canadian law enforcement perspective, it helps to establish the parameters for defining trafficking in persons and acknowledges the urgent need for data collection.

In a literature review commissioned by the RCMP on trafficking in persons and organized crime, Bruckert and Parent (2002) pointed out that only limited material is available, and their analysis has largely been based on secondary data sources, such as research reports and journalistic sources. They also identified the main parameters of the issue and proposed areas in which future research is needed, including research on the various types of trafficking in persons, the interfaces between national legislation on the sex trade, the definition and assessment of the problem, and the means that have been proposed for combating it, and victims' needs at various stages of their experiences.

Their follow-up study (Bruckert and Parent 2004) further examined the issues surrounding trafficking in persons and the links to organized crime by analysing official documents and court cases and interviewing criminal justice representatives and sex trade worker advocates. It stressed the importance of attending to the complex interplay of all the factors that drive irregular migration and the social and labour needs of all persons regardless of immigration status or labour location.

Other research efforts in Canada have concentrated on women and children, the group most vulnerable to trafficking. Status of Women Canada supported three independent policy research projects on trafficking in women. One research project focused on the experiences and struggles of Filipino Mail-Order Brides in Canada (Philippine Women Centre of B.C. 2000). The second project explored the trafficking in women from Central and Eastern Europe to Canada, including the circumstances under which they came to Canada, their working conditions, and how they adapted to the sex trade (McDonald 2000). The third project analysed the legal framework governing the hiring of immigrant live-in caregivers under the Live-in Caregiver Program and the mail-order bride business (Langevin and Belleau 2000).

In 2004, the Department of Justice Canada released a report on trafficking in children in Canada (Langevin et al. 2004). It attempted to establish a foundation for a more in-depth multidisciplinary study on child trafficking in Canada by gathering preliminary information, locating both governmental and non-governmental organizations working on this issue, and identifying the experts who could develop and implement policies against child trafficking in Canada.

THE NEED FOR RESEARCH

While the interest in trafficking in persons has been growing and more research is being undertaken, there is still very limited information on the scale of trafficking in persons, its nature, its impact, and the most effective ways to control it. Studies in the United States have shown that law enforcement, social service providers, and legal advocates have gained most of their understanding about trafficking on a case-by-case basis (Free the Slaves and Human Rights Centre 2004), which is probably even more true in Canada.

First and foremost, there has been a lack of reliable information on the extent of the problem, such as the number of persons trafficked, the geographic distribution of trafficked persons, the number of trafficking cases detected, the number of traffickers charged, and the number of traffickers prosecuted, and the outcome. While limited data are collected and a coordinated national data collection strategy is in the developmental stages, methodologies could immediately be developed to produce sound estimates in order to identify the magnitude of trafficking in persons in Canada. For instance, effective estimates

could be developed using indirect indicators, such as the number and types of visas issued, the number of visas refused, the number of certain types of crimes linked to human trafficking, characteristics of refugee seekers, and the number of illegal border crossings.

Secondly, there is a limited understanding of the nature of trafficking in persons in Canada. More specifically, there is a need to distinguish between different types of trafficking; to obtain demographic and occupational information on both traffickers and consumers; to uncover the structure of the trafficking networks; to examine the nature and extent of Aboriginal people trafficked within Canada; to map trafficking routes starting from country of origin to country of destination, including transit countries, key entry points and movements within Canada; and to study the international perspective on trafficking in persons and the response to it.

Research needs to pay particular attention to the specific vulnerability and needs of children and women. At the same time, however, it is important to ensure that other forms of trafficking receive adequate attention. It is, therefore, necessary to study different types of trafficking operations and to distinguish between trafficking for purposes of sexual exploitation, forced labour, and organ removal. Emphasis should also be placed on Aboriginal people trafficked within Canada or to the United States, as anecdotal evidence suggests that they are rather vulnerable to becoming a victim of trafficking in persons in Canada.

Given the hidden nature of trafficking in persons, it is important to map out its routes and discover its patterns, which means identifying the origin of trafficked persons, the route taken to arrive in Canada, and their movement within Canada. It also means determining and distinguishing the role of Canada as a country of destination, transit, and origin. This will require an analysis of the databases that record such information from domestic and international organizations, assessing the degree to which it accurately identifies trafficking routes into North America and using whatever data are currently available to track movement within Canada.

