



Faculty of Law

Research Project on Human Trafficking

**Prosecuting Human Trafficking Offences in Canada: An
Analysis of the Provisions of the *Immigration and Refugee
Protection Act and the Criminal Code***

Lindsay E. Burgess

April 2014

Prosecuting Human Trafficking Offences in Canada: An Analysis of the Provisions of the
Immigration and Refugee Protection Act and the *Criminal Code*

Lindsay E. Burgess*

Table of Contents

I.	Introduction.....	1
II.	An International Commitment	3
i.	The Palermo Protocol	3
ii.	Strengths and weaknesses of the Palermo Protocol.....	5
III.	Human Trafficking Provisions of IRPA	6
i.	Border security sets the tone for new immigration legislation	6
ii.	Overview of the current provision	8
iii.	Canada’s first human trafficking charge, and acquittal, under IRPA	9
iv.	A constitutionally valid provision	11
v.	Canada’s first conviction under IRPA	12
vi.	Abuse of the system	13
vii.	Sentencing under IRPA.....	14
viii.	Other provisions of IRPA commonly used in trafficking cases.....	15
IV.	Human Trafficking Provisions of the Criminal Code.....	16
i.	Human trafficking becomes an offence under the Criminal Code	16
ii.	Overview of the current provision	17
iii.	Proof of fear as an impediment to laying charges and securing convictions	19
iv.	Transnational human trafficking and the Criminal Code.....	20
v.	Addition of “means” in an attempt to clarify the definition of exploitation.....	21
vi.	“Exploitation” is neither overbroad nor vague.....	22
vii.	Prosecutions under non-trafficking provisions of the Criminal Code.....	24
viii.	Sentencing of trafficking convictions under the Criminal Code.....	25
ix.	Mandatory minimum sentences for offences involving child victims	26
V.	Limitations in Prosecuting Transnational Human Trafficking	26
i.	Lack of victim support impedes prosecutions	26
ii.	Definitional differences: IRPA vs the Criminal Code	29
iii.	Historical problems in applying IRPA	30
VI.	Lessons from the Past Shape Solutions for the Future	32
i.	Awareness and better use of IRPA	32
ii.	Victim support	33
VII.	Conclusion	34
	Bibliography	35

* Lindsay E. Burgess is a second year law student at the University of Alberta. She would like to thank Professor Joanna Harrington for her direction of the University of Alberta Faculty of Law Research Project on Human Trafficking and for her dedicated assistance with this paper.

I. Introduction

Human trafficking involves the “acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them.”¹ The international community has recognized the seriousness of this crime by developing the *Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*.² This 2000 treaty, which Canada is a party to, creates a comprehensive definition of human trafficking that is the bedrock of the international effort to end this heinous crime. In honoring its obligation under this treaty, Canada has created specific human trafficking offences in the *Immigration and Refugee Protection Act (IRPA)* and the *Criminal Code*, the definition of the offence differing between the two.

Canada is a source, transit, and destination country for sex-trafficking and a destination country for forced labour trafficking.³ While trafficking for sexual exploitation has been the predominant form of human trafficking in Canada, the number of foreign victims trafficked for forced labour has been on the rise.⁴ Both transnational and domestic human trafficking are present in Canada. Transnational human trafficking requires the victim cross an international border in the process of being trafficked, the definition applying regardless of the victim’s immigration status and whether the border was crossed legally or illegally.⁵ In contrast, domestic human trafficking applies when all stages of the trafficking process occur within Canada.⁶ As of April 2012, over 90% of human trafficking convictions or cases before the courts involved

¹ United Nations Office on Drugs and Crime (UNODC), (2014) “Human trafficking and migrant smuggling,” <<http://www.unodc.org/unodc/en/human-trafficking/index.html?ref=menu>>.

² 15 November 2000, 2237 UNTS 319, 2002 Can TS No 25, in force 25 December 2003 [*Palermo Protocol*].

³ *Trafficking in Persons Report 2013* (Washington DC: US Department of State, June 2013) at 120 [*US TIP Report 2013*].

⁴ UNODC, *Global Report on Trafficking in Persons 2012* (New York: United Nations, 2012) at 63-64 [*UNODC Global Report 2012*].

⁵ *Human Trafficking in Canada* (Ottawa: RCMP Criminal Intelligence, 2010) at 8, online: <http://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-78-2010-eng.pdf> [*RCMP*].

⁶ *Ibid.*

domestic trafficking.⁷ This paper will focus on cases of transnational human trafficking, as the specific provisions under *IRPA* only apply to such.⁸

In 2010 it was acknowledged that Canada lacked a sufficient framework to accurately measure the extent of the human trafficking problem.⁹ The Royal Canadian Mounted Police (RCMP) identified that the clandestine nature of the crime, the reluctance of victims to come forward, the general misunderstanding of the definition of the crime, and the intermingling of statistics of other crimes, negatively impacted the reliability of Canadian human trafficking statistics.¹⁰ As of March 31, 2013, there have been 35 human trafficking convictions with 80 cases remaining before the courts involving charges under both *IRPA* and the *Criminal Code*.¹¹

Due to the hidden nature of the crime, conviction statistics, while useful, do not provide a complete picture of the extent of human trafficking.¹² Despite recognizing the need for reliable data on human trafficking victims,¹³ it was recently noted that Canada has failed to gather comprehensive statistics on the number of victims both assisted and identified.¹⁴

This paper will argue that, although lack of victim support currently impedes prosecutions under both pieces of legislation, the simpler definition under *IRPA* provides an attractive alternative to the *Criminal Code* provisions in the prosecution of transnational human trafficking offences. An overview of the *Palermo Protocol* will be provided, before moving into an analysis of the human trafficking provisions under *IRPA* and the *Criminal Code*. Limitations

⁷ *National Action Plan to Combat Human Trafficking* (Ottawa: Government of Canada, 2012) at 8 [*National Action Plan*].

⁸ *Immigration and Refugee Protection Act*, SC 2001, c 27 s 118(1) [*IRPA*].

⁹ Lucie Ogrodnik, Canadian Centre for Justice Statistics, “Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons” Crime and Justice Research Paper Series, Catalogue no 85-561-M, no 21 (Ottawa: Statistics Canada, 2010) at 5.

¹⁰ *RCMP*, *supra* note 5 at 8-9.

¹¹ *National Action Plan to Combat Human Trafficking: 2012-2013 Annual Report on Progress* (Ottawa: Government of Canada, 2013) at 4 [*National Action Plan: 2012-13 Progress Report*].

¹² UNODC *Global Report 2012*, *supra* note 4 at 68.

¹³ *National Action Plan*, *supra* note 7 at 20.

¹⁴ *US TIP Report 2013*, *supra* note 3 at 121.

of prosecuting transnational human trafficking under these provisions will be addressed and the paper will conclude with a look at the current solutions created to overcome these obstacles.

II. An International Commitment

In analyzing the human trafficking provisions under *IRPA* and the *Criminal Code* it is important to look at the development of the domestic legislation within the international context, particularly with respect to the *Palermo Protocol*. Ratifying on May 13, 2002, Canada was heavily involved in the development of the *Palermo Protocol*, seeing participation of several government bodies in the negotiations.¹⁵ This section will identify the key provisions and the strengths and weaknesses of the treaty.

i. The Palermo Protocol

The purpose of the *Palermo Protocol* is to prevent and combat trafficking in persons, protect and assist victims of trafficking, and to promote cooperation among States Parties in order to achieve these objectives.¹⁶ The definition of human trafficking is contained in article 3(a) and as Dr. Anne Gallagher AO has shown, can be broken down into three components:

1. An act of recruitment, transportation, transfer, harbouring or receipt of persons;
2. Using means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another; and

¹⁵ Jacqueline Oxman-Martinez, Jill Hanley & Fanny Gomez, “Canadian Policy on Human Trafficking: A Four-year Analysis” (2005) 43:4 *International Migration* 4 at 9.

¹⁶ *Palermo Protocol*, *supra* note 2 art 2.

3. For the purpose of exploitation, which at a minimum includes 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.¹⁷

A person cannot consent to exploitation when any of the above “means” are used.¹⁸ With this definition in mind, States Parties to the *Palermo Protocol* are required to criminalize human trafficking in their domestic legislation.¹⁹

Part II of the *Palermo Protocol* addresses matters relating to victims with article 6 providing guidance on victim assistance and protection.²⁰ Despite the fact that providing support for victims increases the chance they will cooperate with authorities in investigating and prosecuting trafficking perpetrators, these measures are non-obligatory.²¹ Also non-obligatory, article 7 provides that States shall consider implementing measures allowing victims to remain in the country.²² Trafficking and immigration law are seemingly at odds in some circumstances and this provision was a recognition that trafficking victims, who are likely in the country illegally (a fact more often than not exploited by the trafficking perpetrator as a measure of control), require special consideration from the immigration system.²³

As part of the mandate to prevent trafficking, article 11 addresses border controls, and there is an obligation for States Parties to strengthen such measures.²⁴ These provisions were included on the suggestion of Australia and Canada,²⁵ which is consistent with the conversations

¹⁷ Anne Gallagher, “Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis” (2001) 23 Hum Rts Q 975 at 986-987.

¹⁸ *Palermo Protocol*, *supra* note 2 art 3(b).

¹⁹ *Ibid* art 5.

²⁰ *Ibid* art 6.

²¹ David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols* (Oxford: Oxford University Press, 2007) at 339.

²² *Palermo Protocol*, *supra* note 2 art 7.

