

International Centre for Comparative Criminology

Postdoctoral Fellowship 2016

Research Project

Judging Deviance: The Québec Judiciary and History of Internet Child Luring

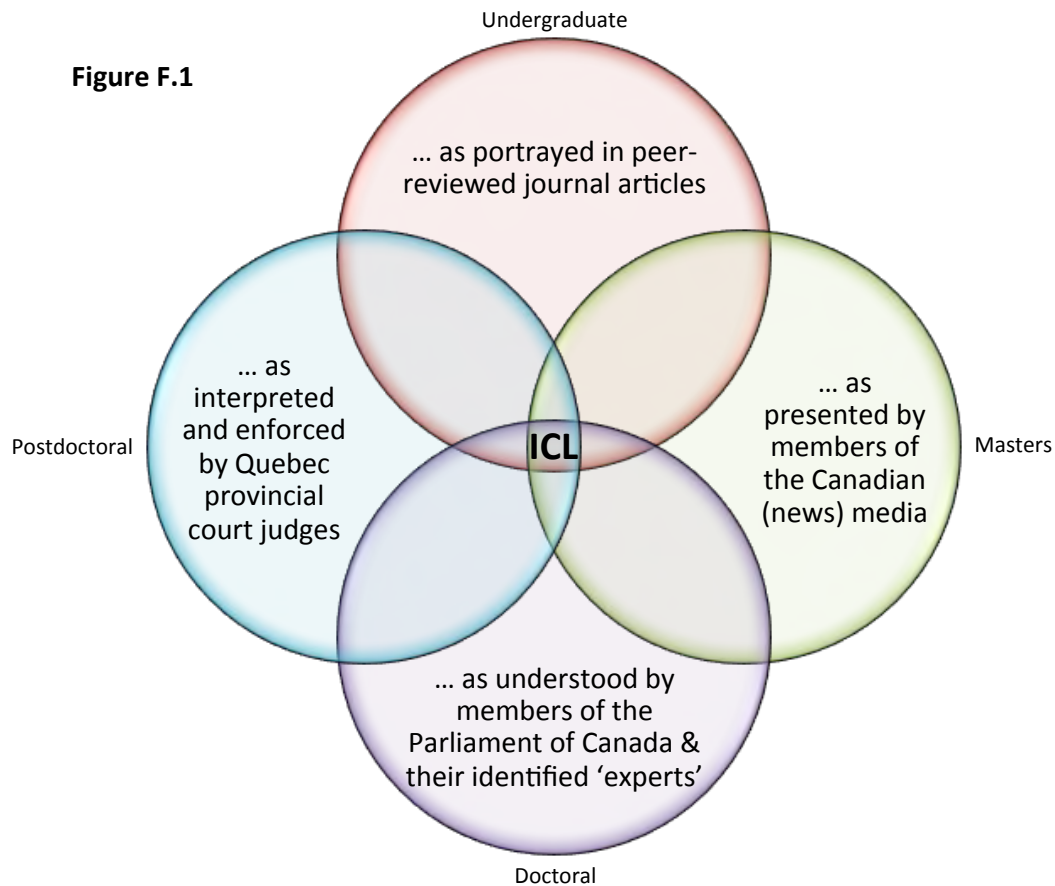
The project outlined below builds on nearly ten years of research, at three different levels of academic study, and aims to answer the following question: *how have judges presiding over Québec provincial courts interpreted and enforced section 172.1 (Luring a Child) of the Criminal Code of Canada?* The project is designed to provide a more detailed understanding of persons charged under the authority of the *Criminal Code's* Luring a Child provision, the circumstances of the offence, and how Québec provincial court judges interpreted this information, rendered related decisions, and, in so doing, enforced this particular area of Canadian criminal law.

Having initially researched Internet Child Luring's (ICL) portrayal in peer-reviewed journal articles for my 4th year undergraduate major research paper (*The 'Reality' of Internet-Facilitated Child Sexual Abuse*), I studied how members of the Canadian news media presented the same happening for my masters thesis. Titled *Constructing 'Reality': The Portrayal of Internet Child Luring by Toronto-Based Newspapers 1998-2008*, this work was nominated for the University of Ottawa's *Commission on Graduate Studies in Humanities Prize* in 2009 and, in part, published in the 2014 edition of *Ambigua* (Greco & Corriveau, 2014).