The global nature of trafficking in persons means that one cannot conduct research on this issue in Canada with studies confined within the borders of Canada. On the one hand, efforts should be taken to understand trafficking in persons in source countries: the conditions that make people vulnerable, the ways in which recruitment occurs, and the kind of outreach that helps victims. Such information from source countries would help develop a coordinated and effective prevention strategy. On the other hand, studying the experiences of destination countries would allow Canada to synthesize information from a broad range of perspectives and to develop effective strategies by building on the knowledge and insight from other countries.

Thirdly, our understanding of the needs and experiences of trafficked persons is insufficient at present. It is essential to identify the following: the process by which victims of trafficking in persons are recruited and what makes them vulnerable; the characteristics of victims (e.g., age, ethnic background, sex); how they enter Canada; where they live and how long they stay; their living and working conditions; their needs and how these needs are being met; and how they return to their source countries or integrate into Canada as survivors.

Assessing the needs of the victims, the barriers to accessing services, and the extent that existing services meet victim needs would provide a basis to develop more responsive and effective programs to ensure that the needs of trafficking victims are met. It is necessary to establish how the needs of trafficking victims differ from other victims of crime and to discover the central barriers they face in securing support and assistance. For example, if indeed the majority of trafficked persons come from poor countries and often arrive as illegal immigrants, it is imperative to comprehend the combined effects of not having legal status to access services, not understanding the Canadian criminal justice system, and facing linguistic and cultural barriers. Moreover, research should be conducted to determine the follow-up care needed for survivors who choose to return to their countries of origin.

Finally, research is needed to support the work of frontline workers and NGOs. It is necessary to understand how trafficking cases/victims are identified and in which economic sectors trafficking in persons tends to occur, so that law enforcement and federal agencies can target activities and resources where they are most effective. It is also essential to evaluate the effectiveness of legal reforms and policy changes, to monitor their implementation, and to identify effective practices as well as barriers.

Many NGOs have responded to trafficking in persons by offering direct services to trafficking victims whom they have encountered. Their needs and the obstacles they face in providing critical services to victims should be examined. Knowing the barriers to providing services to trafficking victims and the assistance service providers need would help in developing strategies to improve their responses to the needs of trafficking victims. Furthermore, evaluation of current policies and practices in responding to trafficking in persons should be conducted in order to identify best practices. Thus, tools can be developed to assist frontline workers in identifying victims and providing appropriate services as well as to aid in the prosecution and conviction of traffickers.

CONCLUDING REMARKS

Both immediate and long-term policy research need to be undertaken to address the knowledge gap in trafficking in persons. The issue of trafficking in persons should be treated as a series of interrelated steps along an extended continuum, which includes all stages in trafficking (i.e., recruitment, transit, destination, recovery), which means that an emphasis should be placed on mixed-methods research that engages multi-disciplinary teams. Such research would help to develop or improve legal instruments and operational policies/practices to more effectively direct preventative strategies, target law enforcement efforts, provide assistance to the victims and help them to recover and reintegrate into society.

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3. Structuring Judgments about Spousal Violence Risk and Lethality: A Decision Support Tool for Criminal Justice Professionals

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INTRODUCTION

Intimate partner violence continues to be a serious problem in Canada, accounting for at least one quarter of all violent crimes reported to police (Canadian Centre for Justice Statistics 2003). As a result of numerous high-profile intimate partner homicides, law enforcement officers are under increased pressure to conduct systematic assessments to determine whether people who are suspected of intimate partner violence pose a high risk of serious or life-threatening violence.

The two types of decision support tools that have been developed to help criminal justice professionals conduct risk and lethality assessments in cases of intimate partner violence are actuarial tools and structured professional judgment (SPJ) guidelines. Actuarial tools are statistical algorithms or tick-box checklists designed to predict an offender's future criminal behaviour on the basis of case history information. The key strength to this approach is that it improves upon the poor reliability and validity of intuitive or unstructured professional judgment (Grove and Meehl 1996; Quinsey et al. 1998). In Canada, this approach was used by the Ontario Provincial Police to develop the Ontario Domestic Assault Risk Assessment, or ODARA (Hilton et al. 2004). However, actuarial tools have at least four major limitations. First, evaluators cannot take into account unique, unusual, or case-specific factors. Second, although actuarial tools give the appearance of objectivity and precision, their interrater agreement and predictive accuracy is far from perfect. Third, actuarial tools do not directly guide decisions about case management strategies—that is, steps that could be taken to prevent future violence. Finally, no actuarial tests exist that can be used to assess risk for life-threatening intimate partner violence.