²³ McClean, *supra* note 21 at 343.

²⁴ *Palermo Protocol*, *supra* note 2 art 11.

²⁵ McClean, *supra* note 21 at 357.

surrounding immigration that were taking place in Canada at the time.²⁶ Article 10(2) sets out requirements for training of law enforcement and immigration officials with a focus on prevention, prosecution of traffickers, and protection of victims.²⁷

ii. *Strengths and weaknesses of the Palermo Protocol*

As discussed by Anne Gallagher, a leading expert on the international law of human trafficking, the creation of the *Palermo Protocol* was a significant development as it represented “the first serious attempt by the international community to invoke the weapon of international law in its battle against transnational organized crime” and placed the issue of trafficking “high on the international political agenda.”²⁸ The instrument creates a common understanding of trafficking to be incorporated into national legislation, which allows States Parties to cooperate more effectively in the fight against human trafficking.²⁹

There are, however, some serious limitations, most notably with respect to victim protection. Gallagher was critical of the lack of obligation for the protection of victims, with the weakness of the protection provisions seen as “likely to undermine its effectiveness as a law enforcement instrument.”³⁰ Border control was seen to be “at the heart of the Protocol.”³¹ This focus on the interception of traffickers fails to address how to identify trafficking victims, and protections cannot be afforded to victims if they are not identified in the first place.³²

In contrast, Professor David McClean, a leading writer in the field of international cooperation, viewed the protection provisions of the Protocol as a good starting point on which

²⁶ Further discussion will be found in section III(i), below.

²⁷ *Palermo Protocol*, *supra* note 2 article 10(2).

²⁸ Gallagher, *supra* note 17 at 976.

²⁹ *Ibid* at 1004.

³⁰ *Ibid* at 990-991.

³¹ *Ibid* at 994.

³² *Ibid*.

States Parties can build in developing their own legislation.³³ He notes that the lack of obligatory language with respect to victims was a matter of resources which most States either do not have, or “do not have the political will to find.”³⁴ Despite its limitations, the *Palermo Protocol* articulates baseline definitions for use as the starting point in addressing Canada’s own commitment to combatting human trafficking.

III. Human Trafficking Provisions of IRPA

In 2002, Canada created the first specific human trafficking offence under section 118 of *IRPA*.³⁵ This provision was created amidst national concerns over weak border security and this initial response to human trafficking did little to assist victims of the crime. Despite using a definition of human trafficking that is broader than that under the *Palermo Protocol*, there have been few charges and convictions under section 118 of *IRPA*.

i. Border security sets the tone for new immigration legislation

IRPA was the creation of Bill C-11, *An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger*.³⁶ A few significant events shaped the debate surrounding the new legislation. First, the arrival of irregular Chinese migrants in the summer of 1999 drew attention to Canada’s immigration and refugee laws.³⁷ Almost a year later, the Standing Committee on Citizenship and Immigration prepared a report addressing refugee protection and border security, making specific recommendations for dealing with human trafficking, including the creation of offences with significant penalties

³³ McClean, *supra* note 21 at 19.

³⁴ *Ibid.*

³⁵ *Supra* note 8 s 118.

³⁶ 1st Sess, 37th Parl, 2001, (assented to 1 November 2001), SC 2001, c 27 [Bill C-11].

³⁷ House of Commons, Standing Committee on Citizenship and Immigration, *Refugee Protection and Striking a Balance* (March 2000) at 1 (Chair: Joe Fontana).

under both the *Criminal Code* and *IRPA*.³⁸ It also recommended the detention of trafficking victims, an action seen to deter future trafficking by removing the financial underpinning of the operation.³⁹ The second matter to consider is timing. The second reading of Bill C-11 was held shortly after the September 11, 2001 terrorist attacks in the United States,⁴⁰ and in light of these attacks, Canada faced a significant amount of criticism of its weak immigration policies.⁴¹ Given this context and Canada's role in the negotiations of the *Palermo Protocol* with respect to border control measures, it is not surprising that border security was a focus of these debates.

During the debates, the Minister of Citizenship and Immigration indicated this new bill remained tough on the criminal abuse of the immigration system, especially with respect to the new trafficking provision, creating harsh new penalties for perpetrators of the offence.⁴²

Although there was support for a crackdown on traffickers, some were concerned that the bill provided for the automatic detention of victims,⁴³ while others noted these tough penalties will have no effect without the resources for implementation and enforcement.⁴⁴ Both of these concerns foreshadowed issues with the effectiveness of the newfound trafficking provisions under *IRPA*.

IRPA effectively tightened immigration channels by increasing security checks, increasing detention of those who could not prove their identities, increasing the use of deportation, and creating the first explicit criminal trafficking offences with correspondingly

³⁸ *Ibid* at 20.

³⁹ *Ibid* at 4-5.

⁴⁰ Parliament of Canada, *Debates of the Senate*, 37th Parl, 1st Sess, Vol 139 Issue 50 (19 September 2001) at 1520 (Jane Cordy).

⁴¹ Oxman-Martinez, *supra* note 15 at 12.

⁴² Parliament of Canada, *House of Commons Debates*, 37th Parl, 1st Sess, No 21 (26 February 2001) at 1525 (Hon Elinor Caplan).

⁴³ *Ibid* at 1625 (Madeleine Dalphond-Guiral).

⁴⁴ *Ibid* at 1545 (Inky Mark).

severe punishments.⁴⁵ However, while trafficking had been made explicitly illegal, there was no guidance on how to treat the victims, most of whom were treated as illegal migrants, thus representing a weakness in Canada’s response to trafficking and a failure to live up to the responsibility outlined in the *Palermo Protocol* for the protection of victims.⁴⁶

ii. Overview of the current provision

Under section 118 of *IRPA*, the offence of human trafficking is defined as “knowingly organiz[ing] the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.”⁴⁷ The term “organize” includes (but is not limited to) the recruitment, transportation, receipt or harbouring of those persons.⁴⁸ The use of the word “knowingly” indicates a requirement for knowledge on behalf of the trafficker that they are engaging in these activities – ergo only intentional conduct will be caught. This definition requires the crossing of an international border; therefore it only applies to cases of transnational human trafficking and does not address domestic trafficking.

IRPA differs from the *Palermo Protocol* in one key way – the purpose of exploitation does not form part of the basic trafficking definition under section 118. Forms of exploitation such as being “subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation”⁴⁹ comprise aggravating factors to consider when determining a sentence under section 121, but exploitation is not necessary to obtain a conviction of the basic offence.⁵⁰ While the “actions” and the “means” are slightly narrower than the *Palermo Protocol* definition, the absence of the “purpose” of exploitation makes the

⁴⁵ Oxman-Martinez, *supra* note 15 at 13.

⁴⁶ *Ibid* at 14-15.

⁴⁷ *Supra* note 8 s 118(1).

⁴⁸ *Ibid* s 118(2).

⁴⁹ *Ibid* s 121(1)(d).

⁵⁰ *R v Orr*, 2013 BCSC 1883, 20 Imm LR (4th) 156, at paras 31-32.

IRPA definition overall more broad. In proving the “means’ portion of the offence, particularly with respect to fraud and deceit, it is necessary to show not only that such means were used by the perpetrator, but that the victim was actually deceived or defrauded and induced by such to come into Canada.⁵¹ Finally, there is no explicit mention of consent in the *IRPA* provision, although arguably one cannot legitimately consent when the above means are used.⁵²

iii. Canada’s first human trafficking charge, and acquittal, under IRPA

Despite being in place for a decade, as of April 2012 only three charges had been laid under section 118 of *IRPA*,⁵³ with the first conviction in 2013.⁵⁴ As with all criminal charges, the Crown must prove their case to the high standard of “beyond a reasonable doubt,” a requirement which is inextricably linked to the notion that the accused is presumed innocent.⁵⁵ This high standard, combined with difficulties in witness testimony, proved a barrier to conviction in the first charge under this provision.

Wai Chi (Michael) Ng was prosecuted for human trafficking under *IRPA* for activities that took place from 2002 to 2004.⁵⁶ Ng ran a massage parlour in Vancouver and had arranged for two women to come to Canada from China using false documents.⁵⁷ The women thought they were coming to Canada to work in a restaurant; instead they were used and sold for sex acts out

⁵¹ *R v Ladha*, 2013 BCSC 2437 at para 11, 2013 CarswellBC 3993, citing jury instructions from *R v Huen* (24 June 2013), Vancouver 26094.

⁵² McClean, *supra* note 21 at 328.

⁵³ *National Action Plan*, *supra* note 7 at 8.

⁵⁴ Dene Moore, “Vancouver man sentenced to 18 months for human trafficking”, *Vancouver Sun* (15 October 2013) online:

<<http://www.vancouversun.com/news/Vancouver+sentenced+months+human+trafficking/9037883/story.html>>.

⁵⁵ *R v Lifchus*, [1997] 3 SCR 320 at para 27, 216 NR 215.

⁵⁶ Benjamin Perrin, *Invisible Chains: Canada’s Underground World of Human Trafficking* (Toronto: Penguin Canada, 2010) at 132.

