

CANADIAN POLICY COMBATING HUMAN TRAFFICKING

by

Alex Cole
A Thesis
Submitted to the
Graduate Faculty
of
George Mason University
in Partial Fulfillment of
The Requirements for the Degree
of
Master of Science
Conflict Analysis and Resolution
Master of Arts
Conflict Resolution and Mediterranean Security

Committee:

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Date: _____ Fall Semester 2014
George Mason University
Fairfax, VA
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A thesis submitted in partial fulfillment of the requirements for the degree of
Master of Science at George Mason University, and the degree of Master of Arts
at the University of Malta

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Fall Semester 2014
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DEDICATION

This is dedicated to my wonderful parents, Michael Cole and Tracey Tarras. Without their support and encouragement none of this would have been possible.

ACKNOWLEDGEMENTS

I would like to thank the many friends, relatives, and supporters who have made this happen. My parents, Michael and Tracey, who are irreplaceable support system, not only for my academic career, but also in all aspects of my life. My mother Tracey especially, for helping me to edit. My good friend Tamara Aqulhas Jarrett for taking time out of her busy schedule and spend long hours helping me to edit this project. My thesis supervisor, Omar Grech, who helped the project reach it's full potential through his timely and insightful feedback. Michael English, the program coordinator for S-CAR, who always had the answers to everything. Lastly to my CRAMS cohort who made my time in Malta an unforgettable experience.

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LIST OF ABBREVIATIONS

Anti-Crime Capacity Building Program	ACCBP
British Columbia Office to Combat Trafficking in Persons	BC OCTIP
Canadian Border Services Agency	CBSA
Canadian Experience Class	CEC
Citizenship and Immigration Canada	CIC
Council of Europe Convention on Action against Trafficking in Human Beings	CoE Convention
Department of Foreign Affairs and International Trade	DFAIT
Gross Domestic Product	GDP
Group of Experts Against Trafficking in Human Beings	GRETA
Global Peace and Security Fund	GPSF
Human Resources and Skills Development Canada	HRSCD
Immigration and Refugee Board	IRB
Interdepartmental Working Group on Trafficking in Persons	IWGTIP
International Labour Organization	ILO
Labour Market Opinion	LMO
Non-governmental Organization	NGO
Persons Against the Crime of Trafficking in Humans Ottawa	PACT-Ottawa
Royal Canadian Mounted Police	RCMP
Status of Women Canada	SWC
Temporary Resident Permit	TRP
The United States Department of State Office to Monitor and Combat Trafficking in Persons	OMCTP
Trafficking in Persons Report	TIP
Trafficking Victims Protection Act	TVPA
United Nations	UN

ABSTRACT

CANADIAN POLICY COMBATING HUMAN TRAFFICKING

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George Mason University, 2014

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Human trafficking is a global issue and a grave violation of human rights. This thesis sets out to investigate how successful Canada has been up to date in combating the crime. Canada's main developments in anti-trafficking have been established in the past three years and literature is lacking on these recent efforts. This thesis intends to fill this gap in literature with an analysis on current Canadian anti-trafficking legislation. The extent of success will be determined by two dynamics. The first dynamic of success is the ability of Canadian legislation to appropriately balance a security and humanitarian approach to tackling human trafficking issues. The second dynamic is examining the fulfillment of commitments to the UN Trafficking Protocol demonstrated by Canada's anti-trafficking efforts. After much research, it has been determined that Canada has contributed a great deal to the anti-trafficking fight in the past three years and with a few improvements to existing legislation, will become successful in combating human trafficking at home and contributing to the fight internationally.

INTRODUCTION

Introduction to Human Trafficking

Human trafficking has been on the global agenda of governments for many years. It is a phenomenon that has progressively evolved from the slave trade. The nature of the phenomenon itself has changed slightly but the name in which it goes by or how people have defined it has transformed. The United Nations currently defines human trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force, by abduction, fraud, deception, coercion or the abuse of power or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of [...] sexual exploitation, forced labor or services, slavery or practices similar to slavery [...]”¹ Awareness has increased across the globe regarding this issue but the issue itself has increased too. This means each year more people are subjected to grave violations of human rights and have become victims to the crime of human trafficking. At any given time a country can be subjected to becoming either a source, transit and destination country for human trafficking. This is the case in Canada, falling victim to all three. Traffickers have increasingly seen the

¹ *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime.* 2002.
<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

country as a prime spot to conduct activities around human trafficking and it has only increased with each year.

This thesis will explore anti-trafficking efforts by the Canadian government throughout recent years. The main objective of this exploration will be to determine how successful the government's efforts have been to combat human trafficking to date. The exploration will focus mainly on policy suggested and implemented by the Canadian government as well as other important initiatives.

The Importance

Human trafficking consists of a global network of criminals and a global network of individuals who are suffering from severe human rights violations as Article 4 of the Universal Declaration of Human Rights declares that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."²

The numbers of victims seems to grow despite the increased efforts of nations to combat the crime; there is no country not affected. Human trafficking operates across all system levels, from a single community to an international level. Canada is just one of the many places that is affected by the crime. The effect of the crime on Canada is linked to other countries that are subject to being either source, transit or destination countries.

Therefore the information that is observed and critique regarding Canadian anti-trafficking efforts will in turn affect these countries. Other governments, organizations

² "Universal Declaration of Human Rights." Worldmark Encyclopedia of Nations. 2007. *Encyclopedia.com*. <http://www.encyclopedia.com/doc/1G2-2586700044.html>

and individuals will gain from the successes of Canadian policy combating human trafficking, and learn from the critiques. This study will outline positive and negative results of Canadian policy in order to highlight a path to the most effective way Canada can combat human trafficking. Addressing the issue of human trafficking at a national level within Canada contributes to the larger and holistic cause of combating human trafficking on a global scale.

Important Theoretical Frameworks

There are two common approaches to dealing with human trafficking that are helpful in answering the question of how successful Canadian efforts have been in combating the crime. The first approach filters any issue concerning human trafficking through a humanitarian lens. This lens is centered on supporting and assisting those who have experienced, or are vulnerable to human rights violations caused by human trafficking. This involves considering the harmful impacts of particular anti-trafficking tactics and the consequences it will entail for victims. The ultimate goal of this approach is to “do no harm” to those who are victims or vulnerable to becoming victims of human trafficking.

Another common approach is one in which issues related to human trafficking are first perceived through a security lens. The use of this approach can often lead to the neglect of the well being of the victim due to a high priority of resources, time and effort on prosecuting and punishing the perpetrators of the crime.

A balance of these two approaches is essential in obtaining successful efforts in combating human trafficking. Discovering successful Canadian anti-trafficking efforts will partially be decided by the balance between these two approaches that are found within Canadian policies and other initiatives. The balance that needs to be sought for in successful anti-trafficking legislation is commonly referred to as the human security approach. Human security in the context of human trafficking promotes victim-centric, comprehensive, and prevention-oriented measures that seek to reduce the likelihood of conflicts, help overcome the obstacles to development and promote human rights for all.³ This entails that the well being of victims is always considered in a decision, while still addressing security threats and solutions like the punishment of traffickers.

Research Design

This project has seven chapters that are devoted to exploring the nature of human trafficking in Canada. Chapter One is a comprehensive literature review that discusses three major themes found in most relevant literature regarding human trafficking. It will examine immigration policy as a factor that either contributes to or works against combating the issue. It also considers how governments use policies as an economic tool in addition to the discussion on reliable statistics in the field of human trafficking.

³ United Nations, "Human Security Approach," *United Nations Trust Fund For Human Security*, n.d., <http://www.unocha.org/humansecurity/human-security-unit/human-security-approach#a3>.

Chapter Two will provide a general background on human trafficking from a global perspective. It will explore the history of the phenomenon and how it has evolved over the years. Understanding the aspects of human trafficking that have transformed and changed over time is crucial in developing anti-trafficking legislation today. It helps provide insight into the future by predicting trends and highlighting problem areas that have been neglected in the past that require more focus.

Chapter Three will deliver a history of human trafficking from a Canadian context. This will uncover when human trafficking became a concern for the Canadian government and its citizens. It will outline the primary methods that were used to combat human trafficking, so that one can see how the very first anti-trafficking legislation has developed into current anti-trafficking legislation that is discussed later in Chapter Five.

Chapter Four will explore the UN Trafficking Protocol that will be used later in Chapter Seven as a benchmark to compare Canadian anti-trafficking legislation. This will examine the history behind the Protocol and where it originated. It then examines the protocol to determine what aspects are beneficial to a global fight against human trafficking. In addition to this, it explores the weaknesses within the Protocol that prevent the document from reaching its highest potential.

Chapter Five breaks down and assesses Canada's National Action Plan to Combat Human Trafficking. It looks at the four main pillars of Canadian anti-trafficking legislation: prevention, protection, prosecution and partnerships. It assesses how successful Canadian efforts have been by comparing the commitments that the Canadian

government has made in the National Action Plan in 2012, to what they have followed through on up to date.

Chapter Six will bring together Chapters Four and Five by linking the UN Trafficking Protocol to Canada's National Action Plan. The UN Trafficking Protocol is a benchmark for all ratifying nations to base their legislation to combat human trafficking on. This is the only international instrument that countries have to look to for guidance when developing policies and other initiatives. This chapter will highlight whether Canada has followed through with its obligations to the Trafficking Protocol. This will be one of the major determining factors when deciding if Canadian policy has been successful in combating human trafficking.

Chapter Seven will focus on a specific type of human trafficking, sex trafficking. Prostitution became a hot topic of Canadian discourse in 2013, when the Canadian Supreme Court struck down prostitution laws. As prostitution and sex trafficking are closely linked, this chapter investigates the thought process behind developing new legislation concerning prostitution in Bill C-36. This Chapter will pay close attention to the uses of a humanitarian approach and a security approach when dealing with prostitution and sex trafficking and try and determine if a appropriate balance of the two has been used so far to tackle this issue. The appropriate balance should create a human security approach, which would entail successful efforts by the Canadian government to challenge sex trafficking.

Finally, the conclusion of this project will consider all the findings within the seven chapters to determine whether Canadian efforts have been successful in combating

human trafficking.

Methodology

Contribution to Research

This research adds to the current literature on the human trafficking by providing a comprehensive evaluation of Canada's anti-trafficking efforts since the signing of the UN Trafficking Protocol in 2000. When initially developing a research question, it was apparent that an actual report card of how successful Canadian policies have been thus far to combat human trafficking is lacking from the literature. This research will attempt to fill in these gaps in current literature in addition to providing clarity and evaluation of how Canadian initiatives taken since 2012, (the implementation of the National Action Plan to Combat Human Trafficking) have contributed to the fight against human trafficking, either positively or negative.

Methods of Research

The main method of research for this project was policy analysis of government documents. There were a variety of documents that were analyzed in attempt to answer the proposed research question. Most of the documents came from the Canadian government's legislation. The main documents and policies that were involved in this process were the Immigration and Refugee Act of 2002, the Canadian Criminal Code and amendments to it (Bill C-310 and Bill C-36) as well as the National Action Plan to

Combat Human Trafficking. The UN Trafficking Protocol was also analyzed and compared with Canadian legislation to evaluate whether the Canadian government had followed through with commitments made after the ratification of the Protocol. A significant amount of newspaper articles were used to provide evidence for specific human trafficking cases. The newspapers were the best source to obtain data pertaining to 2014, as there was few government sources published this year. Previously conducted interviews were also used, especially in Chapter Eight to obtain a consensus on Canadian discourse surrounding prostitution laws. These interviews, mainly found on newspaper websites, were fundamental for this Chapter as the bill dealing with new prostitution laws (Bill C-36) has yet to pass so consequently there are limited official government documents published regarding this subject.

This project also examined scholarly books and articles to comprehensively assess the phenomenon of human trafficking. These works were mainly used to conduct the literature review in Chapter One. There have been articles written that compare the UN trafficking Protocol with Canadian legislation, but none that compare the two after the implementation of Canada's National Action Plan in 2012. This literature gave good insight into this project, being able to measure how far Canadian efforts have come since these comparisons were made. Many recent developments about human trafficking in Canada have not yet been written about in books or articles, so it was difficult to retrieve up-to-date information from these sources.

Methodological Limitations

There were various limitations discovered during the research process. This project dealt with substantial amount of information from 2012 and on, and therefore there are a limited number of sources where the information could be obtained. As well, when looking for information concerning funding for programs, a larger portion of information was archived on government websites that stated that if one wished to view the information, they must send a request to a special contact. Many emails were sent to request certain documents, but few replies were received. An email was sent requesting the document *RCMP National Strategy to Combat Human Trafficking*. A reply was received within twenty-four hours, with a PDF of the document attached to the email. However requesting documents from the Status of Women in Canada regarding information about the Victims Fund was not as simple. The website did not make it clear which email address should be contacted to retrieve the desired information. Two emails were sent out and one reply was received. The reply indicated that two additional individuals should be contacted for detailed information and that they had attached a basic information sheet regarding programs that participated in the Victims Fund in 2013. There was nothing attached to the email, and when this source was contacted again to inquire about the missing attachment, no response was received. Newspaper articles ended up being the most accurate source for obtaining this information.

Another limitation to the research was the varying statistics that exists across literature from published government and non-governmental organization documents. After a considerable amount of investigation, a decision was made to use official

government statistics for the basis of the project even though literature in the field states the numbers can often be inflated or under reported. This decision was due to official government documents publishing the most consistent data in terms of numbers.

CHAPTER ONE: A LITERATURE REVIEW

1.1 Introduction

The majority of literature on the subject seems to explore many similar themes, there are three prominent ones that are repeatedly discussed. The first theme is centered on immigration policies contributing to human trafficking in Canada. Many critiques discuss immigration policies, things such as restrictive borders are a high priority area of discussion, and is said to be a growing catalyst for human trafficking. The second major theme throughout the literature is the idea of organized crime being closely linked to human trafficking. Many authors explore the role organized crime plays in the development of the problem and to what extent it has impacted it. The final theme that arises throughout literature is that a lack of reliable statistics and consistent research that prevents anti-trafficking movements from reaching the full potential for change. These three themes make up a large portion of what literature in the realm of human trafficking discusses. By obtaining a better understanding of these three themes, one can hope to gain a holistic understanding of the complicated phenomenon that is human trafficking.

1.2 Immigration Policy

1.21 Restrictive Borders

Canadian immigration policy and human trafficking are interconnected. Some scholars are even quoted as saying that certain programs that have been implemented have “implicated the state in the trafficking of women into the sex trade.”⁴ One idea that is repeated throughout literature is that Canada’s restrictive borders have had the opposite effect than intended. Authors such as Arthur C. Helton and Eliana Jacobs state that implementing more restrictive immigration laws and greater law enforcement is likely to create the opposite from the desired outcome, and increase human trafficking.⁵ Audrey Macklin also shares the same ideas and describes these restrictive borders as playing a critical role in keeping smugglers and transnational traffickers in business. If the legal method to migrate to a country was not as restrictive, migrants may not seek out traffickers to facilitate their travel arrangements and employment.⁶ The increasing emphasis on securitizing the border by limiting of legal means of entry into the country keeps criminal networks in business and pushes potential victims into the exploitative hands of these networks.⁷

4 Audrey Macklin, “Dancing across Borders: ‘Exotic Dancers,’ Trafficking, and Canadian Immigration Policy,” *International Migration Review* 37, no. 2 (July 1, 2003): 465

5 Arthur C. Helton and Eliana Jacobs, “Combating Human Smuggling by Enlisting the Victims,” *Migration World Magazine* 28, no. 4 (May 2000): 12.

6 Macklin, “Dancing across Borders.” 468

7 Mikhail A. Alexseev and C. Richard Hofstetter, “Russia, China, and the Immigration Security Dilemma,” *Political Science Quarterly* 121, no. 1 (April 1, 2006),

<http://www.jstor.org.ezproxy.lib.ucalgary.ca/stable/10.2307/20202643?origin=api>

Authors such as Haynes, Koser and Oxman-Martinez, all argue that most destination countries (including Canada) continue to pursue restrictive border policies because human trafficking is being seen as a security issue rather than a humanitarian issue.⁸ The restrictive policies that are now fueling the trafficking cycle are partly due to criticism from the United States shortly after the attacks of September 11th. Maja Muftic describes how soon after the attacks, The United States accused Canada as being a “jumping-off point” for terrorists.⁹ Besides the issue of terrorism, their criticisms have also been shaped around the idea that Canadian policy is facilitating human trafficking due to “lax immigration laws”, making the country a transit and destination point to the United States for women, children, and men that are trafficked for purpose of sexual exploitation, labour and the drug trade.¹⁰ These criticisms have put pressure on the Canadian government, resulting in more restrictive policies than has ever been witnessed in past legislation.

1.23 Programs with Problems

The majority of migrants that enter into an agreement with their traffickers in

8 Haynes, Dina Francesca. "Used, abused, arrested and deported: Extending immigration benefits to protect the victims of trafficking and to secure the prosecution of traffickers." *Human Rights Quarterly* 26, no. 2 (2004): 221-272.; Koser, Khalid. *International migration: A very short introduction*. Oxford University Press, 2007.; Jacqueline Oxman-Martinez et al., “Canadian Policy on Human Trafficking: A Four-Year Analysis1,” *International Migration* 43, no. 4 (October 1, 2005): 7–29, doi:10.1111/j.1468-2435.2005.00331.305.

