



Faculty of Law
Research Project on Human Trafficking

**FROM PALERMO TO OTTAWA:
EXPLORING THE IMPLEMENTATION AND
ASSESSING THE IMPACT OF THE
HUMAN TRAFFICKING PROVISIONS IN
CANADA'S *CRIMINAL CODE***

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EXECUTIVE SUMMARY

Human trafficking is a challenge that can be traced back centuries. However, in recent years, it has been exacerbated by globalization and the growth of transnational organized crime. It takes place in every region of the world, in both developing and developed countries, including Canada. Men, women and children are being transferred and transported from other countries, and within Canada, through the use of physical and psychological coercion in order to exploit them. In Canada, the exploitation of women for sexual services is of particular concern.

With the adoption of two international agreements in 2000 – the *United Nations Convention against Transnational Organized Crime (UNTOC)* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* the *United Nations Convention* – an international commitment was made to address this crime. In 2002, Canada was one of the first countries to ratify both agreements. Since then, countries have focused primarily on four main areas to combat human trafficking: 1) prosecutions, 2) prevention, 3) protection of victims, and 4) building partnerships. Of these four areas, most countries, including Canada, have placed an overwhelming emphasis on prosecuting offenders.

Because a significant emphasis has been placed on prosecutions, one might expect them to have produced promising results. However, the evidence suggests otherwise. For example, while Canada introduced provisions into its *Criminal Code* in 2005 to facilitate the prosecution of human traffickers, the number of human trafficking charges and

convictions has remained low over the past nine years. This suggests that much more needs to be done to effectively prosecute human traffickers.

While Canada has set itself a foundation upon which it can continue to build, more needs to be done. Moving forward, Canada should consider the following suggesting in order to develop a more effective approach:

- 1) further amend the human trafficking provisions or provide supporting documentation to make it easier to secure human trafficking convictions;
- 2) raise awareness of the importance of using the human trafficking provisions to prosecute offenders;
- 3) step-up efforts to educate police officers and prosecutors on the difference between human trafficking and other offences;
- 4) encourage more collaboration between government departments and between government departments and non-governmental organization, particularly those working with victims;
- 5) commit to annually reviewing the human trafficking provisions in the *Criminal Code* so that they can be amended to account for new information and insight;
- 6) consider broadening elements and definitions included in the human trafficking provisions to make it easier to secure convictions;
- 7) put better mechanisms in place to assist victims to ensure that they come forward with evidence about their traffickers; and
- 8) put measures in place to seize traffickers' financial assets.

INTRODUCTION

Human trafficking is not a problem experienced only in developing and emerging countries. As recognized in Canada's *National Action Plan to Combat Human Trafficking*, human trafficking also takes place in rich, developed nations, including Canada.¹ It remains unclear how pervasive the problem of human trafficking is both in Canada and internationally.² However, like elsewhere in the world, the *National Action Plan* recognizes that in Canada victims are primarily women and children, who are most often exploited for sexual services.³ Victims are coerced into activities through the use of physical and psychological means. They appear to come from a range of countries including Thailand, Cambodia, Vietnam, India, the Philippines, Mexico and Hungary.⁴ However, as recognized by work undertaken by the United Nations Office on Drugs and Crime (UNODC), victims are largely trafficked within Canada, moving from one province to another.⁵ In recent years, it has become evident that these victims are disproportionately Aboriginal women.⁶

¹ *National Action Plan to Combat Human Trafficking* (Ottawa: Government of Canada, 2013) at 4-5 [*National Action Plan* (2013)]; *National Action Plan to Combat Human Trafficking* (Ottawa: Government of Canada, 2012) at 4, 6 [*National Action Plan* (2012)].

² *National Action Plan* (2013), *supra* note 1 at 4; Neil Boister, *An Introduction to Transnational Criminal Law* (Oxford: Oxford University Press, 2012) at 9.

³ *National Action Plan* (2013), *supra* note 1 at 2, 4-5; *National Action Plan* (2012), *supra* note 1 at 6, 12, 19; United Nations Office on Drugs and Crime (UNODC), "Human Trafficking: People for Sale" available online at: <<http://www.unodc.org/>> [UNODC, "People for Sale"]. This has been identified in every annual *Trafficking in Persons Report* on Canada issued by the United States, Department of State (for the most recent report, see: United States, Department of State, *Trafficking in Persons (TIP) Report* (Washington, DC: Department of State, 2013) at 120-22, available online at: <<http://www.state.gov/j/tip/rls/tiprpt/>> [US, *TIP Report* (2013)]. There are also cases where men have been trafficked for the purpose of forced labour: see Julie Kaye, John Winterdyk & Lara Quarterman, "Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada" (2014) 56:1 *Can J Criminology & Crim Just* 23 at 30. Additional forms of trafficking also exist, such as organ removal, forced begging, and involuntary marriage: see Boister, *supra* note 2 at 123.

⁴ *National Action Plan* (2012), *supra* note 1 at 6.

⁵ *Global Report on Trafficking in Persons* (Vienna: United Nations Office on Drugs and Crime, 2012) at 51.

Human trafficking, like other businesses and transnational crimes, is driven by the demand that exists for the services, and the huge profits that can be made from this trade.⁷ It has been estimated that human trafficking, along with the drug and weapons trade, is among the most lucrative activities in the world.⁸ Human trafficking is often coordinated by sophisticated transnational criminal organizations, operating across state boundaries. This makes the activities difficult to detect and prosecute.

While the problem of human trafficking is not new, in recent years it has received increasing attention from governments, non-governmental organizations, and the media.⁹ With the adoption in 2000 of a protocol to the *United Nations Convention against*

⁶ *National Action Plan* (2013), *supra* note 1 at 5; *National Action Plan* (2012), *supra* note 1 at 6. This has also been noted in every US, *TIP Report* from 2009-2013 (for the most recent report, see: US, *TIP Report* (2013), *supra* note 2 at 120).