⁵⁷ *Ibid.*

of the massage parlour.⁵⁸ Including the trafficking charge under *IRPA*, Ng was charged with a total of 22 related offences under the *Criminal Code* and *IRPA*.⁵⁹

Ng was ultimately acquitted of the human trafficking charges. A finding of guilt was found to rest exclusively on the evidence of the women, the Crown needing to prove beyond a reasonable doubt not only that fraud and deception were used, but that the women relied upon it to their detriment.⁶⁰ Expert testimony on the behaviours of trafficked persons was introduced at trial, Justice MacLean finding that the women enjoyed freedom of movement and financial independence and thus did not meet the indicia put forth by the expert for classification as trafficking victims.⁶¹ The testimonies of both women were also found to be inconsistent, and there was some uncertainty as to whether or not one of the victims knew she might be working as a prostitute upon her arrival in Canada, which left a reasonable doubt as to whether she had in fact been deceived.⁶²

The reasoning in the judgment is problematic. Whether or not the women met the expert's indicia for trafficking victims is irrelevant. What was relevant for a conviction under *IRPA* was whether or not Mr. Ng made a misrepresentation as to the employment arrangement that was relied upon by the victims in their decision to come to Canada. As Benjamin Perrin has noted in his criticisms:

Rather than applying the elements of human trafficking under *IRPA*, Judge MacLean chose instead to determine whether [the women] were “trafficked persons,” based on his understanding of the term and generalizations from an expert witness ... [t]his appears to be an astonishing reversal of the expected process since the victims weren't on trial – Ng was.⁶³

⁵⁸ *Ibid.*

⁵⁹ *R v Ng*, 2007 BCPC 204 at para 1, [2007] BCJ No 1388 (QL) [*Ng Trial*].

⁶⁰ *Ibid* at paras 124-125

⁶¹ *Ibid* at paras 109-112

⁶² *Ibid* at paras 124-126.

⁶³ *Supra* note 56 at 133.

The *Ng* case exemplifies the difficulty in meeting the high criminal standard of proof using victim testimony. It also marks the first failure in the prosecution of human trafficking, which the media was quick to note, criticizing police and prosecutors, and possibly setting back human trafficking investigations in British Columbia.⁶⁴

Despite being acquitted of the human trafficking charges, Ng was convicted of prostitution offences under the *Criminal Code* and two immigration offences, receiving an initial sentence of 15 months.⁶⁵ The Crown appealed this sentence to the British Columbia Court of Appeal, which found the sentence was insufficient to account for the “moral turpitude” of the prostitution offences, thus increasing the sentence to 27 months imprisonment.⁶⁶ As Perrin notes, this is recognition that sentencing judges should take the sexual exploitation of foreigners more seriously.⁶⁷

iv. *A constitutionally valid provision*

Despite the lack of a human trafficking conviction, the *Ng* case represents a small victory in that section 118 of *IRPA* was found to be constitutionally valid. As part of his defence Mr. Ng argued that the use of the words “fraud” and “deception” were vague and overbroad and asked the Court to read down the provision to exclude those words.⁶⁸ Mr. Ng’s defence counsel maintained that, because the provision lacks “any explicit reference to people being exploited as a result of the deception,”⁶⁹ the law is vague and thus unconstitutional. Justice MacLean disagreed, and in finding neither term to be vague, acknowledged that both “fraud” and

⁶⁴ *Ibid.*

⁶⁵ *Ng Trial*, *supra* note 59 at paras 119-141.

⁶⁶ *R v Ng*, 2008 BCCA 535 at paras 31-32, 263 BCAC 300, Low JA.

⁶⁷ *Supra* note 56 at 134.

⁶⁸ *R v Ng*, 2006 BCPC 0111 at para 1, 144 CRR (2d) 224 [*Ng Charter*].

⁶⁹ “BC man challenges human trafficking charge”, *CBC News* (3 February 2006) online: CBC <<http://www.cbc.ca/news/canada/b-c-man-challenges-human-trafficking-charge-1.574013>>.

“deception” were well understood legal terms clarified in Canadian case law.⁷⁰ He also acknowledged that “fraud” and “deception” are part of the definition of trafficking under the *Palermo Protocol* and given the objective of *IRPA* is to prevent trafficking through compliance with this instrument, the use of these words do not make the provision overbroad.⁷¹

v. *Canada’s first conviction under IRPA*

On June 26, 2013, a jury found Franco Yiu Kwan Orr guilty of human trafficking under *IRPA*, as well as two other immigration offences, becoming the first conviction under section 118.⁷² Mr. Orr and his wife, Ms. Huen (who was acquitted of trafficking charges), brought their Filipina nanny, Ms. Sarmiento, from Hong Kong to Canada, making certain representations that Ms. Sarmiento relied upon in deciding to accompany the family.⁷³ These representations included a wage consistent with Canadian law and the help of a second domestic helper, neither of which were adhered to.⁷⁴ This difference of employment conditions was central to a finding of guilt under section 118.⁷⁵

In the sentencing decision it was observed that, while it was clear the employment conditions were not as promised,⁷⁶ whether or not there was exploitation was a contentious issue.⁷⁷ It was noted that the Crown did not pursue charges for human trafficking under the *Criminal Code*, an offence which requires proof of an ulterior purpose of exploitation.⁷⁸

Exploitation is not a requirement for conviction under *IRPA*, but elements of exploitation form

⁷⁰ *Ng Charter*, *supra* note 68 at paras 17-18.

⁷¹ *Ibid* at paras 23-24.

⁷² *R v Orr*, *supra* note 50 at paras 1-2.

⁷³ *Ibid* at para 14.

⁷⁴ *Ibid* at para 30.

⁷⁵ *Ibid*.

⁷⁶ *Ibid*.

⁷⁷ *Ibid* at para 31.

⁷⁸ *Ibid*.

aggravating circumstances for the purposes of sentencing.⁷⁹ Justice Goepel in this case found the evidence too frail to prove aggravating exploitative factors of humiliation and degradation.⁸⁰

This finding is interesting as, had the Crown pursued human trafficking charges under the *Criminal Code*, they likely would have been unsuccessful. However, a conviction was correctly rendered here as exploitation is not a required component of the *IRPA* offence.⁸¹

Because this case was tried by a jury, there are no written judicial reasons for the finding of guilt that may be relied upon by prosecutors in trying future trafficking cases under *IRPA*. However, the sentencing decision will provide guidance for future sentencing hearings under this provision. Moreover, being the first (long overdue) conviction under this provision, the hope is that this provision is more visible, and that it will be more readily used in the future.⁸²

vi. *Abuse of the system*

Investigating and prosecuting human trafficking offences is difficult and demands much in the way of resources. While it seems the crime is under-charged and prosecuted, a recent case suggests that there is a risk some may try to abuse the system in order to obtain Canadian residency. Mumtaz Ladha was charged with human trafficking and other immigration offences under *IRPA* for allegedly using deceit to convince a young Tanzanian woman to come to Canada to work as an esthetician, instead putting her to work as a domestic servant against her will, for long hours and no pay.⁸³ Ms. Ladha's version of the events differed, that the young lady, having worked for Ladha in Tanzania, was brought to Canada as a guest.⁸⁴ Ladha was acquitted of all

⁷⁹ *Supra* note 8 s 121(1)(d).

⁸⁰ *R v Orr*, *supra* note 50 at para 44.

⁸¹ *Ibid* at para 32.

⁸² Andrea Woo, "Human-trafficking conviction in nanny's case hailed as precedent setting", *The Globe and Mail* (28 June 2013) online: <<http://www.theglobeandmail.com/news/british-columbia/human-trafficking-conviction-in-nannys-case-hailed-as-precedent-setting/article12881196/>>.

⁸³ *Ladha*, *supra* note 51 at paras 3-4.

⁸⁴ *Ibid* at paras 5-6.

charges, as the elements of fraud and deception required to convict on the trafficking offence had not been proven.⁸⁵ This finding was based on the complainant's inconsistent statements, motive to lie about her circumstances in order to stay in Canada, and overall complete lack of credibility.⁸⁶

More often than not, legitimate trafficking cases do not make it to trial, but here we have a case where it seems to be the opposite. This case depended on finding the complainant to be either a victim or a liar,⁸⁷ with the court finding the latter. Victims of trafficking may stay in Canada if they are approved for a temporary residency permit and it appears the complainant in this case was attempting to abuse the system in order to extend her stay.⁸⁸ This is unfortunate as human trafficking is a very serious crime. Abuse of the system not only wastes court resources, but also diminishes the scarce support and attention that is desperately needed for legitimate victims.

vii. Sentencing under IRPA

Trafficking under section 118 of *IRPA* is an indictable offence carrying stiff maximum penalties – a trafficker found guilty is liable to a potential fine of not more than one million dollars or to life imprisonment, or both.⁸⁹ In determining the penalty, the provision provides a number of aggravating factors for the Court to consider such as bodily harm or death, endangering the life or safety of any person, participation in a criminal organization, whether

⁸⁵ *Ibid* at para 54.

⁸⁶ *Ibid* at paras 27, 42, 47.

⁸⁷ Daphne Bramham, "A victim or a liar? The answer is key to BC human trafficking case: Tanzanian woman takes the stand in case against her former West Vancouver employer", *Vancouver Sun* (24 September 2013) online: <<http://www.vancouversun.com/news/victim+liar+answer+human+trafficking+case/8954556/story.html>>.

⁸⁸ *Ibid*.