9 Maja Muftic, “The Impact of Restrictive Immigration Policies on Human Trafficking in Canada” (M.A., University of Ottawa (Canada), 2009),

<http://search.proquest.com.ezproxy.lib.ucalgary.ca/docview/520201637/abstract?accountid=9838>. 29

10 Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices: Canada*, Human Rights Report (Washington, D.C., February 25, 2004),

<http://www.state.gov/j/drl/rls/hrrpt/2003/27889.htm>.

order to facilitate their arrival to Canada end up being indebted to them. Macklin describes women primarily being the most vulnerable to this.¹¹ The owed debt becomes the basis for forced labor, and in many cases the reason why women enter the sex trade with no safe opportunity to exit it in the future. Two specific programs developed by the Canadian government are continuously discussed in literature as being controversial, the Exotic Dancer Visa Program and the Live in Caregiver Program (LCP). The Exotic Dance Visa was one of the most controversial, and is thought to have implicated the state in human trafficking. The program allowed strippers that had job offers from a Canadian employer to arrive at a Canadian port of entry, apply for a work permit and receive one on the spot without any scrutiny of the circumstances behind the demand for their services.¹²

The problem with this process was the lack of concern by the government to look into individual situations with more detail. Macklin states that there was no interest by the government to look into the job offers or the companies providing the offers. There are substantially less Canadian strippers working in these positions, and this is due to the working conditions, wages and how the nature of the work has evolved into something that many women deem as unacceptable. Citizenship and Immigration Canada's (CIC) response to the allegations is that "for its part, CIC insists the entry of exotic dancers should not be facilitated in anyway different from that for temporary workers in other

11 Macklin, "Dancing across Borders." 468

12 Macklin, "Dancing across Borders." 467

occupations.”¹³ However, Macklin points out the official government discourse contradicted itself due to the fact that policy on temporary workers allows for those to be admitted to fill temporary needs, not jobs that Canadians themselves are rejecting; and if exotic dancers were to be treated like everyone else, this would mean reintroducing the employment validation requirement, which would force the government to examine carefully the nature of the industry.¹⁴ *(It should be noted that changes were made in 2012 to the Temporary Foreign Workers Program, and instead of implementing the employment validation requirement, CIC banned the Exotic Dancer Visa. This resulted in all foreign strippers in losing their immigration permits. This was done to prevent temporary workers from working in business sectors that had a risk of sexual exploitation. However taking away a legal platform into the country can force migrants to seek illegal platforms and thus continue the on-going cycle of trafficking).*

Oxman-Martinez, Martinez and Hanley bring up similar concerns to that of Macklin’s. They discuss the implications regarding another program implemented by the Canadian government, specifically on women, the Live-in Caregiver Program (LCP). The strict nature of this program creates a situation where individuals, mostly women, are easily exploited. They explain that exploitation begins after the women enter the country, they feel trapped and they live in fear of being arrested or having their documents confiscated. The difficulty with this program is that it binds women’s immigration status to their employers, so when the women do find themselves in an exploitative situation,

13 Canada. Citizenship and Immigration Canada, *Immigration Manual. (FW): Temporary Foreign Worker Guidelines* (Ottawa: Citizenship and Immigration Canada, 1999).

14 Macklin, “Dancing across Borders.” 477

their options are scarce; return to their home country or tolerate the circumstances.¹⁵ This program allows women to obtain a temporary work permit to provide care for children, elderly and disabled in a private household.¹⁶ Once one completes twenty-four months of the program they are eligible to apply for permanent status. This is due to the idea that the live-in caregivers have already shown their ability to work in Canada at this point, so they are almost always approved. This makes the program appealing since the educational and capital requirements of the current immigration policies generally do not permit women to enter the country as individual immigrants.¹⁷

Like the Exotic Dancer Visa Program, the LCP only allows women to work exclusively for the employer whose name appears on the visa. This creates conditions for exploitation, women are required to live in their employer's home and this social isolation makes it difficult for women to be aware of and defend their rights.¹⁸ There are other programs like the Exotic Dancer and Live-In Caregiver that have similar structure and create situations where women can be easily exploited. It is a consensus among many scholars that changes to the programs need to be made, or new programs developed, in order to protect women and keep them from these vulnerable environments they are continuously exposed to. In 2009 the Canadian Experience Class (CEC) introduced an objective to facilitate the permanent immigration of temporary foreign

15 Oxman-Martinez et al, "Canadian Policy on Human Trafficking." 305

16 Ibid.

17 Ibid.

18 Jacqueline Oxman-Martinez, and N. Lapierre-Vincent. "Precarious immigration status, dependency and women's vulnerability to violence: Impacts on their health." In *Conference Proceedings. Montréal: Centre for Applied Family Studies, McGill University and Immigration and Metropolis (domain 4)*. 2002.

workers and international students, eligible to those who meet the minimum requirements.

1.24 Immigration Policy as an Economic Tool

The economy plays a significant role when it comes to developing immigration policy. It has been stated by various scholars that the immigration policy is solely used as an economic tool by the Canadian government. With a focus on creating a thriving economy it is no wonder that many programs and policies fail at examining through a humanitarian lens thus creating potential vulnerable situations for migrants. Alan Green and David Green explain that the idea of immigration as an economic policy (current and past) developed from the desire of the government to control skill composition of migrants entering the country.¹⁹ Muftic describes the interests by government having a high immigration level stemming from changing Canadian demographics and a goal of creating a larger labour force.²⁰ Due to the constantly changing labour market conditions, such as retirements and shortages in specific areas, Canada's immigration policies help the country compete for high quality immigrants.²¹

The government created a vulnerable situation for migrants in 1982 when they declared the only independent applicants that would be permitted to enter the country were those who held a pre-arranged employment agreement. This created vulnerable

19 Alan G. Green and David A. Green, "The Economic Goals of Canada's Immigration Policy: Past and Present," *Canadian Public Policy / Analyse de Politiques* 25, no. 4 (December 1999): 425, doi:10.2307/3552422

20 Muftic, "The Impact of Restrictive Immigration Policies on Human Trafficking in Canada." 20

21 Muftic, "The Impact of Restrictive Immigration Policies on Human Trafficking in Canada." 21

situations for women especially, being forced into a labour agreement with very little details in employment.

In 1985 the new conservative government reviewed immigration policy. It is this point in time where the main priority regarding immigration was revealed, the economy. It was pointed out by Green and Green that fertility rates had substantially decreased; analysts during this time suggested that by the twenty-first century the population would begin to decline. At this point the government dropped the “pre-arranged” employment restriction not due to the amount of women put into vulnerable situations, such as being exposed to human trafficking, but to boost the population. The new policy would “try and readjust the overall age structure of the population so that there would be enough workers to pay the baby boomers pensions and health care.”²²

Jeffery G. Reitz describes Canada as being committed to mass immigration, and that strategy is a product of our institutional history and position in North America.²³ Garnett Picot and Arthur Sweetman identify eight economic issues that are the driving force behind Canada’s mass immigration strategy, the most important of these being; occupational and labour shortages. According to Picot and Sweetman, filling occupational gaps or skill shortages is one of the most-often stated economic goals of immigration policy.²⁴ They point out that progression of immigration policies do not

22 Green and Green, “The Economic Goals of Canada’s Immigration Policy: Past and Present.”

23 Jeffrey G. Reitz, “Closing the Gaps Between Skilled Immigration and Canadian Labor Markets: Emerging Policy Issues and Priorities,” in *Wanted and Welcome?*, ed. Triadafilos Triadafilopoulos, Immigrants and Minorities, Politics and Policy (Springer New York, 2013), 147–63, http://link.springer.com/chapter/10.1007/978-1-4614-0082-0_8.

24 Garnett Picot and Arthur Sweetman, *Making It in Canada: Immigration Outcomes and Policies* (Montreal, Canada: Institute for Research on Public Policy, April 2012), <http://search.proquest.com.ezproxy.lib.ucalgary.ca/docview/1095564829/citation?accountid=9838>.

address the “fundamental misalignment between the short-term employment relationship and the lifetime nature of permanent residency or citizenship.”²⁵ An improvement in this area could be seen as a major milestone in fighting human trafficking. A permanent residency or citizenship in Canada could take away the hold that many traffickers have over their victims, like mentioned earlier in the LCP or Exotic Dancer Programs. Victims could live freely knowing the threat of having their status taken away due to an exploitative sponsor, was no longer an existing threat.

1.3 Organized Crime as an Element of the Problem

The United Nations has developed a definition of organized crime that is found in Article 2 of the Convention against Transnational Organized Crime:

“Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.²⁶

Canada has also developed a similar definition within the Criminal Code:

“Criminal organization” means a group, however organized, that (a) is composed of three or more persons in or outside Canada; and (b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons

²⁵ Picot and Sweetman, *Making It in Canada*.

²⁶ *Convention Against Transnational Organized Crime*, New York, 15 November 2000, *United Nations Treaty Series*, vol. 2225, No. 4739, p. 209,

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

who constitute the group.”²⁷

These two definitions, similar in construction, seem to differ from what scholars in the field have defined throughout their research. John Salt discusses the universal assumption that human trafficking continues to grow and its nature is becoming more organized.²⁸ Although there is not yet significant research that creates a dominant link between organized crime and human trafficking in Canada, we are aware that this link exists, and it is important to understanding the phenomenon. Salt lists evidence, developed by Europol, that explains why this link exists; people coming from different nationalities are trafficked or smuggled in the same transport; that voyages over long distances, in groups, needs a sophisticated organization; considerable amounts of money are always involved; schedules are changed quickly with ease; there is an instantaneous response to counter measures taken by the authorities.²⁹

Salt then discusses how trafficking organizations are organized structurally. The organization itself is crucial to its survival, and what makes it so difficult for authorities to penetrate. Salt quotes a Hungarian scholar who describes the operations that arise in Hungary as well organized, connected transnationally, having a hierarchical and cellular structure where the lower units are unaware of the executive activities.³⁰ Rebecca Taibly, in her research for Australia, also shares the same ideas that Salt explains, she believes that it is highly likely organized crime is behind many of the trafficking and smuggling initiatives in Australia for reasons such as; the means of transportation (whether it be by

27 *Criminal Code*, 1985, c C-46 s 467.1

28 John Salt, “Trafficking and Human Smuggling: A European Perspective,” *International Migration* 38, no. 3 (January 1, 2000): 31–56, doi:10.1111/1468-2435.00114

29 Salt, “Trafficking and Human Smuggling.” 43

30 Salt, “Trafficking and Human Smuggling.” 42

sea or by air) involved and the occurrence of nationalities in the same group of illegal immigrants.³¹ Shannon shares similar concepts with her readers when discussing organized crime as one of the major factors in the sex industry (including sex trafficking) and is involved at all levels. She recognizes that the nature and extent of involvement are difficult to determine and therefore more research is required in this area to develop a clear link.³²

1.4 Lack of Reliable Statistics and Consistent Research

There has been a consensus amongst all scholars from around the world that the field of human trafficking is lacking in reliable statistics. In many countries there is no attempt to gather statistics on human trafficking specifically. This is likely due to two reasons, the first being the importance of research for the field has not yet been recognized and the second being that there is simply no legislation that specifically addresses the phenomenon.³³ This becomes problematic when attempting to learn more about the subject, even though there has been a substantial amount written, the majority of it has been anecdotal or sensationalistic rather than grounded in sound research.³⁴

This statement can be proven correct from a literature review of more than 100 academic articles by Sheldon X. Zhang a sociologist at San Diego State University. His

31 Rebecca Taibly. Organised Crime and People Smuggling/Trafficking to Australia. Australian Institute of Criminology 208 (2001): 1-6. <http://www.aic.gov.au>

32 Sarah Shannon, "Prostitution and the Mafia: The Involvement of Organized Crime in the Global Sex Trade," *Frank Cass* 3, no. 4 (1997): 126

33 Salt, "Trafficking and Human Smuggling." 37-41

34 Ronald Weitzer, "Sex Trafficking and the Sex Industry: The Need for Evidence-Based Theory and Legislation," *Journal of Criminal Law and Criminology* 101, no. 4 (2011): 1337+.

review found that the claims of government agencies (especially U.S.) and global organizations (such as the United Nations) were treated as evidence, even though these agencies had consistently failed to reveal their data sources or methodological procedures for arriving at their conclusions.³⁵ There are many other scholars whose thinking aligns with Zhang's. For instance Jyoti Sanghera, an author recognized for her human trafficking literature, claims that the current discourse on human trafficking is not driven by empirical research but grounded in the construction of a particular mythology.³⁶ Much research in this field has depended on interviews and meetings with "key stakeholders" and often relay the stories of victims from the third person. Estimating the extent of human trafficking specifically in women and children for forced labour and sexual exploitation has largely remained guesswork. There are various different figures regarding human trafficking that are circling around literature today. The United Nations Population Fund has estimated that up to 800 000 people are trafficked across borders annually and 80% of them are women and children who are later exploited in the sex trade.³⁷ A report released by the International Labour Organization (ILO) in 2008 estimated that there are at least 2.4 million trafficked persons at any given point in time.³⁸ Many governments and non-governmental

³⁵ Sheldon X. Zhang, "Beyond the 'Natasha' Story - a Review and Critique of Current Research on Sex Trafficking," *Global Crime* 10, no. 3 (August 2009): 178–95, doi:10.1080/17440570903079899.

³⁶ Jyoti Sanghera, 'Unpacking the Trafficking Discourse', in *Trafficking and Prostitution Reconsidered. New Perspectives on Migration, Sex Work and Human Rights*, ed. Kamala Kempadoo (Boulder: Paradigm Publishers, 2005), 4.

³⁷ Zhang, "Beyond the 'Natasha' Story - a Review and Critique of Current Research on Sex Trafficking," 182

³⁸ Special Action Program to Combat Forced Labour (SAP-FL), *ILO Action Against Trafficking in Human Beings*, SAP-FL Reports (Geneva, Switzerland, 2008), http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf.

organizations (NGOs) use these quote statistics as a source of evidence for their research. Public Safety Canada has yet to fully determine the extent of human trafficking within Canada but offers other statistics since April 2012 to provide context: Approximately 56 cases currently before the courts, involving at least 85 accused and 136 victims. At least 26 of these victims were under the age of 18 at the time of the alleged offence. Over 90% of these cases involve domestic human trafficking; the remaining, less than 10% involved people being brought into Canada from another country.³⁹

Although statistics are not consistent across the board, it is important that efforts are focused on exploring possible strategies to expand our knowledge on the topic rather than on gaps and concerns regarding academic research.

1.5 Conclusion

These themes that have been discussed reveal themselves throughout much of human trafficking literature. Immigration policies contribute heavily, either positively or negatively, to the fight against human trafficking in Canada. Creating restrictive borders is a pattern that is found in much of Canadian anti-trafficking legislation, the awareness around this trend needs to develop into action surrounding a solution. This project will re-work the argument of many scholars that immigration policies are often used as an economic tool by the government. The basis of this argument is that state neglects to use

³⁹ Public Safety Canada, *National Action Plan to Combat Human Trafficking* (Ottawa, ON, CAN: Public Safety Canada, 2012), <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/index.eng.aspx#toc-01>

a humanitarian approach when developing immigration policies and much of their focus is shaped by an economic way of thinking. This project parallels with the idea that a humanitarian approach is neglected but introduces a security approach as the current focus of policy makers. A thorough analysis of Canadian policies, while referring to these themes, will play a large role in determining the successfulness of Canadian anti-trafficking legislation.

Scholars seem to agree that organized crime seems to be linked to human trafficking. The last chapter of this project will look at prostitution, a phenomenon largely driven by organized crime and discover how current legislation contributes to human trafficking, in addition to how the future legislation can become more successful in combating human trafficking. Lastly it has been confirmed that the statistics regarding human trafficking are not always consistent. However the premise of this project can almost regard statistics as irrelevant. What remains important is that human trafficking is a phenomenon that is occurring in our society today. The difference of whether a dozen individuals are suffering or a 1000 individuals are suffering should not deter efforts of countries', including Canada, to take every measure necessary to do their part to combat human trafficking. As long as human trafficking exists, and individuals suffer, efforts need to be made and improved in order to stop it from continuing.

CHAPTER TWO: HISTORY OF HUMAN TRAFFICKING – A GLOBAL PERSPECTIVE

2.1 Slavery

Slavery is often thought of as an entity of the past, but it does still exist in our world today. It still exists in many forms in Canada despite its abolition in 1807. This was one of the major issues that appeared throughout the enlightenment. William Wilberforce, an activist part of a coalition to end slavery was quoted as saying.