⁷ *National Action Plan* (2013), *supra* note 1 at 4; *National Action Plan* (2012), *supra* note 1 at 4; Carol S. Brusca, "Palermo Protocol: The First Ten Years after Adoption" (2011) 2:3 *Global Sec Stud* 8 at 10; John Winterdyk, Benjamin Perrin & Philip Reichel, "Introduction" in John Winterdyk, Benjamin Perrin & Philip Reichel, eds, *Human Trafficking: Exploring the International Nature, Concerns, and Complexities* (Boca Raton: CRC Press, 2012), 1 at 3, 8 [Winterdyk, Perrin & Reichel, "Introduction"].

⁸ UNODC, "People for Sale", *supra* note 3; *National Action Plan* (2012), *supra* note 1 at 4; Winterdyk, Perrin & Reichel, "Introduction", *supra* note 7 at 3; Marylee Reynolds, "Organized Crime and Enslavement" in Rodriguez, Junius P., ed, *Slavery in the Modern World: A History of Political, Social and Economic Oppression* (Santa Barbara, CA: ABC-CLIO, 2011), vol 1, 47 at 55.

⁹ Paul Knepper, "History Matters: Canada's Contribution to the First Worldwide Study of Human Trafficking" (2013) 55: 1 *Can J Criminology & Crim Just* 33 at 47-48; Boister, *supra* note 2 at 40; "Hamilton human trafficking kingpin sentenced to 9 years" *CBC News* (3 April 2012), available online at: <www.cbc.ca/news>; Gloria Galloway, "Human trade initiative unfair to prostitutes, sex workers say" *The Globe and Mail* (28 January 2014) A4; Holly Moore & Joanne Levasseur, "Human traffickers going unpunished in Canada, experts say" *CBC News* (25 March 2013) available online at <www.cbc.ca/news>; Joanne Schnurr, "Ottawa teen 'pimp' sentenced to maximum penalty for Human Trafficking Law" *CTV News Ottawa* (20 January 2014), available online at: <<http://ottawa.ctvnews.ca/>>.

Transnational Organized Crime (UNTOC),¹⁰ named the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*¹¹ (known colloquially as the *Palermo Protocol*), an international legal commitment was made by states to work together to address human trafficking. The *Palermo Protocol* focuses on three main areas: prosecution of traffickers, protection for victims, and the prevention of human trafficking. Since then, some states, including Canada, have added a fourth area, emphasizing the need for partnerships to comprehensively and effectively combat human trafficking.¹² Over the years, many states, including Canada, have dedicated human and financial resources to tackle each of these four areas of concern. However, most attention has been placed on the first area, namely prosecuting traffickers.¹³

Canada was one of the first countries to ratify the *Palermo Protocol* in 2002. Since the early 2000s, Canada has been viewed¹⁴ and self-claimed to be a “leader in international anti-trafficking efforts across the globe and through its participation in international

¹⁰ 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003, ratified by Canada 13 May 2002) [*UNTOC*].

¹¹ 15 November 2000, 2237 UNTS 319, Can TS 2002 No 25 (entered into force 25 December 2003, ratified by Canada 13 May 2002) [*Palermo Protocol*].

¹² *National Action Plan* (2013), *supra* note 1 at 2, 14-17, 18-19.

¹³ Marianne Wade, “Prosecution of Trafficking in Human Beings Cases” in Winterdyk, Perrin & Reichel, *supra* note 7, 153 at 170-71; Sanja Čopić & Biljana Simenunović-Patić, “Victims of Human Trafficking: Meeting Victims’ Needs?” in Winterdyk, Perrin & Reichel, *supra* note 7, 233 at 266; Philip Reichel, Benjamin Perrin & John Winterdyk, “Epilogue” in Winterdyk, Perrin & Reichel, *supra* note 7, 291 at 293 [Reichel, Perrin & Winterdyk, “Epilogue”].

¹⁴ Laura Barnett, *Bill C-49: An Act to amend the Criminal Code (Trafficking in Persons)* (Ottawa: Library of Parliament, 2006), available online at: <www.parl.gc.ca> [Barnett, *Bill C-49*]; *House of Commons Debates*, 38th Parl, 1st Sess, No 125 (26 September 2005) at 1225 (Vic Toews) [*HC Debates*, 38th Parl].

fora.”¹⁵ Nevertheless, it was not until three years after it ratified the *Palermo Protocol* that Canada introduced human trafficking provisions into its *Criminal Code*.¹⁶ Since then, few traffickers have been charged, and even fewer have been convicted under these provisions.

This limited number of charges and convictions of concern given the amount of attention and resources that have been allocated to addressing human trafficking.¹⁷ The situation leads to questions about both effectiveness and efficiency. In fact, available evidence suggests that while Canada has placed an increasing amount of attention and resources into addressing human trafficking, the *Criminal Code* provisions have been of limited use in prosecuting human traffickers. As will be discussed in this paper, there appear to be three main reasons for the ineffectiveness of Canadian criminal law: 1) the definition of human trafficking and its components in the *Criminal Code* provisions remain unclear, and thus of limited help to police officers, prosecutors and judges; 2) there is a poor understanding amongst law enforcement officers, prosecutors and judges of what human trafficking charges involve, and what distinguishes human trafficking from other offences; and 3) it remains easier to charge and convict human traffickers under older, familiar and more frequently used provisions.