⁸⁹ *Supra* note 8 s 120.

profits were realized from the trafficking, and whether the victim was subjected to humiliating treatment, including poor work or health conditions or sexual exploitation.⁹⁰

Given that *Orr* is the only conviction thus far under section 118, it is the only decision to provide guidance on sentencing for future cases. In the sentencing decision, Justice Goepel noted that because exploitation is not a requirement of the human trafficking offence under *IRPA*, sentencing decisions for human trafficking under the *Criminal Code* provide no guidance on appropriate punishment.⁹¹ Denunciation and deterrence were recognized as the main objectives of sentencing, it being recognized that “individuals cannot be allowed to disregard the immigration laws of this country with impunity.”⁹² A lack of aggravating factors and the fact that Mr. Orr had been a “productive, law-abiding member of society”⁹³ put the offence at the lower end of the spectrum and he was sentenced to 18 months imprisonment.⁹⁴

viii. *Other provisions of IRPA commonly used in trafficking cases*

Given the nature of transnational human trafficking, charges under other provisions of *IRPA* are commonly laid in conjunction with specific human trafficking charges. Human smuggling,⁹⁵ employing a foreign national contrary to *IRPA*,⁹⁶ and misrepresentation that induces errors in the administration of *IRPA* and counselling to that effect⁹⁷ have also seen charges in human trafficking cases. While it is important that specific human trafficking charges

⁹⁰ *Ibid* s 121.

⁹¹ *R v Orr*, *supra* note 50 para 66.

⁹² *Ibid* at para 81, Goepel J.

⁹³ *Ibid* at para 71, Goepel J.

⁹⁴ *Ibid* at para 79, 83.

⁹⁵ *IRPA*, *supra* note 8 at s 117. See *Ng Trial*, *supra* note 59 at paras 121-123. See also “Alberta priest’s company admits to foreign worker scheme,” *CBC News* (9 October 2012) online: CBC <<http://www.cbc.ca/news/canada/edmonton/alberta-priest-s-company-admits-to-foreign-worker-scheme-1.1217051>> (referring to a \$215,000 fine and mentioned in *US TIP Report 2013*, *supra* note 3 at 121).

⁹⁶ *IRPA*, *supra* note 8 at s 124. See *R v Orr*, *supra* note 50 at 1. See also *National Action Plan: 2012-13 Progress Report*, *supra* note 11 at 12 (referring to charges laid against Csilla Yit for employing a foreign national contrary to *IRPA*).

⁹⁷ *IRPA*, *supra* note 8 at ss 126, 127. See *Ng Trial*, *supra* note 59 at para 129. See also *R v Orr*, *supra* note 50 at 1.

are laid in appropriate cases, the use of other provisions demonstrates the complex nature of a crime that involves many issues, and provides additional tools to ensure traffickers are prosecuted and convicted accordingly.

IV. Human Trafficking Provisions of the Criminal Code

In 2005, Canada took an important and necessary step when it chose to create specific human trafficking offences in the *Criminal Code*. Given the extent of domestic trafficking in Canada, the offences under *IRPA* were insufficient on their own to deal effectively with the problem. This section will examine the *Criminal Code* provisions, with a comparison of the definition of trafficking under these provisions to that set forth by the *Palermo Protocol*. Despite having some advantages over the treaty definition, the definition under the *Criminal Code* has been criticised as onerous and has proved an impediment to successful convictions.

i. Human trafficking becomes an offence under the Criminal Code

As a result of Bill C-49, *An Act to Amend the Criminal Code (Trafficking in Persons)*, human trafficking became an offence under the *Criminal Code*.⁹⁸ The bill, which received all-party support in the third reading in the House of Commons and the Senate,⁹⁹ was intended to strengthen Canada's commitment to combatting human trafficking.¹⁰⁰ Two key issues emerged from the parliamentary debates which support the necessity of the new provisions. First was the intention that the provisions explicitly recognize what was seen as the key to human trafficking, namely exploitation.¹⁰¹ Second, it was noted that exploitation was predominant within Canada's borders and additional measures were required to address the problem of domestic trafficking

⁹⁸ 1st Sess, 38th Parl, 2005, (assented to 25 November 2005).

⁹⁹ Laura Barnett, *Bill C-49: An Act to Amend the Criminal Code (Trafficking in Persons): Legislative Summary LS-508E* (Ottawa: Library of Parliament, 2006) at 12.

¹⁰⁰ Parliament of Canada, *House of Commons Debates*, 38th Parl, 1st Sess, No 125 (26 September 2005) at 1205 (Hon Paul Harold Macklin).

¹⁰¹ *Ibid* at 1210.

which does not fall under the purview of *IRPA*.¹⁰² Some criticisms of the bill included a lack of mandatory minimum sentences,¹⁰³ as well as the questionable availability of provincial resources to enforce the new provisions.¹⁰⁴ It was also acknowledged that, while this bill was a step in the right direction, further work needed to be done in terms of victim protection, and a call was made for a victim-centered approach.¹⁰⁵

ii. Overview of the current provision

The human trafficking provisions can be found in sections 279.01 to 279.04 of the *Criminal Code*, all of which are indictable offences.¹⁰⁶ Unlike the provisions under *IRPA*, these provisions apply to both transnational and domestic trafficking. There are also separate offences for trafficking involving a minor,¹⁰⁷ receiving a material benefit,¹⁰⁸ and withholding or destroying documents.¹⁰⁹ It is explicitly stated that consent is invalid in relation to human trafficking under the *Criminal Code*,¹¹⁰ which is consistent with the *Palermo Protocol*.¹¹¹

The basic definition of human trafficking under the *Criminal Code* is found in section 279.01(1) which provides:

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.

¹⁰² *Ibid* at 1345 (John Maloney).

¹⁰³ *Ibid* at 1240 (Vic Toews).

¹⁰⁴ *Ibid* at 1310 (Paul Szabo).

¹⁰⁵ Parliament of Canada, *Debates of the Senate*, 38th Parl, 1st Sess, Vol 142 Issue 91 (25 October 2005) at 1620 (Gerard Phalen).

¹⁰⁶ *Criminal Code*, RSC 1985, c C-46.

¹⁰⁷ *Ibid* s 279.011.

¹⁰⁸ *Ibid* s 279.02.

¹⁰⁹ *Ibid* s 279.03.

¹¹⁰ *Ibid* ss 279.01(2), 279.011(2).

¹¹¹ *Palermo Protocol*, *supra* note 2 art 3(b).

The United Nations Office on Drugs and Crime (UNODC) has noted that this definition requires only two elements of the *Palermo Protocol* definition: an “action” and the “purpose.”¹¹² The definitions of each differ slightly from the *Palermo Protocol* and are wider in scope. The action from this provision adds exercising “control, direction or influence” over the movements of the victim, which the UNODC indicated presents the potential for consideration of the means by which exploitation occurs, Canadian courts understanding that this concept involves “behavior that leaves little choice to the person controlled.”¹¹³

The mental component, or *mens rea*, of this offence is found in the accused’s subjective intention, namely that the trafficking was undertaken with the specific ulterior purpose of exploitation or the facilitation thereof.¹¹⁴ Proving exploitation is the key to this offence, and occurs when the accused engages “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.”¹¹⁵

The omission of the “means” element has been interpreted as a definitional strength, as it decreases the evidentiary burden on prosecutors thereby increasing prosecutions.¹¹⁶ The UNODC further remark that the “undefined nature of exploitation is noted as offering evidentiary advantages in situations where more intangible control mechanisms are used by the perpetrator.”¹¹⁷ In a plain reading of the provision,¹¹⁸ exploitation is an objective standard that:

¹¹² *Abuse of a Position of Vulnerability and Other “Means” Within the Definition of Trafficking in Persons*, Issue Paper (New York: United Nations, 2013) at 47, online: UNODC < http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf>.

¹¹³ *Ibid* at 49.

¹¹⁴ David Watt & Michelle Fuerst, *The 2014 Annotated Tremear’s Criminal Code* (Toronto: Carswell, 2013) at 684.

¹¹⁵ *Criminal Code*, *supra* note 106 s 279.04(1).

¹¹⁶ UNODC, *supra* note 112 at 50.

¹¹⁷ *Ibid* at 51.

¹¹⁸ *Criminal Code*, *supra* note 106 s 279.04(1).

requires proof that the conduct used by the trafficker is such that a reasonable person in the victim's position, having regard to all the circumstances, would have such a belief...it is the nature of the conduct and the context in which the accused engages in that conduct that is integral to the determination of the reasonably expected effect on the victim.¹¹⁹

The definition thus requires proof of the accused's conduct, not necessarily proof of an outcome,¹²⁰ and the standard is thus that of the "reasonable person," not the actual effect on the victim. Furthermore, the Department of Justice has noted that it is not necessary for exploitation to have actually occurred, evidence of an intent to exploit being sufficient.¹²¹ Despite these interpretations, proof of fear has historically been cited as an impediment to laying charges and securing convictions for human trafficking under the *Criminal Code*.

iii. *Proof of fear as an impediment to laying charges and securing convictions*

The definition of human trafficking under the *Criminal Code* has been criticized as overly onerous in laying trafficking charges.¹²² In practice, law enforcement officials have indicated that proving fear is problematic as it requires proof the victim was "entirely unwilling or there was no real consent."¹²³ This suggests an analysis of the mental state of the victim as opposed to the conduct of the trafficker, which runs counter to the objective standard of the provision which requires proof of conduct, not outcome.¹²⁴ Moreover, section 279.01(2) of the *Criminal Code* clearly states any consent to human trafficking is invalid, thus whether or not there was consent is irrelevant and to require proof of lack of consent runs counter to this

¹¹⁹ UNODC, *supra* note 112 at 47.

¹²⁰ *Ibid* at 50.

¹²¹ Barnett, Laura. *Trafficking in Persons: Background Paper No 2011-59-E* (Ottawa: Library of Parliament, 2013) at 6.