“I mean not to accuse any one, but to take the shame upon myself, in common, indeed, with the whole parliament of Great Britain, for having suffered this horrid [slave] trade to be carried on under their authority. We are all guilty—we ought all to plead guilty, and not to exculpate ourselves by throwing the blame on others; and I therefore deprecate every kind of reflection against the various descriptions of people who are more immediately involved in this wretched business.”⁴⁰

There were many who fought tirelessly to end the slave trade. The question that is left is why and how is the slave trade still exists today if nations were dedicated to its abolition? The answer to this may be found when comparing and contrasting old from new slavery. In today’s definition, international law defines slavery as “that status or condition of a person whom any or all the powers attaching to the right of ownership are exercised”⁴¹ It is also under this definition that a perpetrator can be

⁴⁰ William Cobbett and Great Britain. Parliament, *Cobbett’s Parliamentary History of England: From the Norman Conquest, in 1066 to the Year 1803*, n.d.3

⁴¹ Benjamin Perrin, *Invisible Chains: Canada’s Underground World of Human Trafficking* (Toronto: Viking Canada/Penguin Group, 2010). 7

prosecuted anywhere in the world, no matter where the crime took place. Slavery is illegal in every place in the world, perpetrators can be tried no matter where they run to, but it is troubling that estimations declare that there are more people in bondage today than at any point in history.⁴² When one thinks about slavery of the past, or old slavery, there are a few things that define it. The first is that owners tended to pay high sums for slaves and in return received low profits from the slave labour. The owners generally provided slaves with the bare minimum to cover the basic necessities in hopes of gaining a profit over the long term. The main factor during this time period was that ethnic differences drove the slave trade.

Times have changed and just like most phenomena, slavery has evolved. The modern day slave trade, or new slavery, has defining characteristics as well. In this current era, the owner almost always avoids legal ownership of slaves. They buy them at a very minimal price and in return make a high profit from slave labour. This exploitative relationship between the owner and the slave is disposable, since it is so easy to obtain another one. Subsequently, it is very rare that one may receive their basic needs and therefore many human rights are denied. In new slavery, every one has an equal opportunity to be exploited. The skin colour or your ethnicity is usually irrelevant, but those who are most vulnerable, and the majority being women are most likely to be exploited.

These two variations of the slave trade are not far off from each other as they have many similarities. A common occurrence from both the new and old is the

⁴² Perrin, *Invisible Chains*. 7

targeting of disadvantaged individuals to exploit and gain a profit; this has and seemingly always will be the driving force of the slave trade. Another similarity is the resistance of those who profit to exposing the system of exploitation as well as the participation that governments have had through corruption or inability to act towards the cause. The last and most crucial similarity is the role that civil society was needed (old slavery) and is currently needed (new slavery) to campaign against the abolition of the slave trade.⁴³

New slavery comes in a variety of forms, the most prominent form being human trafficking. Human trafficking is often confused with human smuggling. Similar in nature, but there are differences. Consent is the first defining factor between the two. Migrants who are smuggled often endure dangerous situations like those who are trafficked, however these migrants have willingly consented to the process. If trafficking victims initially consented, it is rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.⁴⁴ Exploitation is the second factor that separates human smuggling from human trafficking. Smuggling ends once the migrants arrive at the desired destination, trafficking on the other hand involves the ongoing and continuous exploitation of the individual. Transnationality is the last determining factor for these two phenomena. Human smuggling is always transnational; migrants are smuggled across borders to arrive at a pre-determined

⁴³ Perrin, *Invisible Chains*. 7

⁴⁴ Public Safety Canada, *National Action Plan to Combat Human Trafficking*

destination. Trafficking does not necessarily have to be transnational. Individuals can be moved from location to location within their own community or from state to state.

The next section will discuss the different types of trafficking that exist internationally.

2.2 Types of Trafficking

Interpol defines four main categories of human trafficking, they are as follows: trafficking in women for sexual exploitation, trafficking for forced labour, commercial exploitation of children in tourism and trafficking of humans for organs. One thing that is consistent throughout all these forms of trafficking is the abuse of human dignity and human rights, as well as the targeting of vulnerable victims. The trafficking in women for sexual exploitation is debated to be the number one form of trafficking that claims the most victims. It has a rippling effect that touches every region of the world, whether it is classified as a source, transit or destination country.⁴⁵ Victims are often promised employment, provided with relevant travel documents and an opportunity to have a better life. These promises however are never followed through. Victims are forced into the sex trade and treated inhumanely. Trafficking for forced labour is equally as established around the globe. Deception is the key tool of the trafficker in this form of trafficking. Everyone is equally as susceptible of being recruited. Men, women and children are involved in various types of labour-intensive jobs such as agricultural, construction and domestic work.

⁴⁵ “Types of Human Trafficking.” *INTERPOL*, 2014. <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>.

The commercial sexual exploitation of children in sex tourism is an offense that has been dominant in Asia for many years. It has now begun to expand into areas of Africa, Central and South America.⁴⁶ The low risk of prosecution, or even being caught, is what makes these areas prime location for sex tourism. Cambodia is well known for its sex tourism and will be discussed in the next section. The last official definition from Interpol is the trafficking of humans for the use of their organs. This form of trafficking had recently been on the rise over the years. Like any organized crime activity, these traffickers have found a new avenue to exploit. Waiting lists for transplants of various organs, especially kidneys have been increasingly getting longer. Traffickers exploit the desperation of those whose livelihood depends on these organs. Interpol identifies that this type of trafficking will only continue to get worse due to an ageing population with increasing cases of diabetes in developed countries.⁴⁷

This thesis will mainly focus on the trafficking in women for sexual exploitation. This is the most common form of trafficking that occurs in Canada and much of the anti-trafficking legislation, although directed on all counts of trafficking, is focused on trafficking for sexual exploitation.

2.3 Examples of Trafficking Around the World

As we have seen, human trafficking is a global phenomenon that every country is burdened by. The word “trafficker” has been developed as a western concept and in many parts of the world other terms are used to define it. It is important to be familiar

⁴⁶ Ibid.

⁴⁷ Ibid.

with these different terms to obtain a holistic view of the interconnected world of human trafficking. This section will give a brief overview of four different countries that use distinctive terms and a brief description of how the phenomenon has developed in each country.

Cambodia is known as a country where sex tourism flourishes. It is considered a source, transit and destination country for traffickers. According to the Ministry of Women and Veteran Affairs there are 88 000 undocumented Cambodian women in Thailand, and an estimated forty to sixty percent are sex workers. There are also an estimated 15 000 active in Cambodia.⁴⁸ The common term for trafficker in Cambodia is “mama san”. These are those who are responsible for the sale of young girls into brothels to perform sexual acts for tourists and locals alike.⁴⁹ Economic incentive is the most prevalent reason for people to be involved in sex tourism and trafficking. The average weekly per capita income in Cambodia is \$36.50 US. The sale of the virginity of an average girl, profits can range from any where from \$300 to \$700 US.⁵⁰ It is easy to understand why the industry of sex tourism in Cambodia attracts so many individuals, when other legal trades cannot provide for an acceptable quality of life here.

In India, trafficking exists in countless parts of the country. The term that is most commonly used here is “bonded labour” and the culprits are a group of a few economically and socially powerfully individuals. They generally target families in areas of poverty and have been known to offer loans in exchange for the service of these

⁴⁸ Kana Takamatsu, “Human Security and International Assistance: Combating Human Trafficking in Cambodia,” *Gender, Technology and Development* 8, no. 2 (July 1, 2004): 277–85, doi:10.1177/097185240400800206. 287

⁴⁹ Perrin, *Invisible Chains*. 10

⁵⁰ Perrin, *Invisible Chains*. 10

families' children. The conditions of poverty in India and other parts of Asia is what keeps the practice of bonded labour, a phenomenon that disregards human dignity, in existence. Kara Siddharth describes the bonded labour in South Asia as driven by the ability to generate substantial profits at almost no real risk.⁵¹

In Ghana, “fishing masters” use exploitative methods to force children to perform dangerous work by retrieving underwater fishing nets. The families of these children are manipulated into thinking that they will be receiving top education in a useful trade. The families in these small fishing communities sell their children to the fishing masters in hopes of giving them a rare educational opportunity that would not be possible otherwise. The United States Department of State Office to Monitor and Combat Trafficking in Persons (OMCTP) notes that trafficking within the country is more prevalent than transnational trafficking and most of the victims are children.⁵²

2.4 Main Developments

2.4.1 USA: Trafficking in Persons Report

In 2000 the United States passed the Victims of Trafficking and Violence Protection Act (TVPA) to make human trafficking a federal crime, it also granted them the power to punish any state that was not taking adequate anti-trafficking measures.

Each year the State Department is required to gather information to form the Trafficking

⁵¹ Siddharth Kara, *Bonded Labor : Tackling the System of Slavery in South Asia* (New York, NY, USA: Columbia University Press, 2012), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=10604404>.

⁵² Benjamin N. Lawrance, “From Child Labor ‘Problem’ to Human Trafficking ‘Crisis’: Child Advocacy and Anti-Trafficking Legislation in Ghana,” *International Labor and Working Class History* 78, no. 1 (Fall 2010): 63–88, doi:<http://dx.doi.org.ezproxy.lib.ucalgary.ca/10.1017/S0147547910000128>.

in Persons (TIP) report that grades all countries on their anti-trafficking efforts. The main goal of this report being to increase initiatives globally in the fight against human trafficking in addition to monitor US funded initiatives to ensure they are targeting the countries in need. The report is created by foreign communications, conversations with government officials and cooperation from international non-governmental organizations. The report lists minimum requirements for anti-trafficking methods that are outlined in the TVPA. These standards include each state making an effort to investigate, prosecute and convict traffickers.⁵³ The TVPA assigns countries based on categories that are divided into three tiers:

(Tier 1) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards;

(Tier 2) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance; and

[(Tier 2 Watch List) Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND: The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.⁵⁴]

⁵³ Alese Wooditch, "The Efficacy of the Trafficking in Persons Report A Review of the Evidence," *Criminal Justice Policy Review* 22, no. 4 (December 1, 2011): 471–93, doi:10.1177/0887403410386217.

⁵⁴ Bureau of Public Affairs Department Of State. The Office of Website Management, *Tier Placements*, Report (Department Of State. The Office of Website Management, Bureau of Public Affairs., June 19, 2014), <http://www.state.gov/j/tip/rls/tiprpt/2014/226649.htm>. 114 STAT. 1482

(Tier 3) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.⁵⁵

The TIP has been issued every year since 2001, but there has been a lot of criticism on how effective these reports are. One main criticism is that the US has self-appointed themselves as supervisors to the rest of the world. However this report, despite its many criticisms, has made progress for the fight against human trafficking. Awareness is a powerful tool and on its own can create pressure for countries to make a change. It puts governments in the spotlight for everyone to observe who is making a commitment to the fight and who is not. This is also referred to as the “naming and shaming” effect.⁵⁶ This was the effect when Canada was ranked as a Tier 2 country in 2003. Canada had been consistently ranked as a Tier 1 country for the previous two years, so it came as a wakeup call that led to changes in ant-trafficking legislation. This ranking will be discussed further in detail in Chapter Three.

The other three countries (Cambodia, India, Ghana) mentioned earlier in this chapter, also participate in the TIP report. In the 2014 report Cambodia is listed as a Tier 2 country and its recommendations are to continue to investigate cases, and strive to prosecute and punish traffickers. It is also suggested that an effort to keep officials accountable needs to increase. Under the areas of prevention it notes that Cambodia has made an effort to create awareness throughout the country by billboards, posters and radio, but this is mainly focused on the foreign population. As identified earlier, the main

⁵⁵ *Victims of Trafficking and Violence Protection Act of 2000*. (DIANE Publishing, n.d.).

⁵⁶ Anne T. Gallagher, “Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Reports,” *Human Rights Review* 12, no. 3 (September 1, 2011): 381–400, doi:10.1007/s12142-010-0183-6. 387

cause of human trafficking of Cambodian nationals is poverty. Yet the report clearly states that although the government is making an effort in meeting minimum requirements, they are not targeting the root of the problem. Cambodia is just one of many countries that are included in this report that have made progress over the years. However, to make more than incremental changes root causes need to be clearly addressed and targeted. The TIP report has been successful in some measures by bringing awareness and inspiring results through other countries increasing their efforts to combat trafficking. As mentioned above this next chapter will look at how Canada fits into the equation and if in fact recommendations by the TIP have benefited Canadian policy to combat human trafficking. The TIP report is one of the largest mechanisms that the international community can look towards as a report card for how each country contributes to combating human trafficking each year; and this is why it can be considered one of the main developments in the fight against human trafficking.

2.42 Europe: Convention on Action Against Trafficking in Human Beings

In 2005, the Council of Europe realized that legislative action needed to be taken against the phenomenon of human trafficking and this meant more than simply attaching laws to the issue. They developed a comprehensive approach to deal with human trafficking and it was adopted on May 16 2005. This convention supplements the UN Trafficking Protocol, focusing on prevention, protection and prosecution as the main areas of development for effective action. The purpose of the convention is to target human trafficking in all of its aspects. This convention is not meant to compete with, but enhance and complement other international initiatives against human trafficking. What

is most intriguing about the convention is the monitoring instrument, which has been noted as being stronger than its international equivalent. The convention has established two monitoring bodies Group of Experts Against Trafficking in Human Beings (GRETA), and the Committee of the Parties, which is linked directly to the Council of Europe's Committee of Ministers.⁵⁷

GRETA involves technical experts on human trafficking that are elected by the Committee of Parties. They develop their own procedures and evaluate the performance of states in their implementation of the Convention. GRETA prepares a report, similar to the TIP, on each state party. The report is prepared in consultation to the relevant state party and then the final report is sent to the Committee of Parties with comments from the relevant state. The Committee of Parties includes one representative from each state party and can request that states take measures to implement GRETA's final conclusions. The evaluation process is organized in rounds, which last for four years each. This first evaluation round was conducted in February of 2010 and sent to the first ten that became parties to the Convention. The second round started on May of 2014, a questionnaire to be sent to all states parties which have undergone the first round of evaluation, and a reply is requested within five months of the questionnaires being delivered.

There are strengths and weaknesses of GRETA like any international entity. One particular weakness that may prove to be problematic is the questionnaire that GRETA has created. The questions tend to be rather general on certain issues, which may make it

⁵⁷ Anne Gallagher, "Recent legal developments in the field of human trafficking: A critical review of the 2005 European convention and related instruments." *European Journal of Migration and Law* 8, no. 2 (2006): 186

difficult to assess in the future whether the countries approach to implementation of the convention is working to target all spheres of human trafficking. However the general nature of the questionnaire can be balanced by the visits that GRETA conducts, without requiring permission from the State Party. This country visits are added to the final report and therefore, if needed, can fill in the specific details.

Another potential weakness lies in the confidentiality of State Party response, unless the State requests publication. This creates a disadvantage for civil society participation. It creates a barrier between the government and civil society and threatens the accountability of states.

The CoE Convention's provisions on internal follow up of recommendations appear to be rather weak. According to Article 38(7), the Committee of Parties is only required to set a date for submitting information on the implementation of the recommendations 'if necessary'. The Committee so far has required every State Party to report back on the implementation of the recommendations within two years.⁵⁸

2.43 Conclusion

The TIP report and the report on the implementation of the CoE are similar in their purpose. However after a careful analysis of both reports, although both considered main developments in the field of human trafficking, it can be concluded that report generated from the CoE convention is a better overall monitoring mechanism. This is

⁵⁸ Julia Planitzer, "GRETA's First Years of Work: Review of the Monitoring of Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings," *Anti-Trafficking Review* 0, no. 1 (June 1, 2012), doi:10.14197/atr.v0i1.18.An 40

owed to the various compressive efforts that go into generating the report for each State Party as well as the recommendations for the future. The CoE report gives governments the chance to evaluate themselves using the questionnaires during evaluation rounds, as well as combines information from country visits and civil society participation. Where the CoE report lacks, it could model after the TIP in areas such of non-confidentiality. The TIP tends to use a “name and shame” strategy, which is often successful in holding governments accountable. The CoE reports are a newer mechanism, and only time will be able to reveal whether they are effective in persuading governments to make necessary improvements to their anti-trafficking methods.

These two reports are the most prominent mechanisms for the monitoring of the implementation of anti-trafficking initiatives. Both of these mechanisms could benefit from evolving into an enforcing mechanism rather than monitoring mechanisms. Though it is in most countries best interests to incorporate recommendations from these reports into their national strategies, there is no real force behind these “suggestions”. Perhaps in the future, creating a legally binding agreement or mechanism, that is regularly enforced, may incline countries to contribute to the anti-trafficking cause with more urgency.