¹⁵ *National Action Plan* (2012), *supra* note 1 at 20; Barnett, *Bill C-49*, *supra* note 14; Laura Barnett, *Trafficking in Persons* (Ottawa: Library of Parliament, 2008) at 15, available at: <www.parl.gc.ca> [Barnett, *Trafficking in Persons*].

¹⁶ *Criminal Code*, RSC 1985, c C-46, ss 279.01-04.

¹⁷ Knepper, *supra* note 9 at 42; Wade, *supra* note 13 at 160.

This paper is organized into four parts. Part I provides an overview of the *Palermo Protocol*. It includes a brief examination of the international instruments addressing human trafficking that predated it and how the *Protocol* came about. This is followed by an analysis of articles 3 and 5 of the treaty text, which are the most significant in terms of the approaches states have taken to address human trafficking within their borders. Part II examines the process by which the human trafficking provisions agreed to on the international legal stage were adopted into Canadian criminal law. This includes an examination of what compelled the Canadian government to amend the *Criminal Code*, and an assessment of amendments that have been introduced since the original provisions were introduced. Part III provides an assessment of the impact of these provisions, focusing on the number of human trafficking charges and convictions that have been issued since their introduction. Several cases will be examined to explore why these provisions have not been more effective. Part IV of the paper assesses how human trafficking has been handled by criminal law in other jurisdictions, selecting three countries that provide approaches that could be adopted by Canada. I conclude that while it was important for Canada to ratify the *Palermo Protocol* and incorporate human trafficking provisions into the *Criminal Code*, further efforts are necessary if Canada wishes to more effectively prosecute human traffickers. Several recommendations will be put forth for how this might be achieved.

PART I: THE PALERMO PROTOCOL

Before examining and assessing how the *Palermo Protocol* was introduced into Canadian criminal law, a brief overview of how the *Palermo Protocol* itself came into existence is needed. Part I of this paper will provide a brief overview of the background to the

adoption of the *Palermo Protocol*, and an assessment of key provisions within the *Protocol*.

Approaches to Human Trafficking Prior to the Palermo Protocol

While the *Palermo Protocol* is by far the most significant and comprehensive international instrument that has been developed to tackle human trafficking, it was by no means the first. Transnational organized crime and human trafficking can be traced back centuries,¹⁸ and international agreements to combat it have been in place for more than 100 years.¹⁹ Multilateral efforts go back to 1904 when the *International Agreement for the Suppression of the “White Slave Traffic”* was concluded.²⁰ Numerous additional instruments followed this over the next several decades.²¹ Thus, there were clearly efforts to address human trafficking prior to the *Palermo Protocol*. However, these instruments were all limited in scope. They failed to focus on the actual process of trafficking, and did not have provisions that required states to criminalize the activity.²² Indeed, the preamble of the *Palermo Protocol* itself notes, “despite the existence of a variety of international

¹⁸ Boister, *supra* note 2 at 36; Reynolds, *supra* note 8 at 49-52.

¹⁹ Annette Herz, “Human Trafficking and Police Investigations” in Winterdyk, Perrin & Reichel, eds, *supra* note 7 129 at 132; Yvon Dandurand, “International Cooperation,” in Winterdyk, Perrin & Reichel, *supra* note 7, 207 at 210.

²⁰ 18 May 1904, 1 LNTS 83 (entered into force 18 July 1905, accession by Canada 3 July 1906).

²¹ *International Convention for the Suppression of the White Slave Traffic*, 4 May 1910, LNTS 8a (accession by Canada 25 August 1913); *International Convention for the Suppression of the Traffic in Women and Children*, 30 September 1921, 9 LNTS 415 (ratified by Canada 28 June 1922); *Slavery Convention*, 25 September 1926, 60 LNTS 254 (entered into force 9 March 1927, ratified by Canada 6 August 1928); *Protocol to amend the Convention for the Suppression of the Traffic in Women and Children*, 12 November 1947, 53 UNTS 39 (entered into force 24 April 1950); *Protocol to amend the International Convention for the Suppression of the White Slave Traffic*, 4 May 1910, 4 May 1949, 98 UNTS 101, Can TS 1951 No 32 (entered into force 14 August 1951); *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 2 December 1949, 96 UNTS 271 (entered into force 25 July 1951); *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, 7 September 1956, 266 UNTS 3, Can TS 1963 No 7 (entered into force 30 April 1957, ratified by Canada 10 January 1963).

²² Boister, *supra* note 2 at 40.

instruments containing rules and practical measures to combat the exploitation of persons ... there is no universal instrument that addresses all aspects of trafficking in persons.”²³

Palermo Protocol

The demand for both the *UNCTOC* and *Palermo Protocol* can be traced back to the 1990s when governments were becoming increasingly aware and concerned that transnational organized crime was spreading as a result of globalization.²⁴ Criminal law professor Andreas Schloenhardt points out that it was Italy that led the demand for a new international instrument to address transnational organized crime. Following the assassination of Judge Giovanni Falcone, who was involved in prosecuting members of the Italian mafia, the Italian government submitted a proposal to the UN, highlighting the need for more international cooperation to address transnational organized crime.²⁵ In 1993, the UN General Assembly (UNGA) agreed to hold an international conference where states would focus on what type of instrument, if any, might help facilitate international cooperation to address transnational organized crime.²⁶

In 1994, the UN General Assembly adopted a resolution recognizing that transnational organized crime was spreading, and encouraged states to work together to tackle the

²³ *Supra* note 11.

²⁴ Andreas Schloenhardt, “Transnational Organized Crime and International Criminal Law” in M. Cherif Bassiouni, ed, *International Criminal Law*, 3d ed, vol 1 (Leiden: Martinus Nijhoff, 2008) 939 at 947-48.