At the doctoral level, I continued to study the ICL phenomenon. Here I was interested in how members of the Parliament of Canada understood the threat posed by persons who used or were believed likely to use a computer system to facilitate the sexual abuse of a child. I was also interested in how individuals identified by parliamentary committees as 'experts' or 'persons in the know' understood the same threat. During this time, my work with University of Ottawa Professor Patrice Corriveau on the topic of online child sexual abuse was recognized by the Institut national de santé publique du Québec. The government organization asked that we write a topic related Thematic Sheet to post on its public website (Corriveau & Greco, 2012).

By building on the above body of work, the proposed postdoctoral project is designed to provide a more expansive understanding of the ICL phenomenon. When completed and compared alongside my previous research (see Figure F.1), the work will allow for a mapping of ICL as presented or interpreted by some of the most notable actors in the development and enforcement of public policy and state legislation. It will also help guide the development of research relating to the federal government's ability to regulate provincial courts, news media's 'role' in managing sexuality, the appropriateness of mandatory sentencing for child sex

offenders, online policing and policy development, and the sexual behaviour of young persons and adults.



The project will be conducted under the supervision of Université de Montréal Assistant Professor and regular CiCC (Centre international de criminologie comparée) researcher Francis Fortin. It will take place over a 12-month period beginning in January 2016.

Issue

The Internet's widespread public dissemination has been accompanied by concern over its content and possible misuse, particularly with regard to the sexual exploitation of children (Baumgartner, Valkenburg, & Peter, 2010; Jenkins, 1998). While most of the initial trepidation seemed to revolve around the availability of child pornography or images of child sexual abuse, concern has more recently centered on the Internet's ability to enable physical acts of sexual aggression (Shannon, 2008).

'Online grooming' (Martellozzo, 2012), 'cybergrooming' (Wachs, Wolf, & Pan, 2012), 'online solicitation' (Seto, 2013), or ICL is the act of using "a computer system" to communicate "with a person", believed to be under the age of sexual consent, in order to facilitate "the commission of" a sexual offence "with respect to that person" (*Criminal Code*, R.S.C., 1985, c. C-46, s. 172.1). The behaviour was declared unlawful in June 2002, following media disquiet about its uncovering and the royal assent of Bill C-15A (Greco & Corriveau, 2014). Since section 172.1's introduction, the provision has been amended on four separate occasions (Bill C-277 in 2007, C-2 in 2008, C-10 in 2012, and C-36 in 2014). Each amendment was argued by members of Parliament as being necessary to ensure the protection of children. In most cases, ICL's rate of occurrence was also presented as increasing (Greco, 2015).

While the number of ICL incidents reported to law enforcement officials and tried in adult criminal court has risen over the offence's 13-year history (Loughlin & Taylor-Butts, 2009; Department of Justice Canada, 2014), "only a few studies of online solicitation offenders have been conducted to date" (Seto, Wood, Babchishin, & Flynn, 2012, p. 320). The same can be said of the ICL generally. The phenomenon remains underexplored and related literature scant, particularly when compared to the study of online child pornography and/or communities advocating the sexual abuse of children (Babchishin, Hanson, & VanZuylen, 2015; Beech, Elliott, Birgden, & Findlater, 2008; Holt, Belvins, & Burkert, 2010; Jenkins, 2001; Taylor & Quayle, 2003; Tremblay, 2002). That said, the number of texts devoted to aspects of this most recent incarnation of child sexual abuse has grown. Wolak and Finkelhor (2013), for example, studied the difference between acts of ICL in which the offender was known to the victim prior to their online meeting and those in which he/she was not. They found that offenders who met their victims online "were less likely to have criminal backgrounds and more likely to use online communications to deceive victims." (Wolak & Finkelhor, 2013, p. 741) In the following year, Bergen, Ahto, et al. (2014) would conclude that the use of identity deception did not significantly differ between those who used the Internet to solicit adults for sex and those who used the medium to solicit children.