CHAPTER THREE: HUMAN TRAFFICKING WITHIN CANADA – DEVELOPMENTS OVER THE YEARS

3.1 Prior to the Protocol

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons was introduced to the international community in 2000. This is also the year progress began with countries across the globe taking anti-trafficking seriously in their legislation. However it is important to grasp an understanding of how things were before the Protocol existed. The 1990's were an era in which irregular migration began to make noise in Canada, and the link between this irregular migration and the sex trade became more apparent and society became concerned about human trafficking for all purposes. Nevertheless the language regarding human trafficking used presently did not exist, and the research that governments were provided with to make decisions was even less than what is available today. There was however a definite alignment with Canada and various other countries deciding during this time, that human trafficking was becoming a dangerous issue and transforming into a social problem. Although awareness was starting to develop, there were no legitimizing actions being made by officials in Canada to combat human trafficking. An example of the lack of action by the Canadian government could be found in the Criminal Code where trafficking was not mentioned

nor criminalized until additions were made later in 2005. This is ironic due to the fact that Canada contributed heavily in negotiations leading up to the creation of the UN Protocol with the participation of representatives from the Department of Foreign Affairs and International Trade (DFAIT), Status of Women Canada (SWC), and Justice Canada all participating.⁵⁹

Research done by Christine Bruckert and Colette Parent confirms the lack of action by the Canadian government during the 1990's. In an attempt to discover the change in discourse surrounding human trafficking and organized crime during the 1990's they identified recorded cases that proved this so. The process included exploring databanks as well as searching for key words such as illegal migrant; snakehead; smuggling and people; traffic and prostitution; prostitution and immigration act; stripper and refugee; prostitution and refugee; organized crime and prostitution.⁶⁰ From 1992 to 2002 they found only a total of eight examples of female refugee claimants whose cases centred on questions of trafficking. This is again ironic for a country that advocated for the fight on trafficking shown through their participation in negotiations for the UN Protocol. This study reinforces idea that during this period Canada had taken very little action to back its fight for anti-trafficking. During the research Bruckert and Parent discovered only two cases prior to 1997, "in which the claimants' participation in the sex trade was a key factor."⁶¹ Not surprisingly, neither of these cases had a positive ending, both cases were appealed and one case overturn.

⁵⁹ Oxman-Martinez, Hanley, and Gomez, "Canadian Policy on Human Trafficking." 9

⁶⁰ Christine Bruckert and Colette Parent, *Organized Crime and Human Trafficking in Canada: Tracing Perceptions and Discourses* (Ottawa: Royal Canadian Mounted Police, 2005). 14

⁶¹ Ibid.

Bruckert and Parent note that the language of trafficking and organized crime was not used even though the case featured young foreign women brought to Canada, a Russian national and an Ukrainian national, who were promised work but instead exploited in sex trade.⁶² These cases occurred in 1991 and what the author's research may reveal is that during this time positive outcomes and the number of cases present may be due to a lack of understanding or definition of the phenomenon of human trafficking. The UN Protocol of 2000 provided a universal definition of trafficking which noticeably made it easier for countries to identify what exactly they were attempting to combat. During the discussion of the research, Bruckert and Patent also identify the confusion of the definition as detrimental to the anti-trafficking fight. The women discussed in the cases they researched were considered smuggled migrants by the court, due to the description of debt bondage, which included repaying of debts, or travel expenses to Canada. The deception in the cases is disregarded and explained by officials in this quotation; "[it]... is understandable that XXXX may have misled the claimant as to the time it would take to pay off the debt."⁶³ The researchers consider this to be a "conservative reading of documentary evidence that defines claimants as illegal migrants as opposed to trafficked victims and the lack of judicial sensitivity."⁶⁴ While this conclusion may be true, the evidence presented continues to prove the point that the absence of a universal definition at this time created confusion and an inability to deal with the phenomenon of human trafficking effectively. This lack of definition can also

⁶² Ibid.

⁶³ Ibid. 23

⁶⁴ Ibid.

said to be responsible for the lack of a humanitarian approach to these cases, neglecting the well-being and inability to provide justice for many of these foreign women.

3.11 Interdepartmental Working Group on Trafficking in Persons

Active from 1999 to 2012, the Interdepartmental Working Group on Trafficking in Persons' (IWGTIP) mission was to “coordinate federal efforts to address trafficking in persons and to develop a federal strategy, in keeping with Canada’s international commitments.”⁶⁵ The IWGTIP would review existing laws, policies and programs that may have an impact on trafficking, with a goal of the identifying best practices and areas for improvement.⁶⁶ It developed and dispersed an anti-trafficking booklet, a pamphlet and a poster, which was available in various different languages to Canadian missions and NGOs abroad and within Canada. The purpose was to warn potential victims of the dangers of trafficking.⁶⁷ The IWGTIP was co-chaired by the Justice Department and the Foreign Affairs Department and included seventeen other federal departments and agencies. The organization was key in raising awareness about human trafficking for the general public and victims themselves. It was also the body that organized meetings with several NGO’s to discuss the potential of a national strategy for human trafficking (The National Action Plan to Combat Human Trafficking). The IWGTIP used a humanitarian approach to dealing with trafficking issues. The previous examples given regarding

⁶⁵ Laura Barnett, *Trafficking in Persons [Revised 18 July 2008]* (Ottawa, ON, CAN: Parliamentary Information and Research Service, 2008), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=10248357.It>

⁶⁶ Barnett, *Trafficking in Persons [Revised 18 July 2008]*.

⁶⁷ Foreign Affairs, Trade and Development Canada, “Human Trafficking and Migrant Smuggling,” Government, *Foreign Policy*, (May 23, 2013), <http://www.international.gc.ca/crime/human-traf-personne.aspx>

awareness were focused on protecting victims and potential victims from harm. This victim-centered tactic is vital to a successful anti-trafficking strategy. The Human Trafficking Taskforce replaced the organization in 2012.

3.2 Immigration and Refugee Act 2002

The previous section has discussed the inaction by the Canadian Government to combat human trafficking in the 1990's. From reviewing the research by Brucket and Patent that the inaction was largely due to the absence of a universal definition of human trafficking. The first significant stride made was the introduction of the Immigration and Refugee Act of 2002. This coincidentally occurs just two years after the international community agreed on an official definition of human trafficking within UN Protocol. The original Immigration Act of 1976 had been amended over thirty times and was considered to be too complex, difficult to understand and did not allow for effective action.⁶⁸ On June 28th, 2002 Canada's new Immigration and Refugee Protection Act (IRPA) came into effect and its purpose was to address all of the issues from the previous act. The IRPA is divided into four sections, Immigration to Canada, Refugee Protection, Enforcement of the Act and the Immigration and Refugee Board (IRB).⁶⁹ An aspect of the IRPA that has had a significant affect on human trafficking is the limiting or narrowing of Canadian immigration channels. These measures include increased security

⁶⁸ Estilbalitz Jimenez and François Crépeau, "Feature Columnist – The Immigration and Refugee Protection Act," *Policy Horizons Canada*, June 26, 2013, <http://www.horizons.gc.ca/eng/content/feature-columnist-%E2%80%93-immigration-and-refugee-protection-act>.

⁶⁹ Jimenez and Crépeau, "Feature Columnist – The Immigration and Refugee Protection Act."

checks at the beginning of the refugee determination process; increased detention of migrants unable to satisfactorily prove their identities; refusal to consider a refugee claim if there are reasons to believe the claimant is a terrorist (the definition of which is considered too wide by many observers⁷⁰); intensification of the use of deportation; increased penalties for those using false papers; and more severe punishments for those arranging illegal entry via smuggling, even if it is for humanitarian reasons.⁷¹ The upgrade to the immigration act has made it more difficult to enter Canada and increased the risk of consequences if discovered to be outside of regular immigration channels.⁷²

The securitizing of the border was an attempt to counter terrorism and is also the area where most government efforts have been allocated to fight human trafficking. However, as discussed in the literature review, restrictive borders tend to have the opposite affect than intended when it comes to combating human trafficking, it has the ability strengthen relationships between migrants and traffickers and even create new relationships. This all falls back to restrictive borders, a result of the government using a security approach to deal with human trafficking. The reduction of legal channels of immigration leaves migrants with very little choice on how to pursue entering the country. Conversely, there are positives with the “toughness” of the IRPA. Section 117 to 121 discusses how the act toughens penalties for persons who break immigration laws. This means that there are harsher punishments for those who organize illegal entry into

⁷⁰ Aiken, Sharryn. "Comments on Bill C-11 Related to National Security and Terrorism." (2001).

⁷¹ Jimenez and Crépeau, “Feature Columnist – The Immigration and Refugee Protection Act.”

⁷² Oxman-Martinez, Hanley, and Gomez, “Canadian Policy on Human Trafficking.” 13

Canada and strict penalties for “the new offence of human trafficking”.⁷³

Again there is a downside to this provision for it does not distinguish between those who commit the act of trafficking for humanitarian reasons, and those who are intending to exploit and deceive. This can become problematic in many circumstances. For instance, if someone is attempting to help a family member escape persecution in their home country they are at risk of losing their permanent residence status with no opportunity for appeal. During the development of this act there was a universal definition for human trafficking together with human trafficker provided by the United Nations. This definition only describes trafficking or a trafficker as having exploitative motives and using force, fraud, abuse etc. Nowhere in the United Nations definition does it label the given hypothetical example of a person helping someone in need cross borders for a humanitarian purpose and human trafficking. This section of the IRPA, though intentions are good, may in fact cause unintended harm. The government is focused on coming down hard on traffickers with severe punishments, which is a perfectly legitimate security approach, but it can affect the victims in a negative way and is not successful in preventing the phenomenon of human trafficking. Therefore expanding legislation to include special circumstances could be classified as a human security approach, with less risk of harming innocent individuals.

⁷³ Jimenez and Crépeau, “Feature Columnist – The Immigration and Refugee Protection Act.”

3.3 Trafficking in Persons Report 2003

As discussed in Chapter Two, the United States has developed an annual report that highlights and identifies countries that succeed in fulfilling the minimum requirements necessary to combat human trafficking and those who do not. The report categorizes each country into three tiers. Tier 1 is reserved for those countries whose governments fully comply with minimum requirements generated by the Trafficking Victims Protection Reauthorization Act of the United States (TVPRA). Tier 2 is reserved for countries whose governments do not fully comply but are making efforts to upgrade legislation to meet the minimum requirements. The Tier 2 Watch List is for those countries that do not fully comply but are making efforts to upgrade legislation to meet the minimum requirements. Tier 3 is reserved for countries that do not comply with the minimum requirements and do not make any significant effort to do so. The TIP report came into existence in 2001 and for the first two reports that it released, Canada was ranked as a Tier 1 country. However in 2003 the TIP report ranked Canada as a Tier 2, this meant that the government was not complying with minimum requirements. The requirements from the TVPRA are summarized as:

- (1) prohibit trafficking and punish acts of trafficking
- (2) prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault, for the knowing commission of trafficking in some of its most reprehensible forms (trafficking for sexual purposes, involving rape or kidnapping, or that causes a death)
- (3) prescribe punishment that is sufficiently stringent to deter and that adequately reflects the offense's heinous nature for the knowing commission of any act of trafficking

(4) make serious and sustained efforts to eliminate trafficking⁷⁴

The 2003 TIP report starts off by identifying Canada as a destination country for persons trafficked into prostitution and forced labor. The report also labels Canada as a transit point that traffickers use to transport victims to the United States. Although the report deems Canada as not complying with the minimum standards listed above, it points out that the implementation of the IRPA “should enhance the government's uneven efforts to prosecute traffickers and impose tough sentences.”⁷⁵ The report evaluates Canada’s efforts in three categories: prevention, prosecution and protection. In the prevention category, Canada is presented as attempting to prevent trafficking before victims reach Canadian borders. One measure of prevention recognized is the stationing of immigration officers in source countries to identify traffickers before they depart for Canada. Another measure listed is the policy requiring “Canadian minors be issued their own passports, rather than being included in a parent's passport, this intended to protect children from traffickers posing as parents.”⁷⁶

The report then continues to distinguish the IRPA as a key development in prosecution and highlights the “tough punishments” as the key to success in this process as the “few convictions of traffickers”⁷⁷ was the main concern in this area. Protection, the last area under review emphasizes even though basic services are provided to victims such as shelters, health care, and legal aid for all victims of violence and sexual abuse,

⁷⁴ Canadian Council for Refugees, “The Situation of Trafficking in Canada According to the US Report on Trafficking in Persons,” n.d., https://ccrweb.ca/situation_canada.htm.

⁷⁵ Department Of State. The Office of Website Management, *Trafficking in Persons Report 2014: Tier Placements*. 46

⁷⁶ Ibid.

⁷⁷ Ibid.

there was no effort to rehabilitate and work with victims for successful reintegration.⁷⁸

Another important critique in the protection of victims is that foreign trafficking victims are eligible to apply for refugee status under gender-related persecution guidelines, but usually end up being deported.⁷⁹

The TIP Report of 2003 recognizes and praises Canada's focus on the criminal elements of human trafficking with the implementation of the IRPA. However it also points out how the act lacks effort towards the protection of victims themselves.

Critiques of the IRPA have stated that it lacks a "victim-centered and human rights framework."⁸⁰ Trafficked victims, without clear legal protections, have few alternatives when faced with inhumane work conditions, forced labour, sexual, and undocumented within a country once trafficked. Providing adequate protections to victims may ensure security and help to identify the victims easier. A study by Research and Statistic Division of the Department of Justice of Canada in 2005 identifies marginalization and isolation as serious barriers to helping victims of human trafficking. The marginalization and isolation develop from the secretive environment of human trafficking. Victims are trained to not disclose information and are restricted from movement and communication with the outside world. This prevents them from easily accessing services.⁸¹ The study states that overcoming these two barriers will require continuous police intervention and a long-term commitment to the intervention. Language was also stated as a barrier that

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Nadra Qadeer, "Canada Take Note: A Comparative Perspective on Trafficking," *Canadian Woman Studies* 22, no. 3/4 (Spring/Summer 2003): 72–77.

⁸¹ Jacqueline Oxman-Martinez, Marie Lacroix, and Jill Hanley, *Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector* (Ottawa, ON, CAN: Canada Department of Justice, 2005), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=10127202>. 26

prevents international trafficking victims from obtaining essential help. Most community organizations in Canada are able to provide services in different languages other than English and French, but no organization can represent all languages need from the array of victims that seek their services. It has been important that these organizations continue to work together in providing victims with translators of the appropriate language.⁸²

3.4 Conclusion

There has been much progress in Canadian efforts to combat human trafficking over the years. It has been observed that these efforts have developed from a strong security approach. This security approach is continually reinforced by the TIP report. A humanitarian approach is recognized by the TIP report as being vital to being successful and there have been hints of this approach in Canadian efforts. However, a balance of these two needs to be achieved to obtain a human security approach to human trafficking. The TIP report does not provide guidance on how to create this balance, it only recognizes that both approaches are needed. Recommendations on ways to obtain this balance would assist the Canadian government in the long run to successfully combat human trafficking.

⁸² Oxman-Martinez, Lacroix, and Hanley, *Victims of Trafficking in Persons*. 26

CHAPTER FOUR: THE UN TRAFFICKING PROTOCOL

4.1 Contents of the Protocol

In December of 1998 the United Nations General Assembly passed resolution 53/111. The resolution called on establishing an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing types of organized crime.⁸³ The resolution resulted in The United Nations Convention against Transnational Organized Crime, the main international tool to fight organized crime and its three supplementary three protocols; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.⁸⁴ The Trafficking Protocol was adopted by the General Assembly in November 2000 and officially entered into action on December 25th 2003. Canada signed the treaty on December 14th 2000 and later ratified in on May 13th 2002. It was meant to be a blueprint for nations to follow to enhance their mechanisms of combating human trafficking. It provided the international community with a universal

⁸³ UN General Assembly. *United Nations Convention against Transnational Organized Crime: resolution/adopted by the General Assembly, 8 January 2001. A/RES/55/25, 2001.*

⁸⁴ Ibid.

definition of human trafficking. Article 3 of the Protocol defines trafficking in persons as:

(a) the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;⁸⁵

(d) “Child” shall mean any person under eighteen years of age.⁸⁶

The three basic elements to identify human trafficking are therefore:

- 1) the act (recruitment, transportation, transfer, harbouring or receipt)
- 2) the means (threat or use of force, coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving/receiving payments/benefits to achieve consent of a person having control over another person)
- 3) the purpose of exploitation⁸⁷

⁸⁵ *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime.*

⁸⁶ Ibid.

⁸⁷ Nicole A. Barrett, *An Exploration of Promising Practices in Response to Human Trafficking in Canada* (Vancouver, BC, CAN: International Centre for Criminal Law Reform and Criminal Justice Policy, Univ. of British Columbia, 2010), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=10434242>.

4.11 Debating the Definition

As discussed previously, one of the biggest obstacles in combating human trafficking prior to the Protocol was the lack of a universal definition. A universal definition has the ability to harmonize efforts across the international stage. The process of obtaining the official definition listed in Article 3 of the Protocol was strenuous due to the conflicting ideologies that surrounded the negotiating tables. One view considers all sex work to be trafficking, the other, believes that the conditions of forced labour in all industries should be assessed. The debate of whether prostitution should be connected to the definition became a highly discussed theme at the negotiation table. On one side of the debate was the Human Rights Caucus, which was comprised of human rights and anti-trafficking, sex worker activist organizations.⁸⁸ At the forefront of the Human Rights Caucus were the International Human Rights Law Group (IHLRG) and the Global Alliance Against Trafficking Women (GAATW). The efforts by these groups concentrated on developing a definition that was inclusive of all forms of trafficking, regardless of the type of work or the sex of the trafficked person. Their definition would also exclude voluntary sex work or prostitution, separating trafficking and sex work into separate issues.