²⁵ *Ibid* at 948; Dandurand, *supra* note 19 at 212; Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery* (New York: Oxford University Press, 2008) at 55.

²⁶ Schloenhardt, *supra* note 24 at 948.

problem.²⁷ In 1997, an experts group was created with the task of drafting an international convention on transnational organized crime.²⁸ This would become the initial draft of the *UNCTOC*.²⁹ In 1999, the first meeting was held in Vienna to discuss the text.³⁰ Between January 1999 and October 2000, eleven meetings were held in Vienna in order to solidify the language on what would eventually become the *UNCTOC* and *Palermo Protocol*.³¹ Although the Italians spearheaded the push for the *UNCTOC*, it was the United States that submitted the initial draft of what would become the *Palermo Protocol*.³² At the second meeting, a revised proposal was submitted, recognizing contributions from the United States, Argentina, Australia and Canada.³³

Over the next nine meetings, most of the debate and controversy stemmed from how to define human trafficking.³⁴ Countries and NGOs had divergent opinions on whether

²⁷ *Naples Political Declaration and Global Action Plan against Organized Transnational Crime*, GA Res 49/159, UNGAOR, 49th Sess, UN Doc A/RES/49/159 (1995).

²⁸ *Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transactional Crime*, GA Res 52/85, UNGAOR, 52d Sess, UN Doc A/RES/52/85 (1998).

²⁹ Scarpa, *supra* note 25 at 55.

³⁰ *Transnational organized crime*, GA Res 52/111, UNGAOR, 55th Sess, UN Doc A/RES/53/111 (1999).

³¹ Scarpa, *supra* note 25 at 56; Melissa Dittmore & Marjan Wijers, “The negotiations on the UN Protocol on Trafficking in Persons” (2003) 4 *Nemesis* 79 at 79.

³² *United States Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the United Nations Convention on Transnational Organize Crime*, UNGAOR, 1st Sess, Annex Agenda Item 4, UN Doc A/AC.254/4/Add.3 (1998). Argentina also submitted an alternative proposal: *Argentina Draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children, supplementary to the Convention against Transnational Organized Crime*, UNGAOR, 1st Sess, Annex Agenda Item 5(a), UN Doc A/AC.254/8 (1999).

³³ *United States & Argentina Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, UNGAOR 2d Sess, Annex Agenda Item 4, UN Doc A/AC.254/4/Add.3/Rev.1 (1999); *Proposals and contributions received from Governments*, UNGAOR, 2d Sess, Annex Agenda Items 3 & 4, UN Doc A/AC.254/5/ADD.3 (1999).

human trafficking should be defined in relation to the nature of the work involved, such as forced prostitution, or by the means of coercion used.³⁵ There was also a lot of debate about how to best distinguish human trafficking from human smuggling, for which there was a separate protocol being negotiated at the same time.³⁶ There were also debates over how the topic of consent should be incorporated.³⁷

The definition was finally agreed upon by deliberately deciding to leave terms vague.³⁸ For instance, while there was a push by some countries and NGOs to define terms such as “forced labour”, “exploitation of the prostitution of others” and “sexual exploitation,”³⁹ in the end they were left undefined. The absence of a definition allowed governments the ability to interpret terms in a manner that was consistent with their domestic laws.⁴⁰ Thus, as with many international treaties, the articles included in the *Palermo Protocol* were left broad enough to gain widespread participation.

³⁴ *Travaux Préparatoires of the negotiations of the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Vienna: United Nations Office on Drugs and Crime, 2006), available online at: <<https://www.unocd.org/>> [Travaux Préparatoires].

³⁵ Ditmore & Wijers, *supra* note 31 at 79-85.

³⁶ Dandurand, *supra* note 9 at 212; *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, 2241 UNTS 507 (entered into force 28 January 2004, ratified by Canada 13 May 2002) [*Smuggling Protocol*].

³⁷ *Travaux Préparatoires*, *supra* note 34 at 343-46; Ditmore & Wijers, *supra* note 31 at 82.

³⁸ Ditmore & Wijers, *supra* note 31 at 84.

³⁹ *Ibid*; *Travaux Préparatoires*, *supra* note 34 at 339-346; *Proposals and contributions received from Governments*, *supra* note 33.

⁴⁰ Ditmore & Wijers, *supra* note 31 at 84.

By 2000, participants had agreed upon final texts, and the *UNCTOC* and *Palermo Protocol* were opened for signature. The *UNCTOC* entered into force on 19 September 2003. The *Palermo Protocol* entered into force on 25 December 2003. Canada became a party to both on 13 May 2002.⁴¹

Article 3: Defining Human Trafficking

Despite the fact that these treaties came together relatively quickly, they were not without controversy. As previously mentioned, what came to be article 3 (see Box 1) was one of the most contentious provisions in the *Palermo Protocol*. Despite limitations, it is still viewed by some as one of the most important provisions to come out of the *Protocol*.⁴² This is because, despite its breadth, it was the first time that a standardized definition of human trafficking was agreed upon,⁴³ which was viewed as a necessary step for improving international cooperation to address human trafficking.⁴⁴

In its *Legislative Guides*, the UNODC breaks down human trafficking into three elements: 1) an *act*, such as recruitment, transportation, transferring, harbouring or receipt of a person; 2) a *means*, such as threat, force, coercion, abduction, etc.; and 3) a

⁴¹ As of the end of March 2014, there were 179 parties to the *UNCTOC* and 159 parties to the *Palermo Protocol*. In order to become a party to the *Palermo Protocol*, a state must first ratify the *UNCTOC* (see art 37(2) of the *UNCTOC*, *supra* note 10). There are only 138 parties to the *Smuggling Protocol* (*supra* note 36), and 109 parties to the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime*, 31 May 2001, 2326 UNTS 208 (entered into force 3 July 2005).