SPJ guidelines are "how-to" manuals that attempt to ensure that risk assessments reflect current theoretical, professional, and empirical views of intimate partner violence. They specify the risk factors that should be considered at a minimum in every case and make recommendations for gathering information, communicating opinions, and implementing case management strategies. In Canada, this approach was used by the British Columbia Institute Against Family Violence to develop the Spousal Assault Risk Assessment Guide, or SARA (Kropp et al. 1994, 1995, 1999). SPJ guidelines have been popular in the corrections field for many years, demonstrating considerable success in the prevention of

general criminality (e.g., Andrews and Bonta 2003). One major limitation of SPJ guidelines is that they are subjective in nature, relying on the exercise of discretion. There is evidence, however, suggesting that the interrater agreement and predictive accuracy of decisions made using SPJ guidelines such as the SARA is equal to that of decisions made using actuarial tools (Douglas and Kropp 2002; see also Belfrage 1997; Douglas and Webster 1999; Grann and Wedin 2002; Hanson and Morton-Bourgon 2004; Kropp and Hart 2000). Another major limitation is that use of SPJ guidelines places a relatively heavy burden on users in terms of the availability of time, technical expertise, and case history information. For example, use of the SARA requires detailed information about the mental health of the offender.

In our view, the SPJ guideline approach is more appropriate than the actuarial approach when conducting intimate partner violence risk and lethality assessments. Principles of natural justice, as well as those enshrined in Canadian constitutional, statutory, and common law, place a heavy burden on those who make decisions that affect the life, liberty, and security of citizens. On the one hand, these decisions must not be arbitrary or discriminatory; the rationale underlying them must be clear, well reasoned, and reasonable. But on the other hand, the decision-making process must allow for some flexibility to reflect the uniqueness and totality of circumstances in the case at hand. With funding from the Department of Justice Canada, we developed SPJ guidelines for intimate partner violence risk assessment that could be used easily by police and other criminal justice professionals who may have little access to detailed information about the mental health of offenders. We called this new tool the Brief Spousal Assault Form for the Evaluation of Risk, or B-SAFER (Kropp and Hart 2004; Kropp et al. 2004).

DEVELOPMENT OF B-SAFER

The development process included three activities. First, we conducted a comprehensive review of the literature regarding spousal violence and spousal violence risk assessment. We also updated this review continuously during the project to keep abreast of new developments in the field. Second, together with our colleagues David Cooke and Christine Michie from Glasgow Caledonian University, we statistically analyzed existing data to identify possible redundancy among the 20 risk factors in the SARA. Third, we pilot tested the SARA for use by police in Sweden to determine the feasibility of assessing the 20 risk factors.

Based on the results of these activities, we developed a B-SAFER worksheet and user Manual. The B-SAFER comprises 10 risk factors. There are 5 risk factors related to the perpetrator's history of spousal violence:

1. serious physical/sexual violence;

2. serious violent threats, ideation, or intent;
3. escalation of physical/sexual violence or threats/ideations/intent;
4. violations of criminal or civil court orders; and
5. negative attitudes about spousal assault.

In addition, there are 5 risk factors related to the perpetrator's history of psychological and social functioning:

1. other serious criminality;
2. relationship problems;
3. employment and/or financial problems;
4. substance abuse; and
5. mental disorder.

The B-SAFER also allows evaluators to identify unique case-specific risk factors. In addition to making ratings of individual risk factors, evaluators make a series of summary judgments regarding risks posed by the perpetrator.

EVALUATION OF THE B-SAFER

We pilot tested the B-SAFER for use by police in Canada and Sweden (Kropp and Hart 2004). In Canada, six different police agencies from five different cities forwarded a total of 50 cases. In Sweden, the Swedish National Police forwarded a total of 283 cases. In addition to completing the B-SAFER, police in Canada and Sweden indicated the management strategies they used for each case. Police in Sweden also provided follow-up information concerning recidivism (i.e., new contacts with police related to intimate partner violence). Finally, 11 police officers in Canada provided detailed feedback.