¹²² Lara Quarterman, Julie Kaye & John Winterdyk, *Human Trafficking in Calgary: Informing a Localized Response* (Calgary: Act Alberta, 2012) at 18, online: Act Alberta <http://www.actalberta.org/uploads/070712_SP8J95PMb5nXDTQ_181714.pdf>.

¹²³ *Ibid* at 21.

¹²⁴ UNODC, *supra* note 112 at 50.

component of the provision as well.¹²⁵ The impact is that the fear component has been interpreted so narrowly that law enforcement officials are reluctant to lay charges and prosecutors are likewise reluctant to prosecute under these provisions.¹²⁶

iv. *Transnational human trafficking and the Criminal Code*

To date, there have been few charges and convictions of transnational human trafficking under the specified *Criminal Code* provisions. Difficulties in obtaining evidence to prove exploitation, as defined in section 279.04, has been cited as a reason for dropping charges. Furthermore, most of the trafficking convictions under the *Criminal Code* provisions are the result of guilty pleas, therefore there are few written judicial reasons for the conviction that Crown prosecutors can use as guidelines in building their cases.¹²⁷ Two examples will be discussed further.

In 2007 eleven Filipino men were lured to Canada with the promise of well-paying jobs building an icebreaker.¹²⁸ The potential employer had obtained work permits and the men had quit their jobs in the Philippines, some even sold everything they owned, on the legitimate expectation that the promise would be honored.¹²⁹ Once in Canada, the men's passports and work permits were taken from them, they were placed in cramped quarters with little food and forced to work excessive hours without the pay promised.¹³⁰ Resistance was met with threats of deportation although one man did escape, and a raid was conducted by the police.¹³¹ Charges were never laid in this case, the RCMP indicating the narrow definition of exploitation could not

¹²⁵ Quarterman et al, *supra* note 122 at 22.

¹²⁶ *Ibid* at 21.

¹²⁷ Perrin, *supra* note 56 at 121.

¹²⁸ *Ibid* at 175.

¹²⁹ *Ibid*.

¹³⁰ *Ibid* at 175-176.

¹³¹ *Ibid* at 176.

be met: “The way exploitation is phrased in the *Criminal Code*, they have to fear for their safety or their lives...they just didn’t have that fear.”¹³²

In 2012, sentences were handed down in what has been hailed the largest human trafficking ring in Canadian history.¹³³ The Domotor family was a criminal organization that recruited workers from Hungary with offers of employment in a construction business.¹³⁴ Once in Canada, the victim’s documents were seized and they were forced to work as labourers for little or no compensation, among other things.¹³⁵ The victims’ movements were controlled through intimidation and threats of violence, as well as the fact that they spoke little or no English.¹³⁶ Once the local police were informed, the traffickers threatened the victims and their families.¹³⁷ Ultimately there were 23 victims of the operation and 14 accused who all entered guilty pleas to a variety of *Criminal Code* and immigration offences,¹³⁸ including the ringleader, Ferenc Domotor Sr., who plead guilty to conspiring to traffic in human beings.¹³⁹

v. Addition of “means” in an attempt to clarify the definition of exploitation

In 2012, amendments were made to the *Criminal Code*¹⁴⁰ bringing into effect factors for the courts to consider in determining whether exploitation has occurred,¹⁴¹ as well as adding human trafficking to the list of offences for which Canada will take extraterritorial

¹³² RCMP Constable Julie Meeks quoted in Dale Brazao, “Exploited workers Canada’s ‘slave trade’”, *Toronto Star* (30 August 2008), online:

<http://www.thestar.com/news/investigations/2008/08/30/exploited_workers_canadas_slave_trade.html>.

¹³³ “Hamilton human trafficking kingpin sentenced to 9 years”, *CBC News* (3 April 2012) online: CBC <<http://www.cbc.ca/news/canada/hamilton/news/hamilton-human-trafficking-kingpin-sentenced-to-9-years-1.1189198>>.

¹³⁴ *R v Domotor*, 2011 ONSC 626 at para 6, [2011] OJ No 6357 (QL).

¹³⁵ *Ibid* at paras 8-9.

¹³⁶ *Ibid* at para 10.

¹³⁷ *Ibid* at para 11.

¹³⁸ Frederick Desroches, “The OPAPA human trafficking case”, (2012) 74:4 *The Gazette* 30 at 31, online: RCMP <<http://www.rcmp-grc.gc.ca/gazette/vol74n4/externalsubmission-reportageexterne-eng.htm#opapa>>.

¹³⁹ *R v Domotor*, [2012] OJ No 3630 (QL) at para 1 (Ont Sup Ct) [*Domotor 12*].

¹⁴⁰ Bill C-310, *An Act to Amend the Criminal Code (Trafficking in Persons)*, 1st Sess, 41st Parl, 2012, (assented to 28 June 2012).

¹⁴¹ *Criminal Code*, *supra* note 106 s 279.04(2).

jurisdiction.¹⁴² It was recognized that the definition of exploitation had been interpreted too narrowly, hinging on proof of the victim’s fear for physical safety, and it was recommended the definition be expanded to include psychological and emotional harm, and “means” of exploitation as indicated by the *Palermo Protocol*.¹⁴³ In determining whether there has been exploitation courts may consider, among other factors, methods used by the accused such as the use of threatened force, coercion, deception, or an abuse of a position of trust, power or authority.¹⁴⁴

Exploitation requires proof of fear under the reasonable person standard, not necessarily proof of actual fear on behalf of the victim.¹⁴⁵ However, in absence of any guidance on what types of conduct would cause the “reasonable person” to fear for their safety, “victims bear the burden of convincing the court they had such a fear.”¹⁴⁶ The amendments to section 279.04(2) remedy this problem by providing the necessary guidance on the conduct required to meet this objective standard. This appropriately shifts the understanding of exploitation to the actions of the accused and away from the subjective mental state of the victim. After all, the accused is the person on trial, not the victim.

vi. “Exploitation” is neither overbroad nor vague

In 2013, the Ontario Superior Court of Justice ruled section 279.011 of the *Criminal Code* to be constitutionally valid.¹⁴⁷ The challenge was raised on the grounds that the definition of exploitation under the offence was imprecise, leading to an impermissible vagueness and over

¹⁴² *Ibid* s 7(4.11).

¹⁴³ Parliament of Canada, *House of Commons Debates*, 41st Parl, 1st Sess, No 036 (25 October 2011) at 1725 (Joy Smith).

¹⁴⁴ *Criminal Code*, *supra* note 106 s 279.04(2).

¹⁴⁵ UNODC, *supra* note 112 at 47.

¹⁴⁶ Perrin, *supra* note 56 at 137.

¹⁴⁷ *R v Beckford*, 2013 ONSC 653 at para 47, 276 CRR (2d) 26.

breadth in the law.¹⁴⁸ The accused argued this imprecision allowed for conviction on the basis of a diminished *mens rea*, thus capturing conduct falling below the threshold of blameworthiness required for the penalties and stigma associated with human trafficking.¹⁴⁹ This argument was based on an understanding that the words “for the purpose of” as they appear in sections 279.01 and 279.011 apply only to exploitation and not the facilitation of exploitation.¹⁵⁰ The Court readily rejected this argument instead finding it clear that “for the purpose of” applies to both exploitation and facilitation of exploitation, which gives a heightened *mens rea* requisite with the seriousness of the crime.¹⁵¹ The accused’s subjective intention to exploit a person is required to prove the former and knowledge of the trafficking and intention to facilitate such being required to prove the latter.¹⁵²

The accused further argued it is problematic that exploitation need not actually occur to meet the definition, an argument the Court rejected in light of case law on other, unrelated offences, confirming that proof of an intended effect by the accused is all that is required.¹⁵³ Finally, the accused argued that because proof of exploitation relies on the reasonable belief of another person, it is difficult to predict when a person’s actions might be criminal.¹⁵⁴ The Court disagreed, finding “exploitation” and “the reasonable person standard” to be easily understood legal concepts that sufficiently demarcate the prohibited conduct.¹⁵⁵

¹⁴⁸ *Ibid* at para 2.

¹⁴⁹ *Ibid* at para 34.

¹⁵⁰ *Ibid*.

¹⁵¹ *Ibid* at para 35.

¹⁵² *Ibid* at paras 39-40.

¹⁵³ *Ibid* at para 42.

¹⁵⁴ *Ibid* at para 30.

¹⁵⁵ *Ibid* at paras 41, 43-45.

vii. Prosecutions under non-trafficking provisions of the Criminal Code

In 2012 at least 25 trafficking offenders were convicted under other sections of the *Criminal Code*.¹⁵⁶ Prostitution-related offences, abduction, kidnapping, assault, sexual assault, forcible confinement, extortion, and conspiracy are examples of *Criminal Code* offences that may see charges in human trafficking cases.¹⁵⁷

Fair labelling of human trafficking becomes a problem when the offence is only prosecuted under other, lesser charges. Such was the case in Montreal in 2008 where trafficking charges were withdrawn in relation to a domestic sex-trafficking ring, the Crown instead choosing to pursue the simpler procuring charges under the *Criminal Code*.¹⁵⁸ Conversely, one critic noted that parallels between the human trafficking provisions and prostitution related offences has led to the re-labelling of small scale pimping as the more severe crime of trafficking, which has the effect of undermining the trafficking offences and diverting resources.¹⁵⁹

When legitimate trafficking cases are pursued solely under other charges it diminishes the seriousness and recognition of the crime.¹⁶⁰ According to Benjamin Perrin, “the most serious charges that are supported by the evidence should be laid, along with the charges for less serious offences, to ensure that traffickers are held accountable and victims are protected.”¹⁶¹ However, in cases where there is insufficient evidence to convict under the specific human trafficking provisions, the availability of these related provisions provide additional measures for bringing the perpetrators of these crimes to justice.