The Coalition Against Trafficking in Persons (CATW) headed the “opposing” side of the negotiating table. Other members included the European Women’s Lobby (EWL) and the International Abolitionist Federation (IAF). This side deemed prostitution as a violation of human rights and parallel to slavery. They believed that all

⁸⁸ Melissa Ditmore and Marjan Wijers. *The negotiations on the UN Protocol on Trafficking in Persons.* *Nemesis* 19, no. 4 (2003): 80

sex work should be banned and punished without punishing the prostitutes themselves. In their assessment, the consent of sex work or prostitution was irrelevant and all prostitution activities should be deemed as forced labour.⁸⁹ Each approach to trafficking and sex work varied greatly hence why a definition was tremendously challenging to attain. When the final definition developed, the language was chosen very carefully as to let each individual government decide how exploitation should be interpreted.⁹⁰

This leaves the definition of “exploitation” up to individual countries. This can be problematic, for it may be in the best interest for some to interpret in a particular way that allows for simplifying anti-trafficking legislation. Around the world, sex work and prostitution are dealt with differently. It is important to discover where Canada fits in the spectrum on the debate of defining trafficking on the nature of work or by the use of deceit and coercion.⁹¹ Canada is currently in the process of addressing how sex work and prostitution should be dealt with and this process will be discussed further in Chapter Seven.

4.12 Prior to the Protocol

Prior to 2000, there was only one previous convention which only touched on minimal aspects of human trafficking, the 1949 Convention of the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. This coincidentally was adopted just one year after the Universal Declaration of Human Rights. The

⁸⁹ Ditmore and Wijers. “*The negotiations on the UN Protocol on Trafficking in Persons.*” 81

⁹⁰ Refer to end of footnote 73 (a)

⁹¹ Ditmore and Wijers. “*The negotiations on the UN Protocol on Trafficking in Persons.*” 83

convention addresses slavery and slavery like practices such as trafficking and prostitution in addition to advocating for punishment against perpetrators of the crime. Although principles behind the convention are virtuous in theory, there are some issues that prevented it from becoming a useful instrument in the international fight against human trafficking. The convention addressed trafficking only in the frame of prostitution, which leaves out the various other types of trafficking, discussed earlier in Chapter Two. Another critique of this Convention is that there were few countries that were actually party to it. Canada never became a signatory due to several reasons, a major one being that the convention went as far as to outlawing all forms of prostitution, whether legal or not.⁹²

4.2 Purpose of the Protocol

One of the main goals of the UN Trafficking Protocol was to create a universally binding instrument that addressed all aspects of trafficking on an international level, in order to prevent and combat the crime while protecting persons that are vulnerable to becoming victims of trafficking. The purpose of the Protocol is outlined in Article 2 as preventing and combating trafficking in persons, paying particular attention to women and children; protecting and assisting the victims of such trafficking, with full respect for their human rights; and promoting cooperation among State parties in order to meet those

⁹² Barnett, *Trafficking in Persons [Revised 18 July 2008]*.

objectives.⁹³ The Protocol outlines some key objectives that states are obliged to uphold: criminalizing trafficking, investigate, prosecute and convict traffickers and under take border control measures, provide measures to protect and assist victims, train law enforcement and border control officials, inform and educate victims and potential victim as well as the general public, co-operate with each other and civil society to reach these aims.⁹⁴

4.3 Strengths of the Protocol

4.31 Security Approach

The success in the Trafficking Protocol depends on parties being able to find the balance in treating human trafficking as a security issue as well as a humanitarian issue. The articles within the Protocol that address law enforcement provisions use a security framework. Many countries in the world are struggling to combat human trafficking due to a lack of this balance, especially in exercising a security framework due to the absence of anti-trafficking legislation. The articles of the Protocol that address law enforcement, promotes using a security approach. For instance Article 5 obliges all state parties to adopt policies that establish criminal offences for any activities that involve the description given in Article 3. These criminal offences should be applied those who commit the crime as well as accomplices and those who organize or direct another to

⁹³ *U.N. Convention Against Transnational Organized Crime.*

⁹⁴ Natalia Ollus. "The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children: a tool for criminal justice personnel." *Resource Material Series 62* (2002). 28

commit the offence. Additionally, Article 10 encourages the cooperation of all officials such as law enforcements, immigration and other authorities by exchanging information in order to look out for fraudulent travel documents used to cross borders as well as the “means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.”⁹⁵ Article 11 and 12 are concerned with strengthening border security by examining travel documents and increasing their quality in attempt to eliminate the possibility of fraud and boarding vehicles that cross borders for inspections.

4.32 Humanitarian Approach

The humanitarian framework can also be found throughout the Protocol, these articles tend to focus more on victims. For instance, Article 6 is concerned with the recovery of victims, specifically the physical, psychological and social recovery. This includes the state cooperating with organizations and civil society to provide necessities such as housing, counseling, psychological and medical assistance and educational and professional training opportunities. However, the Protocol only suggests that states should “consider implementing” these measures, in other words it is not mandatory. There was talk during the negotiations to make these provisions compulsory for states, however there was apprehension on the costs of such provisions, especially on

⁹⁵*Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime.* 2002.
<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

developing countries.⁹⁶ Article 8 outlines the requirements of State Parties to facilitate reparations for nationals “with due regard for the safety of the victim by providing necessary travel documentation and a return without unreasonable delay.”⁹⁷ Article 9 puts the emphasis on protecting the victims of trafficking and the prevention of trafficking in persons. In order to obtain the protection and prevention the Article encourages cooperation with NGO’s to develop programs and polices, cooperation to alleviate factors that make persons vulnerable to trafficking and cooperation to discourage the demand that fosters the exploitation that drives the trafficking industry.⁹⁸

4.4 Weaknesses of the Protocol

4.41 Potential Prosecution of Victims

There are some areas where the Protocol falls short. One common critique is that there is no provision that protects victims from being prosecuted, even if they are coerced into performing illegal acts unwillingly. Due to different legislation in various state parties, crimes such as prostitution, working without a permit or having false travel documents⁹⁹ could lead to punishments such as deportation. There needs to be a concrete provision that better protects victims that are forced into illegal acts outside of their will.

⁹⁶ Kelly E. Hyland "The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children." *Human Rights Brief*8.2 (2001)

<http://digitalcommons.wcl.american.edu/hrbrief/vol8/iss2/12>. 31

⁹⁷ Hyland "The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children." 31

⁹⁸ *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime*. 46

⁹⁹ Hyland "The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children." 31

4.42 Identifying Victims

Another weakness of the Protocol is the inability of the provisions to address how victims of human are to be identified. A legitimate question regarding this matter comes from the Canadian Refugee Council: “If authorities have no means of determining among the intercepted or arrested who is being trafficked, how do they propose to grant them the measures of protection they are committing themselves to?”¹⁰⁰ The Protocol grants those who are trafficked greater protection and therefore creates a greater financial burden on the state than those who are smuggled. This can prove to be problematic, especially concerning developing countries that lack the adequate resources to fund these initiatives. It may be less complex and economically beneficial to identify migrants crossing the border irregularly as smuggled rather than trafficked. This ambiguity in the Protocol creates gaps such as this and thus does not fully aid in protecting victims of trafficking and creates space for governments to use this ambiguity to protect economic interests.

4.43 Focus on Border Crossing

A large portion of the prevention section of the Protocol (Article 10 and 11) is focused on controlling border crossings. This area of focus may be thought of as ineffective due to the fact that most people that are caught crossing the borders illegally or with illegitimate travel documents are the victims themselves. Trafficking in persons

¹⁰⁰ Canadian Council for Refugees, “Migrant Smuggling and Trafficking in Persons,” *Canadian Council for Refugees*, February 20, 2000, <https://ccrweb.ca/traffick.html>.

technically does not have to be transnational; it can also be the movement of a person from their “community” to another location. Increasing border control does not necessarily help prevent trafficking in this circumstance. This focus also neglects the possibility of trafficked persons successfully reaching the destination and the exploitation that happened once they arrive.

4.4 Canada and the Protocol

Measuring Canada’s success in combating human trafficking will largely rely on how well the government has implemented the requirements laid out within this Protocol. The power of the Protocol lies in the clear requirements for legal measures that states must oblige by when ratified. Chapter Six will compare the Trafficking Protocol with legislation implemented by Canada in order to reveal how committed the government is to fighting human trafficking.

CHAPTER FIVE: CANADA'S NATIONAL ACTION PLAN TO COMBAT HUMAN TRAFFICKING

5.1 Introduction

This chapter will examine the most recent efforts by the Canadian government to combat human trafficking. First the National Action Plan will be presented and analyzed as the main anti-trafficking contribution. Then I will present my own critique as well as build off other scholar's critiques to find out just how effective the Nation Action Plan has been to date. The National Action Plan to Combat Human Trafficking was introduced by the Canadian government and came into effect June 6th 2012. It is a comprehensive blueprint to fight human trafficking within Canada. The Human Trafficking Taskforce, which replaced the IWGTP under Public Safety Canada, coordinates the federal anti-human trafficking response and report annually on progress to the public.¹⁰¹ As noted in previous chapters, human trafficking in Canada tends to take place for the purpose of sexual exploitation. The purpose of the National Action plan is to target the circumstances the majority of identified victims have been exposed to up to date. The Plan does touch on other forms of human trafficking, but reserves its main efforts for human trafficking for the purpose of sexual exploitation. Similarly to the UN

¹⁰¹ Public Safety Canada, *National Action Plan to Combat Human Trafficking* (Ottawa, ON, CAN: Public Safety Canada, 2012), http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/index_eng.aspx#toc-01

Trafficking Protocol, the National Action Plan has four main areas of focus; the prevention of human trafficking, the protection of victims, the prosecution of offenders; as well as working in partnership with others both domestically and internationally.

5.2 Prevention

The Government of Canada will support a broad-based prevention strategy focusing on awareness and research activities to prevent human trafficking.¹⁰² The government states the demand for sexual services as a main contributing cause to human trafficking, and therefore the government is dedicated to developing a holistic strategy to target the root causes in order to better prevent human trafficking from occurring. The plan states that these strategies must be implemented through all stages, through awareness to prevent re-victimization.¹⁰³ There are five main highlights that are outlined in the plan for the fight to prevent human trafficking, they are as follows: promoting training for front-line service providers, supporting and developing new human trafficking awareness campaigns within Canada, providing assistance to communities to identify people and places most at risk, distributing awareness materials at Canadian embassies and high commissions abroad as well as strengthening Child Protection Systems within the Canadian International Development Agency.¹⁰⁴

The government has put various efforts towards the continuation of training of front-line service providers. The biggest contribution so far comes from the efforts of

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

British Columbia's Office to Combat Trafficking in Persons (OCTIP) and the launch of a new online training course titled *Human Trafficking: Canada is Not Immune*. This is aimed at enhancing the ability of front-line service providers to better assist and support victims of human trafficking. The course is divided up into four modules ranging from learning about international and domestic trafficking, discovering the extent of human trafficking in Canada and learning about the indicators of this phenomenon and the potential roles one could have to help the situation. The course includes a number of case studies, two per module to help the reader apply what they are learning to real life situations. At the end of each module there is a quiz that helps to evaluate one's progress throughout the training program. The government encourages everyone, not just law enforcement to participate in the training.

“The updated version of this training reflects changes in Canadian laws on human trafficking, incorporates the voices and unique experiences of trafficked persons in Canada, provides a certificate of completion, and includes a national resource list of organizations working on human trafficking. We encourage all front line workers and anyone concerned about human trafficking to take this free, online course. Simply, trafficked persons have their basic human rights violated and need our assistance.”¹⁰⁵

- Rosalind Currie, Director, Office to Combat Trafficking in Persons

Many non-governmental human trafficking organizations require their staff and volunteers to complete the training as well. Andrea Burkhart the Executive Director at

¹⁰⁵ Public Safety Canada, “Ministers Blaney and Anton Commend BC’s Office to Combat Trafficking in Persons for Updated Online Training Program,” April 2014, <http://news.gc.ca/web/article/en.do?nid=838849>.

Action Coalition on Human Trafficking (ACT) Alberta indicated, “As an organization responding to human trafficking issues and cases in Alberta, we require all of our volunteers and staff to take this training. It provides comprehensive information that all front line workers should know if they think they may encounter trafficked persons in their work.”¹⁰⁶

This training program is a tremendous step in the right direction in raising awareness about human trafficking across Canada. However, the program is only as good as the amount of people it can reach. A random sample of websites of different organizations that contribute to the cause of anti-trafficking in Canada was taken, searching for any mention of this online training program. A total of twenty-three websites were searched. Out of the twenty-three, only eight websites referenced *Human Trafficking: Canada is Not Immune Online Training Program* and one website referred to it as OCTIP Training. Out of the fifteen websites that did not reference the program, four of them referenced their own training program regarding human trafficking. Figure 1 contains a list of all websites that were used in the research.

Table 1: Websites and Online Training

Websites of Organizations, Campaigns & Causes Towards Fighting Human Trafficking	Reference to Online Training Program (Canada is Not Immune)	If No, Provides Own Training
Alberta Coalition to Combat Human Trafficking (ACT)	Yes	

¹⁰⁶ British Columbia Ministry of Justice Office to Combat Trafficking in Persons, “Human Trafficking: Canada Is Not Immune 2nd Edition,” *Office to Combat Trafficking in Persons*, 2014, <http://www.pssg.gov.bc.ca/octiptraining/index.html>.

Alliance Against Modern Slavery	Yes	
Beyond Borders	No	Yes
Canadian Centre for Child Protection	No	Yes (Programs on Child Protection and Exploitation)
Canadian Women's Foundation	No	No
Centre To End All Sexual Exploitation (CEASE)	No	No
Chrysalis Anti-Human Trafficking Network	No	No
Deborah's Gate	No	No
FCJ Refugee Centre	No	Yes
Formerly Exploited voices Now Educating	No	Yes**
Free-Them	Yes	
Joy Smith	Yes	
London Anti-Human Trafficking Committee	Yes (Listed as OCTIP Training Program)	
Love Works	No	No
Men Against Sexual Trafficking	Yes	
Ottawa Coalition to End Human Trafficking – NO	No	No
Persons Against the Crime of Trafficking in Humans (PACT-Ottawa)	No	No
Raise Their Voice (RTV)	No**	No**
Resisting Exploitation Embracing Dignity	No	No
RCMP	Yes	
The Salvation Army	Yes	
Windsor Essex Fighting the International Growth of Human Trafficking	No	No

Despite the lack of online promotion from organizations in Canada, still 8 000

people have accessed the training program since April 2012.¹⁰⁷ This is a significant milestone for the prevention pillar. To reach an even larger audience within Canada and across the world, OCTIP and Public Safety Canada need to make sure the partnerships they have created distribute and promote this online training to ensure a successful campaign for the prevention of human trafficking in Canada.

5.3 Protection

The Government of Canada will continue to assist all victims of crime, including trafficking victims; to work with the provinces and territories to deliver services responsive to the needs of trafficking victims; and to promote greater understanding of the needs of trafficked persons with a view to promoting their physical, psychological and social recovery.¹⁰⁸ The National Action Plan commits to delivering support to victims on all platforms, supporting a full recovery. In the case of foreign victims this can mean additional support as well as support on obtaining some form of immigration status. There are major highlighted commitments that the plan outlines.

The first commitment is Department of Justice The Victims Fund that currently makes funding available to projects that are dedicated to improving victim services. Each project will have the opportunity to be supplied with up to \$500 000 in funding. Provinces, territories, non-governmental organizations and in specific cases victims themselves, are all eligible for funding and in the victims case, financial assistance. This

¹⁰⁷ British Columbia Ministry of Justice Office to Combat Trafficking in Persons, “Human Trafficking: Canada Is Not Immune 2nd Edition”

¹⁰⁸ Public Safety Canada, *National Action Plan to Combat Human Trafficking*

was set to begin somewhere in 2013/2014. There is no financial statement publicly released for the Department of Justice Victims Fund, so it is inconclusive to determine if this fund can be deemed a success for Canadian efforts to combat human trafficking for there is nothing to measure its progress against.