The statistical analyses of Canadian and Swedish cases yielded several major findings. First, most of the B-SAFER risk factors could be evaluated in a given case. In fewer than 10% of cases was a risk factor unable to be evaluated due to missing information. This suggests that the B-SAFER includes relevant risk factors present in spousal assault cases and that the tool can be coded easily by police officers in the course of routine investigations. Second, overall or summary ratings of risk were diverse. This suggests that police officers were able to use the B-SAFER coding instructions to make discriminations among perpetrators. Third, there was limited association between B-SAFER ratings and recommended management strategies, and there was substantial variability both within and among officers in their recommendations regarding management. This suggests that police officers' recommendations regarding case management were influenced by their judgments of risk; both the presence of individual risk factors and overall level of risk. Finally, both judgments of risk and case management strategies were related to recidivism

among men being investigated for complaints of intimate partner violence in Sweden. This suggests that the B-SAFER has predictive validity and may be helpful in guiding decisions about a case.

The feedback obtained from police officers was positive. Most officers found the tool helpful and easy-to-use. Some officers recommended or supported agency or even province-wide implementation of the B-SAFER in release decision making. The officers also offered suggestions for improving the B-SAFER.

SUMMARY AND CONCLUSIONS AND RECOMMENDATIONS

We developed a tool based on the SARA that criminal justice professionals can use to assess risk for spousal violence, which we called the B-SAFER. The B-SAFER shares two important strengths with the SARA. First, the B-SAFER uses a structured professional judgment or structured discretion approach that is appropriate for criminal justice contexts. Second, the content of the B-SAFER is firmly grounded in the professional and scientific literatures on spousal violence. But the B-SAFER also has two important advantages over the SARA when used in some criminal justice contexts. First, the B-SAFER is shorter in length than is the SARA, and so is less resource intensive to administer. Second, the content of the B-SAFER includes fewer items and less technical jargon related to mental disorder, and so requires less expertise to use.

Based on our evaluation efforts to date, we conclude that the B-SAFER is an appropriate and valuable tool that can be used by law enforcement agencies. Police officers found the B-SAFER helpful and easy to use in routine investigations of spousal assault complaints. In addition to helping them assess risks, the B-SAFER helped police to make risk management decisions. We also recommend the development of software to assist in the administration of the B-SAFER. According to the police officers who participated in the pilot testing, the availability of software that helps to make their jobs easier would greatly increase the likelihood that they will routinely use the B-SAFER. Similar software already has been developed for other risk assessment procedures, including the SARA. Finally, we recommend the development of training curricula, and continued research on the use of the B-SAFER in Canada. Further evaluation should examine the interrater and test-retest reliability of the B-SAFER, as well as the impact of the B-SAFER on the safety of victims of spousal violence.

Our detailed report of the development and evaluation of the B-SAFER is available from the Research and Statistics Division, Department of Justice Canada. The B-SAFER *Worksheet* and *User Manual* are available from Proactive Resolutions (Telephone: 1-877-585-9933; or www.proactive-resolutions.com).

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[2]

This paper has been partially adapted from Denov and Campbell (2003, 2005) and Campbell and Denov (2004).

[3]

In order to ensure confidentiality, fictitious ids have been used for the respondents mentioned in this article.

[4]

The Marshall Inquiry, which emanated from the wrongful conviction of Donald Marshall Jr., had a broad mandate to review and assess the administration of criminal justice in Nova Scotia and to 'make recommendations' to help prevent such tragedies from happening in the future (Royal Commission, 1989). The mandates of the other two commissions were similar. Both the Kaufman Inquiry, surrounding the wrongful conviction of Guy Paul Morin, and the Sophonow Inquiry, which examined the wrongful conviction of Thomas Sophonow, were mandated to examine police investigations and criminal proceedings that may lead to wrongful convictions as well as to make recommendations regarding the administration of criminal justice. At the time of writing this article, the inquiry into the wrongful conviction and imprisonment of David Milgaard is taking place in Saskatchewan, as is the Lamer Inquiry into the wrongful convictions of Ronald Dalton, Randy Druken, and Gregory Parsons in Newfoundland.

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