The work of Wolak and Finkelhor (2013) and Bergen, Davidson, Schulz, Schuhmann, and Johansson (2014) is indicative of advancements in the study of ICL and the push by researchers to situate this particular form of offending within and in relation to wider child sexual abuse discourses. At the same time, the works signify existing gaps in the phenomenon's study; neither text makes use of court documents or Canadian data. While Landini's (2015) analysis of ICL cases in the province of Ontario stands as a move towards closing these gaps, not a single study has examined how Québec provincial court judges interpret and enforce section 172.1 of the *Criminal Code of Canada*. Considering the central role of provincial court judges in the administration of justice and the ability of each province to regulate its own judicial system, the proposed project will stand as a navigational pillar for future research on the topic of ICL within the province of Québec. The Cour d'appel du Québec's recent decision to allow the province's Bar to challenge the constitutionality of mandatory minimum sentences in cases involving, among other

things, acts of ICL (Dib, 2015), further emphasizes the importance of this research and its timely introduction.

Objectives

As aforementioned, the aim of this project is to understand how judges presiding over Québec provincial courts interpreted and enforced section 172.1 of the *Criminal Code of Canada*. Because this is a broad/general aim, it seems best that it be divided into three objectives that, in turn, may be represented by three questions.

1. *What are the offender characteristics and situational factors of section 172.1 cases heard in Québec provincial courts?*

Assuming that it is important to first identify the makeup or features of ICL cases, this prefatory objective is to construct comparable histories for instances in which persons charged under the authority of section 172.1 appeared (in person or via a legal representative) before a Québec provincial court judge. Information concerning the accused or person charged (age, sex, previous convictions, etc.), relevant situational factors (such as the possible involvement of undercover police operations) and, where applicable, victim characteristics, will be recorded by way of an open-ended questionnaire or matrix applied to the written decisions of Québec provincial court judges. This descriptive information will allow for the behaviour of identified persons to be charted and related questions (e.g. what, if any, noted role did pornography play in the offence's commission? How and at what point in the relationship's development were law enforcement officials notified?) generated and answered. Comparisons with the findings of national and international studies on child sexual abuse may then be conducted (Cotter & Beaupré, 2014; Martellozzo, 2012; Briggs, Simon, & Simonsen, 2011; Perreault, 2011; Slane, 2011; Choo, 2008; Malesky, 2007).

2. *What were the verdicts, sentences, and related justifications provided/handed down by Québec provincial court judges?*

This objective is most directly adjoined to the project's general aim. A second open-ended matrix will be applied to the same dataset, so as to chart the verdicts, sentences, and related justifications provided by Québec provincial court judges. Again, the open-ended nature of the questionnaire will allow the data to nuance and generate questions to the answers it provides (e.g. were convicted persons perceived to be suffering from a disease or mental illness? Was the goal of sentencing to punish and/or rehabilitate?). The case histories and characteristics resulting from the first objective will help further contextualize these questions and answers, as well as identify (in)consistencies in verdicts and sentencing decisions. Special attention will be paid to any generalizable shifts in the rate of conviction and/or justifications for sentencing following the royal assent of Bill C-277 (which increased the maximum custodial sentences adjoined to section 172.1), Bill C-2

(which set 16 as the new age of consent), Bill C-10 (which introduced mandatory minimum sentences), and the Supreme Court of Canada decisions in *R. v. Legaré*, [2009] 3 SCR 551 and *R. v. Levigne*, [2010] 2 SCR 3. Both of these decisions clarified the behaviour that can be said to constitute an act of ICL and, inline with the federal government's amendments to section 172.1, attention to these key points in the offence's history will allow for a better understanding of any emerging trends. When joined with the research of others (Du Mont, 2003), the information obtained here will also allow for a comparison of sentences across differing forms of sexual abuse.

3. What were the arguments relating to and/or interpretations of section 172.1 put forth by law enforcement officials, crown prosecutors, and defence attorneys?

So as to further contextualize the second objective and build upon the first, the trial transcripts associated with a sample of ICL cases heard in the Palais de justice de Montréal will be assessed to see how law enforcement officials, crown prosecutors, and defence attorneys interpreted and/or presented arguments relating to section 172.1. A third open-ended matrix will allow for a descriptive analysis of the arguments put forth, while again permitting the data to introduce the questions (e.g. what were the duration of custodial sentences sought by crown prosecutors? How did defence lawyers characterize the young persons alleged to have been victimized?) for which answers are provided. Although this information will not be generalizable to the wider province, it will provide a glimpse into how other members of the Québec justice system understood the phenomenon of ICL and offence of Luring a Child. Comparisons with the project's larger (judicial) dataset and suggestions for future research will also be made.