The second highlight is the commitment to identify and protect domestic nationals and foreign Canadian nationals who are vulnerable to human trafficking, especially female immigrants ages fifteen to twenty-one. Since the plan was released a project called “*Working Together: Ending Violence Against Women and Girls*” initiated by the Status of Women Canada launched a call for proposals, the goal is to solicit applications for funding of projects that will prevent and reduce violence against women and girls in Canada. The proposals fall under four categories: Preventing and reducing violence against women and girls in high-risk neighbourhoods, engaging men and boys in ending violence against women and girls, preventing and reducing violence against women and girls in the name of "honour", preventing and reducing the trafficking of women and girls through community planning. On June 24th 2013 at a City Hall event, Rona Ambrose, the Federal Minister for Status of Women Canada, announced that \$200 000 would be given to Persons Against the Crime of Trafficking in Humans Ottawa (PACT-Ottawa). This came as a result of PACT-Ottawa’s proposal. The funding will go towards supporting a two-year study in identifying the problems and challenges, and creating a “broad city profile to highlight where in the city is trafficking most likely occurring.”¹⁰⁹

¹⁰⁹ Alison Sandor, “Feds Spend \$200K to Combat Human Trafficking in Ottawa,” *580 CFRA News Talk Radio*, June 24, 2013. http://www.pact-ottawa.org/uploads/7/6/4/6/7646662/cfra_feds_spend_200k_to_combat_human_trafficking_in_ottawa_-_news_talk_radio.pdf

It will examine root causes, risk factors, identifying specific needs of women and girls who are at risk, institutional barriers, related forms of exploitation and factors that limit community ability to deal with trafficking for women and girls for sexual exploitation.¹¹⁰

Inspector Uday Jaswal with the Ottawa Police is optimistic about the project stating, "I think that's one of the things that this project is going to help us identify because a victim may come to the attention of a social agency, for example, accessing health supports or counseling services, but who may never report to police... So those stats are lost. So the sort of complete picture around human trafficking is not clear at this point."¹¹¹

Since the announcement of the funding, PACT-Ottawa's researchers have had breakthrough findings, with a study released on July 30th 2014. The study identified 140 victims who were trafficked for sexual exploitation in Ottawa in the last year, ages ranging from twelve to twenty-five. "Ottawa Police have a dedicated team in place to target human trafficking, with four officers working on the file. It is a pilot project that has uncovered a few high profile cases and led to convictions and jail time."¹¹²

There are also many other initiatives that the government has taken to ensure the protection of victims since the release of the National Action Plan. For instance, as of July 4th, 2012, Human Resources and Skills Development Canada (HRSCD) issued negative Labour Market Opinions (LMOs) for all applications coming from employers who had been linked to the sex trade, to ensure protection from abuse and exploitation for those coming to Canada to work. A LMO is an assessment introduced by Service Canada

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Joanne Schnurr, "Ottawa Researchers Identify 140 Victims of Human Trafficking," *CTV Ottawa*, July 30, 2014, <http://www.cfra.com/news/2014/07/30/ottawa-researchers-identify-140-victims-of-human-trafficking>

that evaluates the temporary foreign work permit based on opinions of the potential impact of the type of employment of applicants on the Canadian labour market. Strip clubs, escort services and massage parlours¹¹³ are the types of applications that receive a negative LMO and thus prevent foreign workers from being introduced into a possible vulnerable situation of human trafficking for sexual exploitation, thus with a negative LMO these applications will generally be rejected. However, the negative LMO strategy could be seen as a “restrictive border policy” and as discussed previously narrowing the legal channels that are available to migrants. This may lead them straight into the path of traffickers with absolutely no legal framework to fall back on, the opposite effect of what is intended.

5.4 Prosecution

The Government of Canada will build on current efforts to bring traffickers to justice and to strengthen the criminal justice system's responses to this crime.¹¹⁴ The government is committed to dissolving organized crime, and others that are associated with human trafficking of people within and to Canada. Legislation is the main vehicle that allows for this to happen. Progress can be identified in the adjustment of the Criminal Code. On June 28th 2012, less than a month after the release of the National Action Plan, Bill C-310 was assented. This Bill adds the offence of trafficking in persons

¹¹³ Public Safety Canada, *National Action Plan to Combat Human Trafficking - 2012-2013 Annual Report on Progress*, Government (Ottawa, ON, CAN: Public Safety Canada, March 4, 2014), <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2013-ntnl-ctn-pln-cmbt-hmn/index-eng.aspx#a07>.

¹¹⁴ Public Safety Canada, *National Action Plan to Combat Human Trafficking*

committed by a Canadian citizen or permanent resident outside of Canada leading to their prosecution. This is seen in section 7 of the Criminal Code subsection 4.1:

(4.11) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.01, 279.011, 279.02 or 279.03 shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.¹¹⁵

This is a great achievement in Canada's anti-trafficking fight. Now those who traffic abroad will not fly under the radar if neglected by other governments. This should create a greater risk for those Canadian and foreign nationals who are involved with trafficking abroad and perhaps deter the acts from occurring. Section 279.04 of the Criminal Code has been amended by adding factors that will aid the court in their decision in determining whether the accused exploits another person. These factors are as follows: used or threatened to use force or another form of coercion; used deception; or abused a position of trust, power or authority.¹¹⁶

In total seventy-one human trafficking related cases have gone through the court in Canada. This has resulted in twenty-four human trafficking convictions and forty-seven human trafficking related convictions.¹¹⁷ There has been a recent triumph in the Canadian courts after twenty members of the largest human trafficking ring in Canadian

¹¹⁵ Bill C-310, *An Act to Amend the Criminal Code (trafficking in Persons)*. 1st session. 41st Parliament. (Assented to June 28, 2012), Statutes of Canada 2012, c.15
<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5697415>.

¹¹⁶ Bill C-310, *An Act to Amend the Criminal Code*

¹¹⁷ Nicole O'Reilly, "Human Traffickers Deported: 'There Is No Room in Canada,'" *The Hamilton Spectator*, July 23, 2014, <http://www.thespec.com/news-story/4645126-human-traffickers-deported-there-is-no-room-in-canada-/In>

history are currently being deported. The Domotor-Kolompar criminal organization had brought as many as nineteen victims to the Hamilton, Ontario area from Hungary for forced labour. Public Safety Canada's Minister Steven Blaney announced that they "are sending a clear signal that there is no room in Canada for those who are committing the heinous and despicable crime of human trafficking."¹¹⁸ The Domotor-Holompar case involved non-sexual forced labour. The trafficking ring was uncovered in 2011, the members were convicted in 2012 under the Criminal Code, and now in 2014 the members are being deported (all but two members not convicted in the case). This conviction shows great progress in Canadian anti-trafficking efforts, not only is this the biggest case in Canadian history, but this is the only successfully prosecuted case for both international and labour trafficking.¹¹⁹ More convictions may be the result of better trained law enforcement and front-line workers, widespread awareness and education about human trafficking, and of course, amendments to Canadian legislation that improve the courts chances of being able to successfully convict traffickers. (Since this conviction there has been one other case that was successfully convicted, it involved a man from Vancouver named Franco Orr who illegally employed a Filipina nanny, deceived her about her salary and forced her to work unbearable hours.)¹²⁰

¹¹⁸ O'Reilly, "Human Traffickers Deported."

¹¹⁹ Bethany Hastie and Alison Yule, "Milestone or Missed Opportunity: A Critical Analysis of the Impact of Domotor on the Future of Human Trafficking Cases in Canada," *Appeal: Review of Current Law and Law Reform* 19 (2014): 83.

¹²⁰ CBC News, "B.C. Man Guilty of Trafficking Nanny Gets 18 Months," accessed August 1, 2014, <http://www.cbc.ca/1.2054785>.

5.5 Partnerships

The Government of Canada is committed to strengthening its relationships with relevant stakeholders to facilitate the ongoing development of effective policies and tools, to ensure a comprehensive and coordinated approach. As well as work to improve its ability to collect, track and report on data related to human trafficking in order to enhance knowledge and adapt their response appropriately, both domestically and on the international stage.¹²¹ Canada was one of the first countries to promote partnerships as a “fourth P”. Canada recognizes that partnerships are a crucial part of any anti-trafficking strategy. The government is committed to strengthening working relationships within and outside the federal government. This means partnerships will continue to blossom with non-governmental organizations and communities across Canada as well as international organizations and foreign governments. There are three areas within the Partnership pillar that Canada has excelled at: enhancing engagement and collaboration with civil society and all levels of government, supporting capacity-building and anti-trafficking efforts internationally and researching to increase knowledge on forced labour as an emerging issue in Canada.¹²²

5.5.1 Collaboration with Civil Society and All Levels of Government

Since the National Plan has been implemented there have been numerous examples of the government keeping to the commitments they have made. For instance

¹²¹ Public Safety Canada, *National Action Plan to Combat Human Trafficking*

¹²² Public Safety Canada, *National Action Plan to Combat Human Trafficking - 2012-2013 Annual Report on Progress*

in the Fall of 2012, Public Safety Canada announced an online consultation with stakeholders to brainstorm about how the crime of human trafficking has been affecting different parts of Canada. The consultation was sent to over 200 stakeholders across Canada, there were 80 responses received. The consultation targeted organizations and individuals who worked in the area to obtain information regarding current trends (national and regional), different initiatives being employed across Canada and the challenges and gaps within these initiatives. This information will help in determining which issues and what areas the government requires more focus. The findings from these consultations were then used to inform others during five roundtable discussions across Canada, this included: Edmonton, Halifax, Montreal, Toronto and Winnipeg. After the information was gathered it was concluded that human trafficking that was occurring in northern Canada may be different than that occurring in the south and therefore different initiatives may be needed. In March of 2013, Public Safety Canada met with stakeholders and individuals in a small community in southern Nunavut. The two-day meeting provided the opportunity to explore human trafficking manifesting in northern Canada, opening doors to study the issue in this area more intensely. The presence of natural resource extraction industries has brought concern regarding opportunities of exploitation and human trafficking in northern Canada. This has also brought the potential trafficking of Inuit girls from remote northern communities in to cities in southern Canada.¹²³ The government has been unable to give a full

¹²³ Public Safety Canada, *2012-2013 Human Trafficking Stakeholder Consultations - National Summary Report*, March 4, 2014, http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2013-hmn-trffckng-stkhldr/index_eng.aspx#a01

comprehensive overview of human trafficking in this region due to the vast geographic area that is northern Canada. However they were able to provide an inclusive picture of a small community in Nunavut, concluding that awareness of human trafficking through the northern community is in the beginning stages. This combined with the remote area of this regions communities, creates factors that make it very likely for human trafficking to occur. The building of partnerships across Canada, through all levels of government and organizations has been able to open the door to gaps in current Canadian anti-trafficking efforts. The new knowledge about human trafficking in the North was made possible by the cooperation of these partnerships. These types of consultations and stakeholder meetings will only broaden the Canadian governments knowledge and better enable them to make decisions that will help to combat human trafficking in Canada.

There are various other examples that demonstrate the progress that has been made in enhancing and strengthening partnerships between the government and civil society. For instance, the BC OCTIP made a commitment in their roll out of the BC Action Plan to Combat Human Trafficking, to empower and build capacity in local British Colombia communities as well as aboriginal communities to prevent human trafficking and provide assistance to trafficked persons.¹²⁴ In 2013 they fulfilled this commitment by implementing six community “Train the Trainer” workshops on human trafficking throughout British Colombia. Out of the six communities that had received

¹²⁴ British Colombia Ministry of Justice Office to Combat Trafficking in Persons. *B.C'S Action Plan to Combat Human Trafficking: One Year Status Report March 2013 to April 2014*. Government, July 21, 2014. <http://www.pssg.gov.bc.ca/octip/docs/2014StatusReport.pdf>.

the funding, three of them have held successful Train the Trainer events that reached over ninety service providers in Kamloops, the Nisga'a First Nation area and Prince George. The other three remaining communities are expected to hold their events in late 2014 (Prince Rupert, Quesnel, and Sauteau First Nations [Chetwynd area]). The Train the Trainer initiative was created by BC OCTIP and developed over five years of planning. It consists of a local community organizing committee (of a specific community or area) that works with OCTIP staff to plan a two-day event on human trafficking. The invitations to the event are sent to local community services providers, Aboriginal organizations, First Nations bands and councils, municipal government representatives, law enforcement, schools, BC ministries, and other important community members.¹²⁵ Participants identify the current resources that are available in their community, develop a local service model, identify gaps in their networks of support, and propose the next steps to educate their community on human trafficking and create prevention measures. At the end of the two-day event, the partakers are given an anti-human trafficking resource kit that contains DVD's, books, posters, pamphlets, and OCTIP Pocket Cards to support their local effort.¹²⁶ The following are comments that were obtained from participants who attended the Williams Lake Train the Trainer event on November 1st and 2nd:

¹²⁵ British Columbia Ministry of Justice Office to Combat Trafficking in Persons. *B.C.'S Action Plan to Combat Human Trafficking: 2013 - 2016*. Government, March 2013.
<http://www.pssg.gov.bc.ca/octip/docs/action-plan.pdf>.

¹²⁶ Ibid.

“The background info you provided on OCTIP, the PowerPoint & DVD, really helped to expand my thinking around human trafficking and its relevancy to the work I do and the people I work with.”

“Everything, it was so informative! I learned so much that I had no idea what was going on in our own back yard!”

“The diverse group of community services represented, as well as the strong Aboriginal presence among attendees.”¹²⁷

The success of the Train the Trainer event is be observed from opinions and attitudes of those who attend. The comments represent only a small portion of attendees, however every person who benefits from these events, results in a step closer to ending human trafficking within Canada. BC OCTIP has publicly stated that their service model follows a human rights approach. Consequently all the initiatives that have been implemented so far have focused on protecting, assisting and supporting victims. The Train the Trainer events follow this same pattern. These events are a successful contribution for British Columbia’s anti-trafficking fight, now the next progressive step should be obtaining this on a federal level. PACT-Ottawa has delivered similar events modeled after this initiative, a one-day training workshop for frontline service organizations and first responders on human trafficking. This was held on February 27, March 6, 13, 20 and 23, 2013 at St. Joseph’s Parish Hall in Ottawa, Ontario. Although this Train the Trainer workshop did not involve a government partnership, it enhanced relationships within civil society and provided knowledge that is vital to the anti-trafficking fight in Canada.

¹²⁷ Ibid.

5.52 Supporting Anti-Trafficking Efforts Internationally

From 2012 -2013 the Canadian government has participated in numerous multi-lateral events to support capacity-building and anti-trafficking efforts internationally. In October of 2012, the RCMP assisted in training of Burkinabè¹²⁸ forestry and customs officers as well as local police in a project to target traffickers who were recruiting young children to work illegal in gold mines. This operation rescued 387 children and arrested seventy-three individuals associated in the trafficking and forced labour offences.

The Department of Foreign Affairs, Trade and Development (DFAIT) is collaborating internationally to combat human trafficking. There has been a large portion of work done in the Americas. On October 11, 2012, Diane Ablonczy, the Minister of State of Foreign Affairs (Americans and Consular Affairs), announced that Canada would be supporting three projects in Guatemala. “Our government is supporting new local projects to address and prevent violence against children and women and to bring justice to victims of the past. Our government is committed to improving security in the region, and I am gratified to be doing so in concert with my colleagues in Guatemala.”¹²⁹ The projects are valued at \$3.3 million and are being conducted through partnerships with the government of Guatemala as well as non-governmental organizations. This collaboration is just one of many partnerships that Canada has developed and supported internationally. The relationships that Canada makes within the international community are vital to the

¹²⁸ Burkinabè is the nationality of people from Burkina Faso, West Africa

¹²⁹ Foreign Affairs, Trade and Development Canada, “Minister Ablonczy Announces Initiatives to Reinforce Security and Justice in Guatemala,” October 11, 2012, <http://www.international.gc.ca/media/state-etat/news-communiques/2012/10/11a.aspx?lang=eng>.

fight against human trafficking. Not only is Canada fighting to end the grave offence in other parts of the globe, but these partnerships can be great resources to aid the fight within Canada as well.

There are some gaps in the Government of Canada's attempt at creating and strengthening international partnerships. These gaps are a result of the lack of focus on targeting source and transit countries. The *National Action Plan to Combat Human Trafficking – Annual Progress Report 2012-2013* stated that the government has been actively trying to accomplish these partnerships with source and transit countries. The report quotes numerous examples as to how the government is actively fulfilling their commitment: “Promotion of Anti-Crime Capacity Building Program (ACCBP) and the Global Peace and Security Fund (GPSF) to international organizations, NGOs, and partner countries in order to support projects in source and transit countries that combat human trafficking with a focus on organized crime networks.”¹³⁰ This is lead by DFAIT and the process began in 2012. However, the United States-Canada Bi National Assessment of Trafficking in Persons 2006 stated that in Canada, Asian and Eastern European organized crime groups have been the most involved in trafficking women from countries such as China, South Korea, Thailand, Cambodia, the Philippines, Russia and from the region of Latin America.”¹³¹ The Canadian government has mentioned the Americas as the main geographical location where efforts are being made to create partnerships, Guatemala as mentioned above is an example of this. The Canadian

¹³⁰ Public Safety Canada, *National Action Plan to Combat Human Trafficking - 2012-2013 Annual Report on Progress*

¹³¹ Perrin, *Invisible Chains*. 33

government has so far failed to address the other countries mentioned in the Bi National Assessment. Partnering with the main source and transit countries for human trafficking in Canada is a vital piece of a successful anti-trafficking strategy. The government needs to develop programs and provide support to those countries mentioned above if there is any hope to eliminate human trafficking in Canada.

5.53 Researching Forced Labour: An Emerging Issue in Canada

Human trafficking for the purpose of forced labour is becoming an emerging issue within Canada. The government has decided to put more emphasis on this area due to the fact that information is considerably lacking in comparison with information that has been collected and researched from human trafficking for the purpose of sexual exploitation. The government implemented quarterly conference calls, one to focus on human trafficking in general and one specifically on forced labour. These calls provide Federal-Provincial-Territorial stakeholders with opportunities to share best practices and to share tools being developed to address human trafficking.¹³² In June 2013, World Vision Canada launched a countrywide awareness campaign educating the public on the forms of child labour, including child trafficking. This campaign is currently calling all Canadians to sign a petition to work with the Canadian government to eliminate child labour by 2016. The petition reads:

“Dear Prime Minister Harper,

¹³² Public Safety Canada, *National Action Plan to Combat Human Trafficking - 2012-2013 Annual Report on Progress*

To help ensure that Canadians are contributing to the International Labour Organization’s goal of eliminating the worst forms of child labour by 2016, I want the Canadian Government to work with businesses and organizations to encourage and support transparency in supply chains for products sold in Canada as a key step in helping to end the worst forms of child labour.”