⁴² Herz, *supra* note 19 at 133.

⁴³ Winterdyk, Perrin & Reichel, "Introduction", *supra* note 7 at 11; *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocol thereto* (Vienna: United Nations Office on Drugs and Crime, 2004) at 267, available online at <<https://www.unodc.org>> [*Legislative Guides*].

⁴⁴ Dandurand, *supra* note 19 at 216; *Legislative Guides*, *supra* note 43 at 266-72.

purpose, such as sexual exploitation, forced labour, removal of organs, etc. (See Box 1).⁴⁵

If the trafficking involves a child (under eighteen years old), only elements one and three need to be established. The “means” are presumed.⁴⁶

Box 1. Article 3 of the *Palermo Protocol*

Article 3 states, “For the purposes of this Protocol:

- (a) ‘Trafficking in persons’ shall mean 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 purposes 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 person’ even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) ‘Child’ shall mean any person under eighteen years of age.”

Emphasis added. See *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocol thereto* (Vienna: United Nations Office on Drugs and Crime, 2004) at 266-67, available online at <<https://www.unodc.org>>.

It is without a doubt that the goal of this definition was to provide international consistency and consensus on the issue of human trafficking.⁴⁷ However, despite these intentions, the use and impact of article 3 remained limited.⁴⁸ It remained limited because

⁴⁵ *Supra* note 43 at 267-68; *Palermo Protocol supra* note 11, art 3; Bernadette McSherry, “Trafficking in Persons: A Critical Analysis of the New Criminal Code Offences” (2007) 18:3 *Current Issues in Crim Just* 385 at 388.

⁴⁶ *Palermo Protocol, supra* note 11, arts 3.

⁴⁷ *Legislative Guides, supra* note 43 at 266-72.

⁴⁸ Karin Bruckmüller & Stefan Schumann, “Crime Control versus Social Work Approaches in the Context of the ‘3P’ Paradigm: Prevention, Protection, Prosecution” in Winterdyk, Perrin & Reichel, eds, *supra* note 7, 103 at 109.

the intentionally broad and vague definition led to difficulties when states attempted to implement it.⁴⁹ As professor of European criminal law Marianne Wade notes, the terms included in Article 3 “simply are not the easiest of legally determinable and certain concepts, let alone ones that can easily be proved.”⁵⁰ This situation has led some governments and institutions to create their own definitions of human trafficking.⁵¹ Others have adopted the definition provided in article 3, but have had limited success relying on it within their legal systems.⁵² Thus, as criminologist Yvon Dandurand notes, the controversy over how to define human trafficking during the *Palermo Protocol* negotiations seemed to provide a clear sign of the difficulties that countries would continue to have understanding and proving cases of human trafficking.⁵³

Article 5: Criminalization of Human Trafficking

Articles 3 and 5 of the *Palermo Protocol* are integrally linked.⁵⁴ In its *Legislative Guides*, the UNODC states: “The basic obligation to establish criminal offences is directly linked to the definition of ‘trafficking in persons’ and it is this definition which is therefore central to any legislation seeking to implement the Protocol.”⁵⁵ Article 5 requires all

⁴⁹ *Ibid.*

⁵⁰ Wade, *supra* note 13 at 165.

⁵¹ Bruckmüller & Schumann, *supra* note 48 at 111-12.

⁵² Wade, *supra* note 13 at 165; Katrin Roots “Trafficking or Pimping? An Analysis of Canada’s Human Trafficking Legislation and its Implications” (2013) 28:1 CJLS 21 at 37 at 29; Kaye, Winterdyk & Quarterman, *supra* note 3 at 24.

⁵³ Dandurand, *supra* note 19 at 212.

⁵⁴ *Legislative Guides*, *supra* note 43 at 267.

⁵⁵ *Ibid* at 267-68.

parties to the *Palermo Protocol* to criminalize trafficking in persons (See Box 2).⁵⁶

Article 5(1) requires the criminalization of the offences set out in Article 3 “when committed intentionally.”⁵⁷ Article 5(2) requires parties to criminalize attempts to traffic persons; accomplices to trafficking, and anyone who organizes and directs persons to commit human trafficking (See Box 2).

Box 2. Article 5 of the *Palermo Protocol*

Article 5(1) states, “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, *when committed intentionally*.”

Article 5(2) states, “Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

- (a) Subject to the basic concepts of its legal system *attempting to commit* an offence established in accordance with paragraph 1 of this article;
- (b) *Participating as an accomplice* in an offence established in accordance with paragraph 1 of this article; and
- (c) *Organizing or directing other persons* to commit an offence established in accordance with paragraph 1 of this article.

*Emphasis added. See *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocol thereto* (Vienna: United Nations Office on Drugs and Crime, 2004) at 266-67, available online at <https://www.unodc.org>.

Article 5 is particularly significant in that it obliges states parties to criminalize human trafficking.⁵⁸ There are no equivalent mandatory provisions with respect to the other two major aims of the *Protocol*, namely prevention and victim protection. This has led many to conclude that the *Palermo Protocol* prioritizes prosecution above its other aims.⁵⁹ For

⁵⁶ *Supra* note 11.

⁵⁷ Boister, *supra* note 2 at 41.

⁵⁸ *Ibid*; *Legislative Guides*, *supra* note 43 at 267.