Methodology

Data Collection

The Canadian Legal Information Institute's (CanLII) computerized database will be used to generate an initial listing of cases and corresponding judicial decisions that include a section 172.1 charge and were tried in a Québec provincial court (i.e. the Cour du Québec and/or the Cour d'appel du Québec) between June 2002 and January 2016. After manually excluding false positives and decisions not related to criminal matters, the search will again be conducted using SOQUIJ (Société québécoise d'information juridique) and CAIJ (Centre d'accès à l'information juridique) databases. Finally SOQUIJ's 'database for professionals' (i.e. Recherche juridique) will be used to fill in any missing decisions (relating to sentencing, leave to appeal requests, etc.) and access information contained within the adjoining Plumitifs (i.e. reports containing the legal histories of persons who have appeared before a Québec court judge).

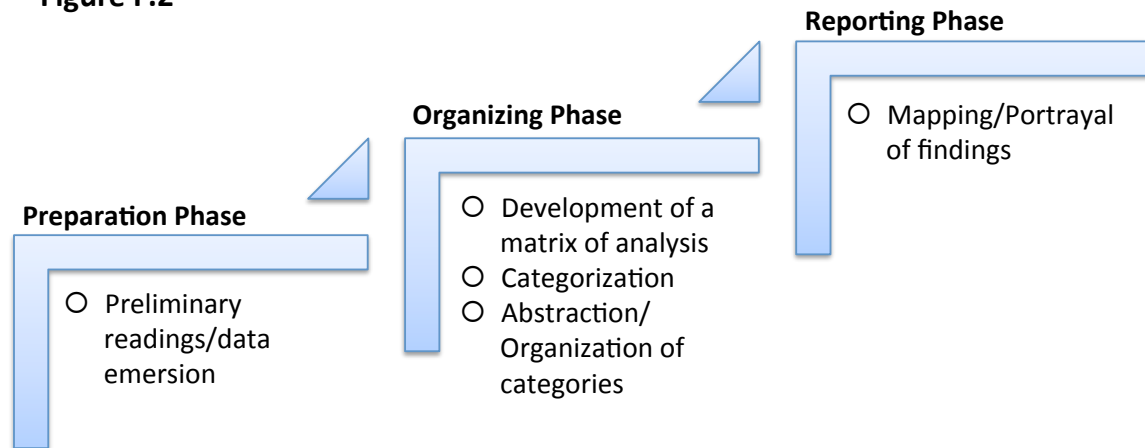
Transcripts of ICL cases heard in the city of Montréal will be obtained from the Montréal city courthouse. Though the Palais de justice de Montréal cannot

guarantee the availability of transcripts for *all* court proceedings, docket or file numbers associated with cases identified in the above search will be used to randomly select from those that were tried in the province’s most populated city and for which a transcript of the proceeding is available.

Data Analysis

Considering the analytical orientations outlined by Halfpenny (1979) and others (Bryman, 2001; Silverman, 2000; Bouma & Atkinson, 1995), as well as Neuendorf’s (2004) suggestion for studying “a carefully selected set of messages”, the analytical approach to be here adopted is a *qualitative* (Krippendorff, 2013; Schreier, 2012) or *qualitative inductive* approach to content analysis (Elo et al., 2014). A soft-constructionist or post-positivist stance shall be used to theoretically situate the three above mentioned open-ended or unconstrained matrixes that will in turn help focus the analysis of court documents¹. A variation of Elo and Kyngäs’s (2008, p. 110) approach to unconstrained deductive qualitative content analysis will then be employed (see Figure F.2).