¹⁵⁶ *US TIP Report 2013*, *supra* note 3 at 121.

¹⁵⁷ Perrin, *supra* note 56 at 130.

¹⁵⁸ *Ibid.*

¹⁵⁹ See Katrin Roots, “Trafficking or Pimping? An Analysis of Canada’s Human Trafficking Legislation and its Implications” (2013) 28:1 CJLS 21 at 40-41.

¹⁶⁰ Perrin, *supra* note 56 at 131.

¹⁶¹ *Ibid.*

viii. Sentencing of trafficking convictions under the Criminal Code

Human trafficking under the *Criminal Code* provisions carries maximum penalties of life imprisonment if aggravating circumstances¹⁶² are present and maximum penalties of fourteen years imprisonment in all other cases.¹⁶³ Receipt of a material benefit and withholding or destroying documents carries maximum penalties of ten and five years respectively.¹⁶⁴

Sentencing of these crimes under the *Criminal Code* has been criticized as lenient, failing to meet sentencing objectives of the protection of society from offenders, denunciation of unlawful conduct, and deterrence of traffickers, among other things.¹⁶⁵ The longest sentences to date appeared in the *Domotor* case.¹⁶⁶ In the sentencing judgment, Justice Glithero indicated:

[T]his country has a long and strong tradition of respecting human rights and dignity...when our values are abused, flagrantly, as they were by these three individuals, we are offended and intolerant to those who behave in this fashion. Modern day slavery is disgusting to us and it offends our core values.¹⁶⁷

These statements indicate the serious nature of human trafficking. Ferenc Domotor Sr. was ultimately sentenced to 9 years, less credits for the guilty plea and time served for a net sentence of four and a half years.¹⁶⁸ Another accused in this case received a seven and a half year prison term.¹⁶⁹ Despite being the longest penalties to date these sentences remain a far cry from the maximum penalties available. Further research is required to determine the impact of these sentences on the crime.

¹⁶² Aggravated circumstances include kidnapping, aggravated assault, aggravated sexual assault, or death.

¹⁶³ *Criminal Code*, *supra* note 106 ss 279.01(1)(a), 279.01(1)(b), 279.011(1)(a), 279.011(1)(b)

¹⁶⁴ *Ibid* ss 279.02, 279.03.

¹⁶⁵ Perrin, *supra* note 56 at 128.

¹⁶⁶ Adrian Morrow, "Judge hands down Canada's toughest penalty for human trafficking", *The Globe and Mail* (29 March 2012) online: <<http://www.theglobeandmail.com/news/national/judge-hands-down-canadas-toughest-penalty-for-human-trafficking/article4097571/>>.

¹⁶⁷ *Domotor 12*, *supra* note 139 at para 50.

¹⁶⁸ *Ibid* at para 53.

¹⁶⁹ Morrow, *supra* note 166.

ix. Mandatory minimum sentences for offences involving child victims

Despite stiff maximum penalties already in place, the initial trafficking convictions involving child victims under the new *Criminal Code* provisions resulted in inadequately short sentences, leading to the view that mandatory minimum sentences were a necessary measure to bring the punishment in line with not only the horrendous nature of the crime, but also other *Criminal Code* offences involving child victims.¹⁷⁰ As a result of a private members bill,¹⁷¹ in 2010 human trafficking of a person under 18 became a separate offence with a mandatory minimum sentence of five years imprisonment, increasing to six years if aggravating circumstances are present.¹⁷² Data collected by the United States for the *Trafficking in Persons Report 2013* indicates that the penalties for human trafficking under the *Criminal Code* are adequate.¹⁷³

V. Limitations in Prosecuting Transnational Human Trafficking

i. Lack of victim support impedes prosecutions

Victim cooperation is crucial in prosecuting human trafficking offences under both the *Criminal Code* and *IRPA*.¹⁷⁴ Victim testimony can provide key evidence to prove exploitation under the *Criminal Code* offences, or to establish deception as required under section 118 of *IRPA*.¹⁷⁵ When victims refuse to testify, police have to resort to either laying other charges or laying no charges at all,¹⁷⁶ which distorts the statistical picture of trafficking convictions.

¹⁷⁰ Parliament of Canada, *House of Commons Debates*, 40th Parl, 2nd Sess, No 020 (27 February 2009) at 1330-1335 (Joy Smith).

¹⁷¹ Bill C-268, *An Act to Amend the Criminal Code (Minimum Sentence for Offences Involving Trafficking of Persons Under the Age of Eighteen Years)*, 3rd Sess, 40th Parl, 2010, (assented to 29 June 2010).

¹⁷² *Criminal Code*, *supra* note 106 s 279.011.

¹⁷³ *Supra* note 3 at 121.

¹⁷⁴ *RCMP*, *supra* note 5 at 38.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

Foreign trafficking victims often present unique issues that impact cooperation. These include: lack of family or other support systems, language barriers, cultural differences,¹⁷⁷ skepticism of police and unfamiliarity with Canadian law, fear of judicial punishment or deportation, fear for their own safety or that of their family back home, and disruption of an income stream that exists even though being exploited.¹⁷⁸ Given these potential barriers to vital witness cooperation, it is absolutely essential that the needs of victims are addressed.

One of the objectives of the *Palermo Protocol* is to protect and assist victims of trafficking;¹⁷⁹ however, the language of the provisions are non-obligatory and as Anne Gallagher once predicted, this deficiency was “likely to compromise the organized crime prevention objectives of the protocols by ensuring that smuggled migrants and trafficked persons continue to have little incentive to cooperate with national law enforcement.”¹⁸⁰ This was certainly the case in Canada.

Despite acknowledgement of the need to address victims during the parliamentary debates for both *IRPA*¹⁸¹ and the *Criminal Code*,¹⁸² Canada was slow to comply, receiving a failing grade from the Future Group, an NGO with expertise on human trafficking, in 2006 for their lack of effort in this regard.¹⁸³ At this point in time there was no government funding for medical and psychological assistance for victims, no formal investigative protections for victims, and a lack of laws providing for temporary residence meant victims were often detained as

¹⁷⁷ Particularly in the case of sex trafficking victims from Asian cultures who place a high value on honor. Victims may fear exposure of the prostitution to their families, the risk of shame being enough to keep them from coming forward. See *ibid* at 17.

¹⁷⁸ *Ibid* at 38-39.

¹⁷⁹ *Supra* note 2 art 2(b).

¹⁸⁰ *Supra* note 17 at 1004.

¹⁸¹ Dalphond-Guiral, *supra* note 43 at 1625.

¹⁸² Phalen, *supra* note 105 at 1620.

¹⁸³ The Future Group, *Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims* (Calgary: The Future Group, 2006) at 35.

illegal migrants and deported.¹⁸⁴ Given Canada's emphasis on human trafficking policies that focused on security rather than victim support, this result was predictable.

In May 2006, Citizenship and Immigration Canada (CIC) responded to these issues by implementing a policy allowing international trafficking victims to obtain legal immigration status through a Temporary Resident Permit (TRP).¹⁸⁵ Victims are not required to testify against their trafficker in order to obtain a TRP, and once the TRP is in place, they can obtain access to health care, trauma counselling, and work permits.¹⁸⁶ However, there are barriers in accessibility of the TRP that stem from the criminal definitions of human trafficking.¹⁸⁷

Whether or not a TRP is granted is determined by a single immigration officer from CIC, often leading to inconsistent results.¹⁸⁸ If the CIC uses the definition of trafficking from the *Criminal Code*, the "focus will be on whether or not the crime is being investigated and can be proven, rather than if the person has expressed they have been a victim and exploited."¹⁸⁹ It is rare for victims of trafficking to self-identify as such as they may either use language which is different from the legislative provisions in defining their experience, or reject the label altogether.¹⁹⁰ Thus, the lack of clarity in defining human trafficking has created further confusion with respect to classifying victims,¹⁹¹ which not only impedes the provision of necessary services, it also creates challenges in laying criminal charges.¹⁹² If human trafficking cases cannot be identified, then charges cannot be laid.

¹⁸⁴ *Ibid* at 13-16.

¹⁸⁵ Julie Kaye, John Winterdyk & Lara Quarterman, "Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada" (2014) 56:1 Can J Criminology & Crim Jus 23 at 27.

¹⁸⁶ Department of Justice, *Temporary Resident Permits – Victims of Human Trafficking* (30 April 2013), online: <<http://www.justice.gc.ca/eng/cj-jp/tp/help-aide.html>>.

¹⁸⁷ Kaye et al, *supra* note 185 at 27-28.

¹⁸⁸ Perrin, *supra* note 56 at 144-145.

¹⁸⁹ Quarterman et al, *supra* note 122 at 23.

¹⁹⁰ *Ibid*.

¹⁹¹ *US TIP Report 2013*, *supra* note 3 at 122.

¹⁹² Quarterman et al, *supra* note 122 at 22-24.