⁵⁹ Sanja Milivojevic & Marie Segrave, “Evaluation Responses to Human Trafficking: A Review of International, Regional, and National Counter-Trafficking Mechanisms” in Winterdyk, Perrin & Reichel, *supra* note 7, 233 at 237; Bruckmüller & Schumann, *supra* note 48 at 107-09; Laura L. Shoaps, “Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act” (2013) 17:3 *Lewis & Clark L Rev* 931 at 947.

instance, transnational criminal law expert Neil Boister notes that while the *Palermo Protocol* encourages victim protection and prevention of trafficking, it emphasizes law enforcement over human rights.⁶⁰

Some have suggested that this emphasis on criminalization was a necessary first step to accomplish the other aims of the *Palermo Protocol*, namely prevention and victim protection.⁶¹ Others have criticized this approach for detracting from the protection of victims.⁶² However, regardless of how article 5 is viewed, it is clear that the obligation led states to implement measures to facilitate the prosecution of human traffickers. For this reason, it is important to next examine how successful these efforts have been.

PART II: ADOPTION IN CANADIAN CRIMINAL LAW

As noted, article 5 of the *Palermo Protocol* requires all parties to criminalize human trafficking. Canada became a party to the *Protocol* when it ratified the agreement in May 2002.⁶³ However, it was not until 2005 that Canada introduced human trafficking offences into the *Criminal Code*. This led some to conclude that Canada was in breach of its treaty obligations between 2002 and 2005.⁶⁴ In light of this conclusion, in this part I will consider how and when Canada adopted its *Palermo Protocol* obligations.

⁶⁰ Boister, *supra* note 2 at 43-44.

⁶¹ Wade, *supra* note 13 at 154.

⁶² Cherish Adams, “Re-Trafficked Victims: How a Human Rights Approach Can Stop the Cycle of Re-Victimization of Sex Trafficking Victims” (2011) 43 *Geo Wash Int’l L Rev* 201.

⁶³ Kaye, Winterdyk & Quarterman, *supra* note 3 at 26.

⁶⁴ Dandurand, *supra* note 9 at 218-19.

Domestic Implementation of the Palermo Protocol Obligations

As a party to the *Palermo Protocol*, Canada is required to meet its obligations under the treaty. According to the UNODC, national legislation can depart from the language in the *Palermo Protocol*, but it should give effect to the concepts contained within it.⁶⁵ When it comes to implementing international obligations, countries are not necessarily required to introduce new legislation. Countries are not required to introduce new legislation because laws and policies may already be in place that meets states' international obligations. These laws and policies may come in the form of a comprehensive piece of legislation or from provisions included in a variety of instruments.⁶⁶

Prior to introducing the human trafficking offences into the *Criminal Code* in 2005, evidence indicates that Canada relied on provisions that were already in the *Criminal Code* to meet its treaty obligations, including those that address kidnapping,⁶⁷ forcible confinement,⁶⁸ aggravated sexual assault,⁶⁹ extortion,⁷⁰ procurement⁷¹ and organized crime,⁷² as well as the human trafficking offence included in the *Immigration and*

⁶⁵ UNODC, "Human Trafficking", available online at: <www.unodc.org/>; Roots, *supra* note 52 at 29.

⁶⁶ For an explanation of the implementation of international treaty obligations in Canada, see John H. Currie et al, *International Law: Doctrine, Practice and Theory*, 2d ed (Toronto: Irwin Law, 2014) at 85-87, 158-73.

⁶⁷ *Supra* note 16, s 279(1).

⁶⁸ *Ibid*, s 279(2).

⁶⁹ *Ibid*, s 273.

⁷⁰ *Ibid*, s 346.

⁷¹ *Ibid*, s 212.

⁷² *Ibid*, ss 467.11-467.13.

Refugee Protection Act.⁷³ Further, Canada took steps to meet its obligations “by establishing crime-focused response mechanisms (e.g., enhance border security, immigration controls, and initiatives driven by law enforcement).”⁷⁴

Human trafficking-related charges and convictions were made under these provisions. For instance, in a report compiled by Library of Parliament analyst Laura Barnett it identifies that between March 2004 and February 2005 at least 31 individuals had been charged with trafficking-related offences.⁷⁵ The fact that Canada played an active role during the *Palermo Protocol* negotiations,⁷⁶ and was one of the first to sign and ratify both treaties, also suggests that Canada was relying on these existing provisions to meet its obligations.

Human Trafficking Provisions in Canada’s Criminal Code

Between 2002 and 2005 a number of incidents occurred that led Canada to introduce the human trafficking offences into the *Criminal Code*.⁷⁷ With the introduction of these provisions, it became clear to all that Canada was in compliance with its obligations set out under the *Palermo Protocol*. However, it was not clear that they would actually improve efforts to prosecute human traffickers in Canada.

⁷³ SC 2001, c 27, s 118 [*IRPA*].

⁷⁴ Kaye, Winterdyk & Quarterman, *supra* note 3 at 24-25.

⁷⁵ Barnett, *Bill C-49*, *supra* note 14; *HC Debates*, 38th Parl, *supra* note 14 at 1355 (John Maloney).

⁷⁶ *Travaux Préparatoires*, *supra* note 34 at 9, 23, 81, 127, 175, 178-80, 185, 191, 292, 320-21, 351, 366, 38-83, 401-03, 411, 415, 419, 446, 478.

⁷⁷ It is worth noting that in 1999 there was a senate bill introduced on human trafficking (Bill S-32, *An Act to amend the Criminal Code to prohibit trafficking in persons*, 2nd Sess, 36th Parl, 1999-2000).