Figure F.2



Unconstrained Deductive Qualitative Content Analysis

Once the above qualitative approach has been completed, the findings will be represented numerically. Using the royal assent of Bills C-277, C-2, and C-10, as well as the two aforementioned Supreme Court of Canada decisions, as transitional markers, statistical analyses will be conducted to identify any significant shifts in the verdicts, sentences, and/or related justifications handed down by Québec

¹ Post-positivism or neo-positivism should here be understood as a research paradigm which “hold that only partially objective accounts of the world can be produced, for all methods for examining such accounts are flawed.” (Denzin & Lincoln, 2005, p. 27; see also Phoenix et al., 2013; Schurr, 2007) This can be equated to the soft-constructionist position taken by Silver (2008), Loseke (2003), and Goode and Ben-Yehuda (1994).

provincial court judges. In addition to providing a more detailed mapping of the cases tried in Québec, this portion of the analytical process will help depict the effect of upper court rulings and legislative amendments on judicial Luring a Child-related decisions at the provincial level. A comparable qualitative/quantitative method is used by Wright (2007; see also Jernbro, Eriksson, & Janson, 2010; Connolly & Read, 2006) in her analysis of *Judicial Decision Making in Child Sexual Abuse Cases* heard within the province of Ontario.

Feasibility

Considering my experience researching the topic of ICL and Professor Fortin's expertise in the field of online child sexual abuse and cybercriminality (Fortin & Corriveau, 2015; Fortin, 2015; Fortin & Corriveau, 2013; Fortin & Lanthier, 2013; Corriveau & Fortin, 2011; Fortin, 2013a, 2013b; Goyette, Renaud, Rouleau, & Fortin, 2008; Fortin & Roy, 2007; Fortin & Roy, 2006), the proposed project will commence from an immensely advantageous position; our two person bilingual team is well aware of the project-related literature, and case law, and is thus able to clearly situate the Québec experience within wider national and international discourses.

The project itself is designed to accommodate the fellowship's 12 month timeframe and maximize productivity. With the exception of SOQUIJ's Recherche juridique (formally AZIMUT) and the transcripts of cases tried in the city of Montréal, the study's dataset is composed of publically available documents that are free to access via the Internet. The accessibility of the dataset, uniqueness/originality of its study, and the experience and expertise of the persons associated with the project will ensure the goals identified in the schedule below are realized without having to compromise the quality of the work produced.

Statement of Motivation

Why the CiCC?

There are a number of factors that make the CiCC the ideal community with which to carry out this project. In addition to Professor Fortin's involvement, the CiCC is comprised of energetic, well-published, researchers (e.g. Professors Jean Bérard and Chloé Leclerc of the Université de Montréal's École de criminologie) whose work has and, I am confident, will continue to allow for interesting comparisons with my own. The CiCC is also home to two of the province's best-known researchers in the field of sexual abuse and maltreatment (Professors Franca Cortoni and Jean Proulx). The ability to work alongside such a well-versed group of academics makes the CiCC an ideal place to conduct postdoctoral research. The focus of the CiCC's research and its physical location make this especially so in my case: my proposed project is focused on the province of Québec and city of Montréal; it is also rooted in both of the CiCC's Research Axes (Intervention, via its security theme, and Regulation, via its legal theme).

On a more personal note, I am also excited by the possibility of being able to continue working in a bilingual research environment, in a city I have long wanted to live in and explore.

Schedule

Table T.1 outlines the principle activities that will take place over the fellowship's 12-month period. These activities include the production of three scientific articles (two in English, one in French), three conference presentations (two in French, one in English), and two communications in CiCC activities.

Table T.1

	Postdoctoral Project	Other Academic Contributions
January – April 2016	<ul style="list-style-type: none"> Collection and analysis of data 	-
May 2016	<ul style="list-style-type: none"> Analysis of data (con't); Literature review for paper on objective part 1; Communicate initial findings in an activity of the CiCC 	Participate in the annual conference of Société canadienne de sociologie, Congrès des sciences humaines (Calgary, Canada)
June – July 2016	<ul style="list-style-type: none"> Analysis of data (con't); Write and submit (to <i>Deviant Behavior</i>) a paper related to objective part 1 	Participate in Congrès de l'Association internationale des sociologues de langue française (Montréal, Canada)
August 2016	<ul style="list-style-type: none"> Analysis of data (con't); Literature review for papers on objective part 2 and 3 	-
September – October 2016	<ul style="list-style-type: none"> Write and submit (to <i>Champ Pénal</i>) a paper related to objective part 2 	Participate in the International Journal on Criminology's conference: Crime, Criminals, Criminality, and Criminology (Washington DC, USA)
November – December 2016	<ul style="list-style-type: none"> Write and submit (to <i>Sexuality & Culture</i>) a paper related to objective part 3; Communicate project's results in an activity of the CiCC 	-

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