The TRP Program alone is not sufficient to address the needs of victims – comprehensive services are required which are generally offered at the provincial level, meaning there is a lack of uniformity in service delivery across the country.¹⁹³ Despite awareness that increased protection of victims would enhance cooperation with law enforcement, a lack of specialized services still remain as demand outstrips resources.¹⁹⁴ Uneven communication between law enforcement and service providers further complicate matters.¹⁹⁵

ii. *Definitional differences: IRPA vs the Criminal Code*

The human trafficking provisions differ as they are defined in *IRPA* and the *Criminal Code*, and both definitions differ from that set forth by the *Palermo Protocol*. The first thing to note is that offences under both *IRPA* and the *Criminal Code* may be applied to individual perpetrators, thus organized crime is not a required element in prosecuting under either piece of legislation.¹⁹⁶

While the trafficking provisions under both *IRPA* and the *Criminal Code* can be applied to cases of transnational trafficking, section 118 of *IRPA* requires the trafficking victim to have crossed an international border. On the other hand, there is no such requirement under the *Criminal Code*; thus these specific provisions are not only better suited to address domestic trafficking, they are the only option.

The most important distinction between the two pieces of legislation is that there is no requirement to prove exploitation under the *IRPA* provision. Given the difficulty in proving exploitation under the *Criminal Code*, when it comes to laying charges for transnational human trafficking, it is easier to prosecute the offence under section 118 of *IRPA*, and there now seems

¹⁹³ Barnett (2013), *supra* note 121 at 12.

¹⁹⁴ *US TIP Report 2013*, *supra* note 3 at 122.

¹⁹⁵ *Ibid.*

¹⁹⁶ Roots, *supra* note 159 at 30.

to be a preference for doing so.¹⁹⁷ A current example of this is the *Orr* case, which saw a conviction under the human trafficking provision of *IRPA* that likely would have not succeeded under the *Criminal Code* provision due to an inability to prove exploitation.¹⁹⁸

It is important to note that the two pieces of legislation are not mutually exclusive, nor should they ever be. Charges may be laid for specific human trafficking offences and related offences under both pieces of legislation. Human trafficking is a broad offence that is best dealt with on a case by case basis. Having a broad range of options available to deal with the problem provides a more comprehensive solution. While it is important that human trafficking offences are prosecuted under the specific offence in *IRPA* and the *Criminal Code*, having other related provisions helps bolster the opportunities to convict offenders for these heinous crimes by tailoring charges to the circumstances of the case.

iii. *Historical problems in applying IRPA*

Although it is easier to prosecute under the human trafficking offence in *IRPA*, the provision has been historically under-utilized for a few reasons. First, whether laying a human trafficking charge under *IRPA* or the *Criminal Code*, victim cooperation is still required to successfully convict. Under *IRPA*, the victim plays a crucial role as their testimony is the key to proving deception.¹⁹⁹

Secondly, investigations of international human trafficking cases demand much in terms of resources, often requiring the gathering of evidence in another country.²⁰⁰ The investigation and prosecution of the *Ng* case alone required the full-time attention of nine police officers over

¹⁹⁷ Quarterman et al, *supra* note 122 at 21.

¹⁹⁸ *R v Orr*, *supra* note 50 at paras 44, 66.

¹⁹⁹ *RCMP*, *supra* note 5 at 40.

²⁰⁰ Perrin, *supra* note 56 at 140.

a six month period costing the Vancouver Police Department approximately \$250,000.²⁰¹ In their 2010 report, the RCMP indicated that a proactive approach could increase the success of human trafficking prosecutions by gathering independent evidence through extensive investigation in support of the charges.²⁰² However, it was noted that to take such an approach required dedicated manpower which was in excess of the resources available.²⁰³ This weakness was acknowledged and the *National Action Plan* has since created a dedicated, integrated team led by the RCMP and also comprised of the Canada Border Services Agency and local police forces with a mandate to undertake proactive human trafficking investigations.²⁰⁴

Thirdly, a lack of awareness has led to oversight in laying charges under *IRPA*. The RCMP has stated: “It was apparent during the analysis of past cases, and particularly investigations involving foreign workers, that the focus on the application of the *Criminal Code* may have led to the oversight of the *IRPA* offence.”²⁰⁵ Human trafficking investigations require law enforcement officials to have an understanding of both pieces of legislation to ensure proper application of the differing definitions and equal consideration must be given to both *IRPA* and the *Criminal Code* to ensure the appropriate provision is applied.²⁰⁶ The *National Action Plan* responded to this deficiency by increasing awareness and training, most notably implementing an integrated training approach organized by the RCMP for law enforcement officers, border and immigration officials, and prosecutors.²⁰⁷ This is in line with the mandate required under article 10(2) of the *Palermo Protocol*.²⁰⁸

²⁰¹ *Ibid.*

²⁰² *RCMP, supra* note 5 at 40.

²⁰³ *Ibid.*

²⁰⁴ *Supra* note 7 at 18.

²⁰⁵ *RCMP, supra* note 5 at 42.

²⁰⁶ *Ibid.*

²⁰⁷ *Supra* note 7 at 13.

²⁰⁸ *Supra* note 2 art 10(2).

Finally, jurisdictional issues may also impede trafficking prosecutions, which the *National Action Plan* has addressed by improving collaboration and coordination between federal agencies²⁰⁹ and law enforcement at the international, national, provincial, and municipal levels through the use of partnerships.²¹⁰ Despite this mandate, the most recent *Trafficking in Persons Report* has indicated coordination between the federal and provincial governments with respect to anti-trafficking law enforcement remains a challenge.²¹¹

VI. Lessons from the Past Shape Solutions for the Future

Having demonstrated that there are challenges associated with prosecuting transnational human trafficking offences, this paper will now discuss the positive solutions in the works for the future. A better use of the human trafficking provisions under *IRPA* and improved victim support suggest a push towards overcoming these difficulties.

i. Awareness and better use of IRPA

In cases of transnational human trafficking, the provisions under *IRPA* present a lower definitional threshold requirement in order to secure a conviction. With the training programs in place, and with Canada's first ever conviction under the provision in *Orr*, awareness of the utility of the provision appears to be on the rise, and there are indications that law enforcement officials and prosecutors are more willing to consider charges under *IRPA* as an alternative to the *Criminal Code* provisions.²¹²

Just because the *IRPA* provisions provide a lower threshold does not mean the *Criminal Code* provisions should be overlooked. Both pieces of legislation should be analysed in light of

²⁰⁹ Such as the RCMP, Canada Border Services Agency, Passport Canada, Citizenship and Immigration Canada, and Human Resources and Skills Development.

²¹⁰ *Supra* note 7 at 18

²¹¹ *US TIP Report 2013*, *supra* note 3 at 121.

²¹² Quarterman et al, *supra* note 122 at 21.

the evidence from the case and the appropriate charge laid. The development of Canadian case law in respect of human trafficking cannot continue if charges are not laid under both provisions and prosecuted accordingly. Thus, although *IRPA* may require an easier test, if a charge for transnational trafficking can be made under the *Criminal Code*²¹³ it should be laid and prosecuted as such in order to further develop the law. On the other hand, in cases where the exploitation component cannot be proven, a charge under section 118 of *IRPA* is more appropriate.

ii. *Victim support*

Historically, Canada's response to transnational human trafficking has been in the form of criminalization, with little attention paid to victim support and human rights.²¹⁴ This is an ineffective model, as it does not live up to Canada's responsibility to protect victims under the *Palermo Protocol*. Given the inextricable link between victim support and successful prosecutions, a model that favours both the prosecution of offenders and the protection of victims is more likely to get to the root of the problem.²¹⁵ Given the problems with inconsistent issuances of TRPs, lack of coordination of victim-focused initiatives, lack of communication, and a continued lack of resources, changes are still required to address the needs of victims.

As part of the *National Action Plan*, Canada has recognized the need for the protection and assistance of victims,²¹⁶ but the plan has fallen short of addressing the issues. One noteworthy obstacle is the fact that of the six million dollars invested by the Government

²¹³ Especially in light of the recent amendments to section 279.04(2) which clarify what types of conduct will instill a fear for safety.

²¹⁴ Constance MacIntosh, "Assessing Human Trafficking in Canada: Flawed Strategies and the Rhetoric of Human Rights" (2006) 1 Intercultural Hum Rts L Rev 407 at 434.

²¹⁵ Dina Haynes, "Used, Abused, Arrested and Deported: The Case for Extending Immigration Benefits to Protect Victims of Trafficking and Secure the Prosecution of Traffickers" (2004) 26:2 Hum Rts Q 221 at 271.

²¹⁶ *Supra* note 7 at 13-16.

annually on Human Trafficking initiatives, only \$500,000 is dedicated to victim services.²¹⁷ This funding was set to begin in 2013/14²¹⁸ and as such may not yet have made a visible impact.

VII. Conclusion

The criminalization of human trafficking requires a comprehensive response to ensure traffickers are prosecuted to the fullest extent possible. To this end, Canada has created specific offences in *IRPA* and the *Criminal Code*, as well as instituting a number of other responses as part of the *National Action Plan* aimed at increasing prosecutions. The simpler definition of the crime under *IRPA* provides an attractive alternative to the *Criminal Code* provisions, and although used little to date, the research in this paper demonstrates that it can play an important role in securing convictions in transnational human trafficking cases going forward. However, given Canada's large problem with domestic trafficking, which *IRPA* does not address, the recent amendments to the *Criminal Code* are needed, and will hopefully provide guidance to courts in interpreting the existence of exploitation so the case law may continue to develop. Finally, given the important role victims play in human trafficking prosecutions, a move towards better measures for victim support will hopefully improve the identification of such cases and the assistance of victims in investigations and prosecutions, which is crucial to improve human trafficking prosecutions in Canada.

²¹⁷ *Ibid* at 10.