It appears that the main reason that these provisions were not incorporated into the *Criminal Code* earlier was because Parliament was not convinced that they were necessary. This was because parliamentarians did not believe that human trafficking was a problem in Canada, and that any cases that did exist could be adequately dealt with under existing laws.⁷⁸ This view changed when the U.S. Department of State issued a report in 2003 indicating that Canada was not doing enough to combat human trafficking.⁷⁹ The U.S. report was issued shortly after Canada had ratified the *Palermo Protocol*. From reading it, it is unclear where Canada was deficient. However, research by Katrin Roots, a PhD student in socio-legal studies, reveals that in 2003 Canada's border control strategy was criticized in the U.S. Department of State's *Report on Human Rights*. Roots identifies that: "The report claimed that a number of Canadian cities served as hubs for criminal organizations involved in human trafficking" and that "Canada is targeted by various criminal organizations as a result of its lenient immigration laws, benefits available to immigrants, and the proximity to the US border."⁸⁰ Thus, it appears that the Americans viewed Canada's approach to human trafficking as inadequate, and likely contributed to Canada re-evaluating its laws in order to maintain its close political and economic relationship with the United States.⁸¹ In addition, in April 2005, the first

⁷⁸ Joy Smith, "Two Private Member's Bills that made Canadian History" (2013) 36:1 Can Parliamentary Rev 4 at 1; See also *HC Debates*, 38th Parl, *supra* note 14 at 1215 (John Maloney).

⁷⁹ US, *TIP Report* (2003), *supra* note 3 at 46; The annual *TIP Reports* have monitored countries' efforts to respond to human trafficking since 2001. In the 2003 report, Canada was given a Tier 2 rank for the first and only time. The *TIP Report's* rank countries along four tiers: Tier 1, Tier 2, Tier 2 Watch List and Tier 3 (see the 2013 *TIP Report* for an explanation of the ranking system (*supra* note 1 at 41-47)).

⁸⁰ Roots, *supra* note 52 at 27.

⁸¹ *Ibid* at 28.

charge was laid under the human trafficking provision contained in the *IRPA*. This charge led to increased media attention on the problem of human trafficking in Canada,⁸² which also likely contributed to raising awareness of the problem of human trafficking and the need to more effectively address it.

On 12 May 2005, the then Minister of Justice and Attorney General of Canada Paul Harold Macklin introduced Bill C-49 into the House of Commons.⁸³ When introducing the Bill, Macklin noted that it would help improve Canada's efforts to combat human trafficking and limit gaps that had been identified in Canada's current approach. He went on to note that Bill C-49 would ensure that the "offence charged is the one that best responds to the facts of the specific trafficking case."⁸⁴ While not all parliamentarians were convinced that the new provisions were necessary,⁸⁵ the Bill received Royal Assent just over half-a-year later on 25 November 2005, and three new indictable offences on human trafficking were introduced into the *Criminal Code*.⁸⁶

Amendments Since

Since Bill C-49 was adopted, human trafficking has remained on Parliament's agenda.⁸⁷ Joy Smith, a devoted anti-human trafficking advocate, introduced Bill C-268 in January

⁸² Barnett, *Bill C-49*, *supra* note 14; Barnett, *Trafficking in Persons*, *supra* note 15 at 10.

⁸³ Bill C-49, *An Act to amend the Criminal Code (Trafficking in Persons)*, 1st Sess, 38th Parl, 2005 (first reading 12 May 2005).

⁸⁴ *HC Debates*, 38th Parl, *supra* note 14 at 1210 (Hon Paul Harold Macklin).

⁸⁵ *Ibid* at 1225 (Vic Toews), 1345 (Larry Bagnell).

⁸⁶ *Ibid* at 1205 (Hon Paul Harold Macklin); *Criminal Code*, *supra* note 16, ss 279.01-279.03.

2009, recommending that minimum sentences be put in place for cases involving child victims. This Bill received Royal Assent in June 2010, and section 279.011 of the *Criminal Code* was amended, putting in place a five-year mandatory penalty for trafficking children.⁸⁸ Smith introduced another Bill in 2011, which had two objectives.⁸⁹ The first was to make the human trafficking provisions contained within the *Criminal Code* extraterritorial offences. This change would allow Canada to prosecute Canadian offenders even if they were not on Canadian soil.⁹⁰ The second objective of Bill C-310 was to enhance the definition of exploitation included in section 279.04 of the *Criminal Code*. In particular, the Bill clarified that the means of coercion could be psychological as well as physical.⁹¹ When introducing the Bill before the House of Commons, Smith explained:

This amendment stems from consultations with law enforcement, lawyers and prosecutors who have faced challenges demonstrating exploitation and trafficking in persons under the current definition. They feel that the current definition of ‘exploitation’ is worded in such a way that it has caused courts to interpret ‘exploitation’ too narrowly. The current definition hinges on an assumption that victims feared for their own safety or for the safety of someone

⁸⁷ In addition, the following Bills have also been tabled, however none have received royal assent: Bill C-381, *An Act to amend the Criminal Code (Trafficking in Persons and Transplanting Human Organs and Other Body Parts)*, 2nd Sess, 40th Parl, 2009 (first reading 7 May 2009); Bill C-602, *An Act to amend the Criminal Code (Trafficking in Persons)*, 3rd Sess, 40th Parl, 2010 (first reading 9 December 2010); Bill C-612, *An Act to amend the Criminal Code (Trafficking in Persons)*, 3rd Sess, 40th Parl, 2010 (first reading 15 December 2010); Bill C-452, *An Act to amend the Criminal Code (Exploitation and Trafficking in Persons)*, 1st Sess, 41st Parl, 2012 (first reading 16 October 2012); Bill C-517, *An Act to amend the Criminal Code (Trafficking in Persons)*, 2nd Sess, 41st Parl, 2013 (first reading 16 October 2013).

⁸⁸ Bill C-268, *An Act to amend the Criminal Code (Minimum Sentence for Offences Involving Trafficking of Persons Under the Age of Eighteen Years)*, 3rd Sess, 40th Parl, 2010 (as passed 29 June 2010); Smith, *supra* note 78 at 2.