This public awareness initiative is advertised on government websites. The demands of the petition are enhancing the elements that are already included in the National Action Plan. Canada has recognized the growing concern of forced labour and is committing to creating partnerships to work towards the cause. Eliminating the worst forms of child labour by 2016 will be a daunting task, but with the work that has been done in just two years since the action plan was implemented, there is potential for substantial progress to be made if the government continues to work with the partnerships it has already formed.

5.5 Investment

The National Action Plans reveals how the Canadian government plans to allocate investments in order to combat human trafficking. The government estimates that it will be contributing over \$6 million on an annual basis. Table 2 displays a breakdown on how funding was allocated from 2012 to 2013.¹³³

¹³³ Public Safety Canada, *National Action Plan to Combat Human Trafficking*

Table 2: Funding 2012/2013

Effort or Activity (lead organization)	Government of Canada Investment 2012/13
Dedicated Enforcement Team - RCMP and CBSA	\$2,030,000
Human Trafficking National Coordination Centre - RCMP	\$1,300,000
Regional Coordination and Awareness - RCMP	\$1,600,000
Border Service Officer Training/Awareness - CBSA	\$445,000
Training, Legislative Implementation, and Policy Development - JUS	\$140,000
Enhanced Victim Services - JUS	Up to \$500,000*
Temporary Foreign Worker Program - HRSDC	\$140,000
Anti-Crime Capacity Building Program - DFAIT	\$96,000
Global Peace and Security Fund - DFAIT	\$1,200,000
Stakeholder Consultation and Coordination - Public Safety	\$200,000
Awareness and Research - Public Safety	\$155,00

The breakdown of financial support reveals a great deal in terms of the current focus of the Canadian government. Almost all the programs listed in Table 2 displays almost an equal balance in a humanitarian and security approach. For instance, the most money was delegated to the Dedicated Enforcement Team lead by the RCMP and CBSA. This team focused on traffickers them self. This focus uses a security approach. However, the various other programs in Table 2 are ones that are dedicated to providing assistance, support and protection to victims, using a humanitarian approach. The balance of the two approaches indicates an appropriate allocation of finances; it is now up

to these programs to use the money to effectively contribute to the fight against human trafficking in Canada.

CHAPTER SIX: CANADIAN EFFORTS AND THE PROTOCOL

6.1 Introduction

As Chapters 4 and 5 have outlined the Trafficking Protocol and Canadian anti-trafficking legislation, this Chapter will summarize the two and outline where Canadian policy falls short on compliance. As noted before, the UN Trafficking Protocol, as a blueprint to combating human trafficking, suggests a three-pronged approach; the prevention and combat of trafficking in persons, protection and assistance to the victims and the promotion of cooperation among state parties. These three elements serve as the overall purpose of the Trafficking Protocol. However the government has shown uneven progress in addressing these areas in policy. The most valiant efforts have taken place over the last three years.

6.2 Article 5 and the Criminal Code (Prosecution)

Article 5 of the Trafficking Protocol, discusses the criminalization of human trafficking. It suggests that states adopt legislative and other measures that are needed to establish the criminal offences listed in Article 3 (the definition of human trafficking) whether are committed intentionally, attempting to commit, participating as an accomplice in the offence or organizing others to commit the offence.

After ratifying the Protocol, it took Canada five years to implement Article 5 into Canadian legislation. Previous to this the Immigration and refugee Protection Act of 2002 addressed human trafficking prescribing fines up to \$1 million and a maximum penalty of life in prison.¹³⁴ In November of 2005 Bill C-49 amended the criminal code, implementing the suggestions of Article 5. This resulted in the first ever charge laid by the Peel Regional Police under Section 279.01 of the Criminal Code. In 2012 the Criminal Code was amended again with Bill C-310 as discussed in Chapter 5. Since these amendments to the criminal code, there have been a total of 123 charges issued for incidents in trafficking in persons from British Columbia, Alberta, Ontario and Quebec.¹³⁵

6.3 Prevention

The Protocol urges member States to take measures to prevent human trafficking from occurring, and for those who are already victims, to prevent their re-victimization once they are intercepted or come forward to seek help from authorities (Article 9.1a).¹³⁶ The Canadian government has instituted awareness as a main focus under the prevention pillar. Although these awareness campaigns target all audiences' including civil society, law enforcement and the victims themselves, there is a weakness in Canada's approach.

¹³⁴ Bureau of Public Affairs Department Of State. The Office of Website Management, *Trafficking in Persons Report 2011*, Report (Department Of State. The Office of Website Management, Bureau of Public Affairs., June 19, 2014), <http://www.state.gov/j/tip/rls/tiprpt/2011/>

¹³⁵ Holly Moore and Joanne Levasseur, "Human Traffickers Going Unpunished in Canada, Experts Say," *CBC News*, March 25, 2014, <http://www.cbc.ca/news/canada/manitoba/human-traffickers-going-unpunished-in-canada-experts-say-1.2584944>.

¹³⁶ Oxman-Martinez, Hanley, and Gomez, "Canadian Policy on Human Trafficking". 11

There is an assumption that if victims are aware of human trafficking by the information provided by various government and non-governmental campaigns then they will avoid exploitation. This is problematic for many reasons, for one when dealing with source countries. Socio-economic factors play a large role in people migrating elsewhere to escape their circumstances, thus clandestine methods of migration to do this leaves them vulnerable to trafficking. Knowing the dangers of trafficking sometimes does not outweigh gaining an opportunity for a better life in a different country. Article 9.4 states that parties to the Protocol shall take or strengthen measures, though cooperation, to improve the factors that make persons vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. The UN Millennium project suggests that 0.7% of Gross Domestic Product (GDP) should be given in development assistance, aiding in the fight against poverty. In 2011 Canada's GDP was \$1.778 trillion¹³⁷ its international assistance reached \$5 million by March 31st, 2011 GDP. Canada fails tremendously to meet this target in their development assistance towards other countries. Factors that contribute to human trafficking such as poverty cannot be expected to make progress when Canada fails to meet the goals set by the international community to help the cause.

Border control is another area in which Canadian policy reveals its weaknesses. Ironically, the weakness does not come from neglecting parts of the Trafficking Protocol but actually following it. The effect of border control on human trafficking has been

¹³⁷ The World Bank Group, "Data," *The World Bank*, accessed August 6, 2014, <http://data.worldbank.org/country/canada>.

discussed numerous times in Canadian legislation. Article 11 of the Protocol establishes that states should strengthen border control in order to prevent and detect trafficking in persons. This is precisely what Canada has done with border control, especially after the incidents of September 11th 2001. However we have learned that migrants seeking entry to Canada are now seen through a security lenses rather than a humanitarian lens when they first arrive. Stricter immigration laws and border controls, lead migrants to seek untraditional and illegal ways of entering the country, placing them into vulnerable situations for potential exploitation by traffickers.

6.4 Protection

Throughout Articles 6 to 8, the Protocol assigns the term “victim” to any persons who is or has been subjected to human trafficking. The Protocol states that all parties must provide adequate assistance and protection to these victims. Technically Canada meets the general requirements for providing protections to victims but falls short in a number of areas, general services provided to victims and a lack of nationwide guidelines to assess foreign nationals as trafficking victims.

6.41 Protection Services

According to the TIP report of 2014, the services offered by the government were very general and there were no government programs that were specifically created to meet the needs of trafficking victims. The responsibility for protection falls in the hands of each individual province or territory that receive funding from the federal government.

This means when searching for protection services a victim of human trafficking that resides on the west coast of Canada may have a different experience than that of a victim who arrived on the east coast. For instance it is to be expected that with British Columbia establishing the OCTIP, they would have more streamlined protection services than those provinces or territories that do not have a legislative body to address human trafficking. Those victims that reside in British Columbia are still directed to a general service for victims of all crimes called Victim Link BC. This is a toll-free telephone service that provides immediate support to victims of all different crimes including human trafficking. The service provides referral services depending on the needs of the victims. British Columbia is the only province to have an office dedicated to the cause. In most provinces, victim services are provided by the community sector, different non-governmental organizations and agencies that are dedicated to assisting victims and many of the provincial governments fund these organizations.

Victims of human trafficking are eligible for a special Temporary Resident Permit (TRP) that is issued by the federal government. This permit is valid for up to 180 days and allows for health care benefits. This TRP allows victims to escape the influence of traffickers, gives them time to decide whether they want to return home, lets them recover from physical or mental trauma (for example, counseling or medical treatment), lets them take part in the investigation or prosecution of the traffickers, or to earn a living without fear of persecution by the trafficker.¹³⁸ In 2013 the government issued fourteen TRPs to fourteen foreign trafficking victims, ten were first-term applicants and four were

¹³⁸ Government of Canada, "Protection and Assistance for Victims of Human Trafficking," *Government of Canada*, September 18, 2013, <http://www.cic.gc.ca/english/information/applications/trp.asp>.

renewals. This number has significantly decreased from the previous year, where in 2012, twenty-six TRP's were granted to twenty-four individuals.¹³⁹ This is not to say that victims did not receive any other type of immigration relief such as refugee status. Although the TRP has notably provided much needed assistance for trafficking victims, the weakness lies in the processing of applications. In 2014, service providers reported delays in victims receiving their TRP's, resulting in victims waiting months to obtain their permits.¹⁴⁰ This meant that the victims were unable to access government services and had to rely solely on the community sector for support. Many victims require immediate and or emergency support once identified. The long waits to receive the residence permits takes away from the appeal of applying for one in the first place. A change in regulations needs to be made in processing, for whatever reason, if the applications are delayed; victims should still be able to access government services.

6.42 Identification of Victims

The 2014 TIP report also stated that many NGO's had reported discrepancies with immigration officials, law enforcement and service providers regarding which individuals were to be considered a victim of trafficking. Over the years Canada has made progress in providing information to those working in this field on how to better identify and assist victims. As noted earlier in Chapter 5, the OCTIP launched an online training program to assist individuals with identification of victims and other important information. There

¹³⁹ Department Of State. The Office of Website Management, Bureau of Public Affairs. *Trafficking in Persons Report 2014*. Report. Department Of State. The Office of Website Management, Bureau of Public Affairs., June 19, 2014. <http://www.state.gov/j/tip/rls/tiprpt/2014/>.

¹⁴⁰ Ibid.

have been other initiatives implemented by provinces to better equip their officers and officials in this area. For instance, the government of Ontario has taken a similar initiative to that of British Columbia with the funding of the Online Training Initiative To Address Human Trafficking. This training is recommended for professionals and staff who are working in this area and may come in contact with trafficking victims. Initiatives like these are a step in the right direction because training of individuals to identify victims is very important, however the training and guidelines are uneven. There are no nationwide procedures for other government officials, such as social workers or labor inspectors or front line workers, to proactively identify and assist trafficking victims among vulnerable populations.¹⁴¹

Article 10 of the Trafficking Protocol addresses the information exchange and training of all officials and workers. “Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine: (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons”¹⁴² Identifying victims from perpetrators is an important part of the Protocol. Streamlining the training of officials on the federal level may help to reduce discrepancies when classifying individuals as a human trafficking victim and thus prevent any victims from falling through the cracks, allowing

¹⁴¹ Department Of State. The Office of Website Management, *Trafficking in Persons Report 2014*

¹⁴² *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime.* 2002.

them to receive the support and assistance they need.

Although the Protocol does not specify how the training should be carried out, it can be concluded that up to this point Canada has failed to adhere to the Protocol, as each province carries out their own method of training. An ideal solution would be to have a collaboration of experts from government and non-governmental organizations come together and develop a comprehensive training program that is specifically dedicated to identifying victims. Once developed, the federal government could disperse the training to each province making it mandatory for law enforcement and immigration officials to take. Human Trafficking: Canada is Not Immune online training program discussed in Chapter 5, is a suitable model of what a training program should look like. The next step is to make this training mandatory for all government officials and service providers. Having a homogenous procedure would drastically reduce the number of inconsistencies of victim identification and help to save many more lives from the crime of human trafficking. This should be in addition to following Article 10 of the Protocol by meeting more than just the minimum requirements.

6.5 Partnerships

The National Action Plan to Combat Human Trafficking addresses partnerships as imperative to a successful human trafficking strategy. The Protocol addresses cooperation throughout various articles. Article 9 suggests that policies and programs developed should be in accordance with “non-governmental organizations, other relevant

organizations and other elements of civil society.”¹⁴³ The relationship between the Canadian government and non-governmental organizations seems to be one based on financial support. The government has committed to funding more projects and organizations. This was demonstrated with the announcement of the \$200 000 backing to PACT-Ottawa in Chapter 5. The provincial governments of Alberta and Quebec continue to fund organizations to lead their anti-trafficking campaigns. ACT Alberta is the leading organization in the province dealing with coordinating services for victims, providing training to front-line service providers, educating the public, and researching and collecting data on human trafficking. This is in addition to helping develop policy provincially and nationally to create community based responses to human trafficking.¹⁴⁴

Partnerships like this are important to continue the fight against human trafficking. Overall, the government has complied with the Protocol’s requirements for partnerships that work towards combating human trafficking, although there is room for improvement. A consistency in relationships between the government and organizations across Canada needs further development. Trafficking occurs in different forms in various provinces so a working relationship with non-governmental organizations that deal with human trafficking specifically in each province and territory would strengthen the overall anti-trafficking fight. It has been noted in Chapter 5 that the Canadian government has been working with stakeholders and the territory of Nunavut to develop more research on trafficking in the North. This is an example of a partnership that has

¹⁴³ *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime.* 2002

¹⁴⁴ ACT Alberta, “Welcome to ACT Alberta,” *ACT Alberta*, 2012, <http://www.actalberta.org/>.

started to develop new research on human trafficking and needs to be further developed.

6.6 Summary of Comparison

On paper, the UN Trafficking Protocol and anti-trafficking efforts by the Canadian government seem to align. In each of the “P’s”, Canada has met the minimum requirements; the main concerns being prosecution, prevention, protection, and partnerships. However, completing the bare minimum will stifle further progress in the anti-trafficking fight. Prosecution is not taken lightly in Canada as it is in the Protocol and the statistics show that there is progress in this area. This can be seen as an accomplishment; conversely most of the prosecutions thus far have been of those traffickers who have committed the act of trafficking. Meaning victims have already suffered which cannot be undone. Canada’s prevention methods parallel suggestions such as spreading awareness from the Protocol but neglect a humanitarian approach to dealing with border security thus may actually do more harm than good. The prevention methods of the Canadian government meet the minimum requirements of the Protocol; however fail to administer efficient general services to victims. Lastly the Canadian government adheres to the provisions in the Protocol regarding partnerships, but the Protocol neglects to address to what extent the relationship should be. Although the Canadian government continues to meet the requirements of the Protocol, it can be concluded that they have made substantial progress since the implementation of the Protocol. These requirements alone are not enough to truly tackle the phenomenon of human trafficking. More detailed

provisions within the Protocol may help countries like Canada strive to achieve more effective results in their anti-trafficking campaigns.

CHAPTER SEVEN: HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION - CANADIAN DISCOURSE ON PROSTITUTION

7.1 Introduction

As discussed in Chapter Four, the discourse surrounding prostitution has taken two positions. One side viewing prostitution as a violation of an individual's human rights and the other side viewing prostitution as a choice that each individual should be able to safely make for themselves. Human trafficking for sexual exploitation is a common occurrence within Canada, and recently the debate on prostitution has stirred up mixed feelings across the country. This chapter will discuss prostitution laws in Canada and examine how they impact human trafficking in an attempt to discover whether or not the Canadian government has successfully made decisions regarding prostitution that will further support the anti-trafficking fight. First, the chapter will explore a well-known court case; *Bedford v. Canada* in which the Supreme Court of Canada's ruling made prostitution in Canada a heated topic. This will be followed by an analysis of Bill C-36 and what this means for prostitution in Canada and how it effects human trafficking in a Canadian context.

7.2 Bedford v. Canada

In 2007 a group of three women, former and current sex workers by the names of Terri-Jean Bedford, Amy Lebovitch and Valerie Scott, launched a Charter challenging the Canadian federal government. Prior to this case, the act of prostitution was not a crime, however many activities concerning prostitution were criminalized. Their goal was to challenge three sections of the Canadian Criminal Code that criminalized the activities related to prostitution. Ultimately, these women believed that these sections of the Criminal Code were unconstitutional, and endangered sex workers throughout Canada. The women sued the federal government because it is this government who is responsible for federal laws. The first challenge to the Criminal Code was to Section 210 regarding keeping a common bawdy house. This law states that it is illegal to keep any location that is used for sex work. The law primarily targets indoor locations, but could be used to argue against outdoor locations that a sex worker or prostitute repeatedly uses for work. The law attacks sex workers ability to be in control of a safe space to conduct their work. This forces them to perform their work in secret and unfamiliar spaces that are potentially dangerous. This also affected landlords, as they would be required to evict their tenants, if they discovered their property was being used for sex work. This has often left sex workers out on the street and vulnerable.