²¹⁸ *Ibid*.

Bibliography

BILLS AND ACTS OF PARLIMAMENT

- Bill C-11, *An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger*, 1st Sess, 37th Parl, 2001, (assented to 1 November 2001), SC 2001, c 27.
- Bill C-49, *An Act to Amend the Criminal Code (Trafficking in Persons)*, 1st Sess, 38th Parl, 2005, (assented to 25 November 2005).
- Bill C-268, *An Act to Amend the Criminal Code (Minimum Sentence for Offences Involving Trafficking of Persons Under the Age of Eighteen Years)*, 3rd Sess, 40th Parl, 2010, (assented to 29 June 2010).
- Bill C-310, *An Act to Amend the Criminal Code (Trafficking in Persons)*, 1st Sess, 41st Parl, 2012, (assented to 28 June 2012).
- Criminal Code*, RSC 1985, c C-46.
- Immigration and Refugee Protection Act*, SC 2001, c 27.

CANADIAN JURISPRUDENCE

- R v Beckford*, 2013 ONSC 653 at para 2, 276 CRR (2d) 26.
- R v Domotor*, 2011 ONSC 626, [2011] OJ No 6357 (QL).
- R v Domotor*, [2012] OJ No 3630 (QL) (Ont Sup Ct).
- R v Huen*, (24 June 2013), Vancouver 26094.
- R v Ladha*, 2013 BCSC 2437, 2013 CarswellBC 3993.
- R v Lifchus*, [1997] 3 SCR 320, 216 NR 215.
- R v Ng*, 2006 BCPC 111, 144 CRR (2d) 224.
- R v Ng*, 2007 BCPC 204, [2007] BCJ No 1388 (QL).
- R v Ng*, 2008 BCCA 535, 263 BCAC 300.
- R v Orr*, 2013 BCSC 1883, 20 Imm LR (4th) 156.

TREATIES

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*, 15 November 2000, 2237 UNTS 319, 2002 Can TS No 25, in force 25 December 2003.

UNITED NATIONS REPORTS

United Nations Office on Drugs and Crime, *Abuse of a Position of Vulnerability and Other “Means” Within the Definition of Trafficking in Persons*, Issue Paper (New York: United Nations, April 2013), online: UNODC <http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf>.

United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2012*, United Nations publication, Sales No E.13.IV.1 (New York: United Nations, 2012).

JOURNAL ARTICLES & OTHER PAPERS

Barnett, Laura. *Bill C-49: An Act to Amend the Criminal Code (Trafficking in Persons): Legislative Summary LS-508E* (Ottawa: Library of Parliament, 2006).

Barnett, Laura. *Trafficking in Person: Background Paper No 2011-59-E* (Ottawa: Library of Parliament, 2013).

Future Group, The. *Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims*, (Calgary: The Future Group, 2006).

Gallagher, Anne. “Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis” (2001) 23 Hum Rts Q 975.

Haynes, Dina F. “Used, Abused, Arrested and Deported: The Case for Extending Immigration Benefits to Protect Victims of Trafficking and Secure the Prosecution of Traffickers” (2004) 26:2 Hum Rts Q 221.

Kaye, Julie, Winterdyk, John & Quarterman, Lara. “Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada” (2014) 56:1 Can J Criminology & Crim Jus 23.

MacIntosh, Constance. “Assessing Human Trafficking in Canada: Flawed Strategies and the Rhetoric of Human Rights” (2006) 1 Intercultural Hum Rts L Rev 407.

Ogrodnik, Lucie. Canadian Centre for Justice Statistics. “Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons” Crime and Justice Research Paper Series, Catalogue no 85-561-M, no 21 (Ottawa: Statistics Canada, 2010), online: <<http://www.statcan.gc.ca/pub/85-561-m/85-561-m2010021-eng.pdf>>.

Oxman-Martinez, Jacqueline, Jill Hanley & Fanny Gomez. “Canadian Policy on Human Trafficking: A Four-year Analysis” (2005) 43:4 International Migration 4.

Quarterman, Lara, Julie Kaye & John Winterdyk. *Human Trafficking in Calgary: Informing a Localized Response* (Calgary: Act Alberta, 2012), online: Act Alberta <http://www.actalberta.org/uploads/070712_SP8J95PMb5nXDTQ_181714.pdf>.

Roots, Katrin. “Trafficking or Pimping? An Analysis of Canada’s Human Trafficking Legislation and its Implications” (2013) 28:1 CJLS 21.

BOOKS

- Boister, Neil. *An Introduction to Transnational Criminal Law* (Oxford: Oxford University Press, 2012).
- Goslett, Henry & Barbara Jo Caruso. *The 2013 Annotated Immigration and Refugee Protection Act* (Toronto: Carswell, 2012).
- McClellan, David. *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols* (Oxford: Oxford University Press, 2007).
- Perrin, Benjamin. *Invisible Chains: Canada's Underground World of Human Trafficking* (Toronto: Penguin Canada, 2010).
- Watt, David & Michelle Fuerst. *The 2014 Annotated Tremear's Criminal Code* (Toronto: Carswell, 2013).

GOVERNMENT DOCUMENTS

- House of Commons. Standing Committee on Citizenship and Immigration. *Refugee Protection and Striking a Balance* (March 2000) (Chair: Joe Fontana MP).
- Human Trafficking in Canada* (Ottawa: RCMP Criminal Intelligence, 2010), online: RCMP <http://publications.gc.ca/collections/collection_2011/grc-rcmp/PS64-78-2010-eng.pdf>.
- National Action Plan to Combat Human Trafficking* (Ottawa: Government of Canada, 2012).
- National Action Plan to Combat Human Trafficking: 2012-2013 Annual Report on Progress* (Ottawa: Government of Canada, 2013).
- Parliament of Canada. *Debates of the Senate*. 37th Parl, 1st Sess, Vol 139 Issue 50 (19 September 2001).
- Parliament of Canada. *Debates of the Senate*. 38th Parl, 1st Sess, Vol 142 Issue 91 (25 October 2005).
- Parliament of Canada. *House of Commons Debates*. 37th Parl, 1st Sess, No 21 (26 February 2001).
- Parliament of Canada. *House of Commons Debates*. 38th Parl, 1st Sess, No 125 (26 September 2005).
- Parliament of Canada, *House of Commons Debates*, 40th Parl, 2nd Sess, No 020 (27 February 2009).
- Parliament of Canada. *House of Commons Debates*. 41st Parl, 1st Sess, No 036 (25 October 2011).
- Trafficking in Persons Report 2013* (USA: Department of State, June 2013).

NEWSPAPER AND MAGAZINE ARTICLES

- “Alberta priest’s company admits to foreign worker scheme”, *CBC News* (9 October 2012) online: CBC <<http://www.cbc.ca/news/canada/edmonton/alberta-priest-s-company-admits-to-foreign-worker-scheme-1.1217051>>.
- “BC man challenges human trafficking charge”, *CBC News* (3 February 2006) online: CBC <<http://www.cbc.ca/news/canada/b-c-man-challenges-human-trafficking-charge-1.574013>>.
- Bramham, Daphne. “A victim or a liar? The answer is key to BC human trafficking case: Tanzanian woman takes the stand in case against her former West Vancouver employer”, *Vancouver Sun* (24 September 2013) online: Vancouver Sun <<http://www.vancouver.sun.com/news/victim+liar+answer+human+trafficking+case/8954556/story.html>>.
- Brazao, Dale. “Exploited workers Canada’s ‘slave trade’”, *Toronto Star* (30 August 2008), online: The Star <http://www.thestar.com/news/investigations/2008/08/30/exploited_workers_canadas_slave_trade.html>.
- Desroches, Frederick. “The OPAPA human trafficking case”, (2012) 74:4 *The Gazette* 30 online: RCMP <<http://www.rcmp-grc.gc.ca/gazette/vol74n4/externalsubmission-reportageexterne-eng.htm#opapa>>.
- “Hamilton human trafficking kingpin sentenced to 9 years”, *CBC News* (3 April 2012) online: CBC <<http://www.cbc.ca/news/canada/hamilton/news/hamilton-human-trafficking-kingpin-sentenced-to-9-years-1.1189198>>.
- Moore, Dene. “Vancouver man sentenced to 18 months for human trafficking”, *The Vancouver Sun* (15 October 2013) online: Vancouver Sun <<http://www.vancouver.sun.com/news/Vancouver+sentenced+months+human+trafficking/9037883/story.html>>.
- Morrow, Adrian. “Judge hands down Canada’s toughest penalty for human trafficking”, *The Globe and Mail* (29 March 2012) online: The Globe and Mail <<http://www.theglobeandmail.com/news/national/judge-hands-down-canadas-toughest-penalty-for-human-trafficking/article4097571/>>.
- Woo, Andrea. “Human-trafficking conviction in nanny’s case hailed as precedent setting”, *The Globe and Mail* (28 June 2013) online: The Globe and Mail <<http://www.theglobeandmail.com/news/british-columbia/human-trafficking-conviction-in-nannys-case-hailed-as-precedent-setting/article12881196/>>.

WEBSITES

- Department of Justice, *Temporary Resident Permits – Victims of Human Trafficking*, <<http://www.justice.gc.ca/eng/cj-jp/tp/help-aide.html>>.
- Royal Canadian Mounted Police (RCMP), <<http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>>.
- United Nations Office on Drugs and Crime, (2014) “Human trafficking and migrant smuggling,” <<http://www.unodc.org/unodc/en/human-trafficking/index.html?ref=menu>>.