Section 211 concerning the act of procuring, was also challenged. This is often referred to as the ‘pimping law’ and targets third parties that are involved and living on the avails of prostitution. This makes it illegal for anyone with a work-related

relationship to take any earnings from a sex worker if they are also providing a service for their work such as recruiting clients, offering protection or running an agency.¹⁴⁵ The third challenge of the Bedford Case was to Section 213 of the Criminal Code, the communicating law. This section makes it illegal for sex workers, third parties or anyone else, to communicate about the exchange of sex for money in a public vicinity, this even includes in a private vehicle. It incorporates any communication regarding services, prices, conditions, practices or other limits or boundaries.¹⁴⁶ The criminalization of communication regarding sex work forced and displaced many individuals into isolated areas, creating a risk for sex workers to collaborate with each other.

On December 13th 2013, the supreme court of Canada reached a unanimous decision that all three laws were to be struck down due to the violation of Section 7 of the Charter of Rights and Freedoms (everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice).¹⁴⁷ In a decision written by the Chief Justice, the court said: “the prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risk.”¹⁴⁸ The judgments on the sections discussed above can be found in Table 3.

¹⁴⁵ Tara Santini, “Challenging Prostitution Laws: Bedford v. Canada” (Stella, April 2013), <http://chezstella.org/docs/StellaInfoSheetBedford.pdf>.

¹⁴⁶ Santini, “Challenging Prostitution Laws”.

¹⁴⁷ “Constitution Act 1982 Document,” *The Canadian Encyclopedia*, accessed August 14, 2014, <http://www.thecanadianencyclopedia.ca/en/article/constitution-act-1982-document/>.

¹⁴⁸ Canada (Attorney General) v. Bedford, [2013] 3 S.C.R. 1101 at para. 60, 2013 SCC 72, <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>

Table 3 Judgments by the Sumpreme Court: Canada V. Bedford

Section of the Criminal Code Challenged	Summary of Judgment by the Court
210 – Bawdy House	The SCC held that the bawdy house law violates sex workers’ constitutionally protected right to security of the person and is struck down. The Court found that this law prevents sex workers from working a fixed location that is safer than working on the street or meeting clients at different locations. ¹⁴⁹
212(1)(j) – Living on Avails of Prostitution	The law punishes everyone who lives on the avails of prostitution without distinguishing between those who exploit prostitutes (such as controlling and abusive pimps) and those who could increase the safety and security of prostitutes (for example, legitimate drivers, managers, or bodyguards). ¹⁵⁰
213(1)(c) communicating in public for the purpose of prostitution	“By prohibiting communication in public for the purpose of prostitution, the law prevents prostitutes from screening clients and setting terms for the use of condoms or safe houses. In these ways, it significantly increases the risk they face.” ¹⁵¹

The federal government was given one year from December 2013 to develop new legislation to replace the challenged sections of the Criminal Code. Bill C-36 is the Canadian government’s new proposed prostitution legislation.

¹⁴⁹ Ibid, para 64.

¹⁵⁰ Ibid, para 142.

¹⁵¹ Ibid, para 71.

7.3 Bill C-36

On June 4, 2014 Justice Minister Peter Mackay introduced Bill C-36 Protection of Communities and Exploited Persons Act in response to the Supreme Court of Canada's ruling regarding the Bedford v. Canada case. The summary of the bill outlines seven major points as its purpose in amending the Criminal Code:

- (a) create an offence that prohibits purchasing sexual services or communicating in any place for that purpose;
- (b) create an offence that prohibits receiving a material benefit that derived from the commission of an offence referred to in paragraph (a);
- (c) create an offence that prohibits the advertisement of sexual services offered for sale and to authorize the courts to order the seizure of materials containing such advertisements and their removal from the Internet;
- (d) modernize the offence that prohibits the procurement of persons for the purpose of prostitution;
- (e) create an offence that prohibits communicating — for the purpose of selling sexual services — in a public place, or in any place open to public view, that is or is next to a place where persons under the age of 18 can reasonably be expected to be present;
- (f) ensure consistency between prostitution offences and the existing human trafficking offences; and
- (g) specify that, for the purposes of certain offences, a weapon includes any thing used, designed to be use or intended for use in binding or tying up a person against their will.¹⁵²

Under this bill, prostitutes and those women trafficked for sexual exploitation will no longer be treated as criminals, however for the first time in Canadian history the buying

¹⁵² Canada. House of Commons. Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts, 2d sess., 40th parliament, 2013 – 2014.
<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6646338&File=19>

of sexual services will be illegal. This bill will also provide robust funding for women and youth escaping prostitution, approximately \$20 million to grassroots organizations with programs that can help facilitate the escape.

The question that needs to be asked regarding this bill is how will it affect the anti-trafficking fight. Funding for those who want to escape prostitution creates more opportunities for individuals trafficked for sexual exploitation to find a way out. Allowing those who are victims of sex work to become survivors. The bill will also allow those who are trafficked for sex work to be treated with dignity, understanding and will no longer be cast as criminals. All these aspects, of course, can be thought of as accomplishments by the Canadian government to combat human trafficking. But what are the implications or benefits of decriminalizing the sex worker or criminalizing the buyer, and how will this affect human trafficking in Canada in the future? The key point in the anti-trafficking fight is found in the proposal to criminalize the purchase, not the sale of sexual services. The government is not condoning the sale of sexual services, but instead treating those who sell this service as victims who need support. However, it was first proposed that criminalizing sexual services in very specific circumstances, in areas where young people under the age of eighteen could be present. This proposal was later revised due to heavy criticism and now has been amended to make it a crime to discuss the sale of sex at, or near, a school, playground or daycare.¹⁵³

¹⁵³ Josh Wingrove. "Tories Soften Prostitution Bill Provision by Expanding Legal Discussion Areas." *The Globe and Mail*. July 15, 2014. <http://www.theglobeandmail.com/news/politics/tories-soften-prostitution-bill-provision-by-expanding-legal-discussionareas/article19607673/>.

It is important to address that sex workers and sex trafficking victims are different even though they may share common experiences. There has been a great deal of backlash from the sex worker community towards the Canadian government for not separating trafficking concerns from prostitution concerns. This goes back to the debates that occurred during the UN Trafficking Protocol negotiations for a universal definition for human trafficking, between the IHRLG, GAATW and the CATW. The official definition of human trafficking from the UN Protocol uses carefully picked language as to let each individual government decide whether sex trafficking and prostitution or sex work should be separate. It is apparent from discussions around Bill C-36 that the current Conservative Government holds the same values as CATW held during the debates. Although one side of the argument (those who believe sex work is a separate entity from human trafficking) may lose out if this bill is passed, the other side will benefit. Prostitution is an integral part of those who are trafficked for sexual exploitation and thus the passing of this Bill will be a win for anti-trafficking measures within Canada.

7.4 The Nordic Model

Many of the principles in Bill C-36 developed from an approach to human trafficking commonly known as the Nordic Model. The Nordic model is what many members of parliament are pushing for, such as Joy Smith, a member of the House of Commons who is a leading activist against human trafficking in Canada. However when examined carefully, the name “Nordic Model” can be deceiving. According to research done by Mar-Len Skilbrei and Charlotta Holmström, both professors at Universities in

Norway, the difference in approaches dealing with prostitution in countries such as Denmark, Finland, Iceland, Norway and Sweden are too great for there to be anything close to a shared “Nordic” model. This model works under the precedent that trafficking for sexual exploitation does not exist simply because victims are vulnerable, it exists because there is a demand for sexual services that traffickers can exploit and thus profit from. The Nordic model that parliament has been referring to stems from the actions of Sweden, Norway and Iceland that have acts unilaterally criminalizing the purchase of sex. Finland has a partial ban on prostitution and Denmark has chosen that decriminalization is the best solution. The “Nordic model”, then, is only confined to three countries.

The Nordic Model that activists like Joy Smith refers to, is the model implemented in Sweden. Sweden introduced the Sex Purchase Act (Sexköpslagen) in 1999. The Sex Purchase Act consists of policies that aim to criminalize the commercial buying of sex services and decriminalize the selling of sexual services. It also aims to provide services to those who sell sexual services and offer support for those who are seeking to exit the sex trade. There are two main goals of this Swedish model. The first is to target the demand of sex trafficking in hopes of cutting of the source, those who seek to buy commercial sex. Sex trafficking is a criminal industry that relies on the typical market principles of supply and demand; men who want to purchase a sexual experience mainly fuel the demand. These men pay for sex and traffickers reap in profits from young women and children who are exploited everyday and forced to work in dangerous situations.

The second goal is to promote equality between men and women. According to many researchers, the main cause of sex trafficking in Sweden is due to gender inequality. This inequality perpetuates the ideals of the sex trade being a business deal; that it is acceptable to buy an individual's body (primarily women and young girls) as long as you can provide a payment. The Nordic Model aims to contradict this norm in the world of sex trafficking by criminalizing these buyers and letting them know that this act will not be tolerated. Since the introduction of the law in 1999, Sweden has become an undesirable destination for sex traffickers. From 1996 to 2008, the number of male buyers for sexual services in Sweden decreased from 13.6% to 7.9%.¹⁵⁴ Men who purchase sex, and thus maintain the demand that fuels sex trafficking, have stated that harsher criminal penalties, having their name exposed and having a letter sent home stating that they were arrested for buying sex, would deter them from buying sex.¹⁵⁵

7.5 Critiques of Bill C-36: An Extension of Swedish Policy

Canada's Bill C-36 is an extension of the Swedish approach of tackling prostitution and sex trafficking. Where there is support, backlash can also be found. Bill C-36 has its skeptics who provide reasons why this bill is not an ideal solution to deal

¹⁵⁴ Kajsa Claude, *Targeting the sex buyer: the Swedish example: stopping prostitution and trafficking where it all begins* (Kajsa Claude and the Swedish Institute., 2010).

¹⁵⁵ Rachel Durchslag and Samir Goswami, *Deconstructing the Demand for Prostitution: Preliminary Insights from Interviews with Chicago Men Who Purchase Sex* (Chicago: Chicago Alliance Against Sexual Exploitation, 2008), <http://www.slaverynomore.org/wp-content/uploads/2011/07/Deconstructing-the-Demand-for-Prostitution.pdf>.

with prostitution in Canada. Many of those who oppose the bill are sex worker advocates. Their focus is not on the prevention of sex trafficking (although of course concerned), but on the right to choose to work in the sex trade industry (the few women who actually do have a choice). However, some of the concerns of sex work advocates and critics alike have valid points that overlap and concern victims of sex trafficking. Safety as a number one priority is a topic that is currently being discussed across the country. In an interview CBC News Network's *Power & Politics*, Maynard discussed Bill C-36 and said "what this actually does is it really seems to put sex workers in the same dangers that they've been facing for decades."¹⁵⁶ Sex worker advocates go as far to say that this proposed bill would increase violence against sex workers. Jane Doe, an author, lecture and feminist activist explains that; forcing women to work in isolated areas where they cannot screen clients, prohibiting indoor workers to advertise or work with security, inducing clients to resist engaging in the very forms of communication that the Supreme Court ruled as critical to sex workers safety, will turn the legislation itself into a form of gender violence.¹⁵⁷ The safety of sex workers also means the safety of those trafficked into the sex trade. Passing a bill that may increase violence towards sex trafficking victims is simply not an option. Not all victims will have the opportunity to seek out support systems and programs right away. It commonly takes time for victims to come forward or acquire the courage to escape their traffickers and in the meantime they may

¹⁵⁶ Josh Wingrove, "Prostitution Bill Would Make It Illegal to Buy, Sell Sex in Public," *The Globe and Mail*, July 15, 2014, <http://www.cbc.ca/1.2664683>.

¹⁵⁷ Jane Doe, "Why the Prostitution Bill Will Increase Violence against Sex Workers," *The Globe and Mail*, July 22, 2014, <http://www.theglobeandmail.com/globe-debate/why-the-prostitution-bill-will-increase-violence-against-sex-workers/article19704999/>.

be forced to work in conditions that perpetuate violence due to legislation put forth by the government.

7.7 Summary of Findings

The current debate regarding prostitution is vital to successfully combating human trafficking in Canada. The Bedford v. Canada case was an important event that was necessary to lead the government to take a deeper look in how to approach prostitution in Canada. Bill C-36 is far from a perfect proposal but it is on the right track. Targeting one of the root causes of sex trafficking is an optimal solution to ending sex trafficking. The criminalization of the buyers should surely decrease the demand of sexual services as was seen in the case of Sweden. Making prostitution illegal, decriminalizing the seller and criminalizing the buyer is a great first step in fighting this phenomenon. However it is here in this current debate that one sees the primary use of a security lens when dealing with prostitution, more than a humanitarian lens. This decriminalization concerns traffickers and pimps who exploit individuals for sexual purposes. It has also been observed that some parts of the Bill could very well endanger victims further, making them still, if not more susceptible to violence. This is where we see a lack of a humanitarian lens, a focus on safety and protection of the victims. The proposals of support programs to victims and those who seek to exit the sex trade needs to be further developed upon, with more than \$20 million (a good start, but not enough) provided as resources. A better balance of the two lenses is needed to create a successful bill. If

safety issues were addressed surrounding perpetuated violence with certain provisions proposed, Bill C-36 could be an effective tool used against sex trafficking and thereby successfully contributing to combating all of human trafficking in Canada.

CONCLUSION

This project set out to determine how successful Canadian policy has been in combating human trafficking up to date. The past three years has seen more contribution to the anti-trafficking fight than ever before in Canada. This research is intended to build on studies of the past, by bringing a new analysis of recent initiatives by the Canadian government, and reveal whether or not they have been effective in combating trafficking. Success in this context was determined based on two elements. The first factor used to determine success in this project was to conclude whether Canadian legislation has followed through with the commitments outline in the UN Trafficking Protocol.

Human trafficking is a transnational and national security threat to public safety and a serious violation of human rights; therefore the second element is the evaluation of the initiatives by Canada, in terms of the approach used to tackle the issue of human trafficking. The ideal approach being a balanced use of both a humanitarian approach (focused on well-being of victims) and a security approach (focusing on prosecution and punishment of traffickers). The appropriate balance of these two approaches is referred to as the human security approach.

In regards to the first element of evaluation, Canada has complied with almost all provisions within the UN Trafficking Protocol, however, after a careful analysis of the

Trafficking Protocol itself, it can be observed that many of its provisions are vague, and leave a significant amount of detail up to the state parties discretion. Since the Protocol is considered an international blueprint for anti-trafficking legislation, it should set the bar higher for minimum requirements. This would encourage all countries, as well as Canada, to reach a higher potential in their fight against human trafficking.

The second element was more complex in determining. Canada has been inconsistent in the application of their approaches to tackling human trafficking. Restrictive borders policies are a theme that was discussed in detail in the literature review and has repeatedly shown up through the research of this project. Some of the weaknesses within the Protocol, such as the strong focus on border control, have trickled down into Canadian anti-trafficking legislation. These restrictive border policies entail an overwhelming security approach to human trafficking. This approach can be detrimental to the anti-trafficking cause, as it can create an unintended affect of forcing migrants into the hands of traffickers. It is recommended that these restrictive policies be re-worked to include a humanitarian approach that takes into account consequences on victims and potential victims of human trafficking. In regards to the debate on developing new prostitution laws, this too been approached from mainly a security framework. Some provisions of Bill C-36 neglect to concern the safety of those who are trafficked for sex work as well as sex workers themselves, and needs to be further developed to address this issue.

Through this research there are a number of other recommendations that have developed in order for the Canadian government to create a more effective and successful

anti-trafficking strategy. It is apparent that different provinces across Canada have different methods towards human trafficking as well as varying effort levels towards the cause. British Columbia has proven to be the province that has taken the most initiative towards combating human trafficking. They have a designated office, the BC OTIP as well as their own action plan to fight human trafficking, which developed from the National Action Plan. If each province committed to constructing an office dedicated to the cause, as well as an action plan that catered to the different circumstances related to human trafficking within each province; the process of human trafficking would be streamlined across the country. From the consultations discussed earlier in Chapter Five, it has been observed how each province is affected by human trafficking differently due to Canada's vast geographic area. Alberta, Quebec and Ontario should be the first to lead the way in creating specialized offices for this crime, as these are the provinces are major hubs for human trafficking. (British Columbia also being a major hub). Another recommendation that is vital to the anti-trafficking fight is to develop stronger partnerships with those source and transit countries that are most relevant to Canada. Partnerships with the Americas have begun to develop, as was observed in Chapter Six with Guatemala, however there are many other countries that Canada needs to focus on to create a stronger international network that strives to combat human trafficking.

Overall, Canada has made great strides in their anti-trafficking legislation, in the areas of prevention, protection, prosecution and partnerships. The past three years have seen the most progress with the implementation of the National Action Plan, but there is room for improvement. Combining a better balance of a security and humanitarian

approach to tackling the issues surrounding human trafficking would allow Canada to further the progress that has been made, and become one step further in winning the fight against human trafficking.

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