⁸⁹ *HC Debates Debates*, 41st Parl, 1st Sess, No 36 (25 October 2011) at 1715 (Joy Smith).

⁹⁰ *Ibid.*

⁹¹ *Ibid* at 1720 (Joy Smith); Bill C-310, *An Act to amend the Criminal Code (Trafficking in Persons)*, 1st Sess, 41st Parl, 2012 (as passed 28 June 2012); Smith, *supra* note 78 at 2-3.

known to them so much that they were compelled to provide a labour or a service. This has often been interpreted as a concern for one's physical safety.⁹²

There was hope that this amendment would help to improve the “serious deficiencies” present in the human trafficking laws, which up to that point had only led to five convictions.⁹³

Human Trafficking Provisions in the Criminal Code

Bills C-49, C-268 and C-310 are what shaped the human trafficking provisions that currently exist within the Canadian *Criminal Code*.⁹⁴ Section 279.01 prohibits persons from “engaging in specified acts for the purpose of exploiting or facilitating the exploitation of a person.”⁹⁵ Section 279.011 criminalizes the trafficking of minors, and sets out a mandatory minimum sentence for the offence. By requiring proof of the means of coercion, this section departs from article 3(c) of the *Palermo Protocol*.⁹⁶ Section 279.02 attempts to attack those who profit from human trafficking.⁹⁷ Section 279.03 is aimed at punishing offenders who withhold or destroy identification documents for the purpose of committing or facilitating human trafficking.⁹⁸ It does not matter whether the

⁹² *HC Debates*, 41st Parl, *supra* note 89 at 1725 (Joy Smith).

⁹³ *Ibid* at 1800 (Jack Harris). Two offenders attempted to challenge the constitutionality of s 279.04 for being overbroad and vague prior to the amendments introduced in Bill C-310. The challenge was unsuccessful: *R v Beckford*, 2013 ONSC 653, 276 CRR (2d) 26.

⁹⁴ *Supra* note 16, ss 279.01-279.04.

⁹⁵ Lucie Ogrodnik, “Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons,” a paper published as part of the Crime & Justice Research Paper Series (Ottawa: Canadian Centre for Justice Statistics, Statistics Canada, 2010) at 12, available online at: <<http://www.statcan.gc.ca/pub/>>.

⁹⁶ *Palermo Protocol*, *supra* note 11, art 3(c).

⁹⁷ Barnett, *Bill C-49*, *supra* note 14.

⁹⁸ Ogrodnik, *supra* note 95 at 12.

Box 3. Human Trafficking Provisions in the *Criminal Code*Section 279.01: Trafficking in Persons

(1) Every person who *recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person*, for the *purpose of exploiting* them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Section 279.011: Trafficking of a Person Under the Age of 18

(1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Section 279.02: Material Benefit

Every person who receives a financial or other material benefit, knowing that it results from the commission of an offence under subsection 279.01(1) or 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

Section 279.03: Withholding or Destroying Documents

Every person who, for the purpose of committing or facilitating an offence under subsection 279.01(1) or 279.011(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status is guilty of an indictable offence and liable to imprisonment for a term of not more than five years, whether or not the document is of Canadian origin or is authentic.

Section 279.04: Exploitation

(1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could *reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened* if they failed to provide, or offer to provide, the labour or service.

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused

(a) used or threatened to use *force or another form of coercion*;

(b) used deception; or

(c) abused a position of trust, power or authority.

(3) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

**Criminal Code*, RSC 1985, c C-46, ss 279.01-04 [Emphasis added].

document is Canadian or authentic.⁹⁹ Section 279.04 defines exploitation, serving as an

evidentiary aid to prosecutors (See Box 3).¹⁰⁰ In addition to this section 7(4.11) allows for the prosecution of Canadian citizens and permanent residents who commit human trafficking offences outside of the country.¹⁰¹

The inclusion of these provisions in the *Criminal Code* was important. With respect to the most recent amendments that were introduced as a result of Bill C-310, it is still somewhat premature to judge their impact. However, there is reason to believe that these provisions still need further improvement. For instance, Julie Kaye, John Winterdyk and Lara Quarterman note that despite the wording in sections 279.01(2) and 279.011(2) courts still require prosecutors to establish that victims have not consented to exploitation.¹⁰² In addition to this, confusion remains about how to distinguish trafficking from other offences, such as smuggling, child sex tourism, child pornography and prostitution.¹⁰³

PART III: IMPACT OF CANADIAN CRIMINAL LAW PROVISIONS

When introducing Bill C-49, Macklin indicated that the new human trafficking provisions would “help the provinces carry out their duties because it is more precise and hopefully should lead to convictions that will be *relatively easily* obtained because of the nature of

⁹⁹ Barnett, *Bill C-49*, *supra* note 14.

¹⁰⁰ Smith, *supra* note 78 at 2-3.

¹⁰¹ *Criminal Code*, *supra* note 16, s 7(4.11). As of 31 March 2014, there are no cases where this provision has been used.

¹⁰² Kaye, Winterdyk & Quarterman, *supra* note 3 at 35; See also Roots, *supra* note 52 at 30.

¹⁰³ McSherry, *supra* note 45 at 390; Roots, *supra* note 52 at 23, 31; Ogradnik, *supra* note 95 at 12-13; Kaye, Winterdyk & Quarterman, *supra* note 3 at 32, 34-35.

how we have described the offence within the bill itself.”¹⁰⁴ Unfortunately, this assertion is inaccurate. Since the implementation of these provisions, few human trafficking charges have been laid, and even fewer convictions have taken place.¹⁰⁵ While it takes time for police officers, prosecutors and the judiciary to become familiar with new provisions,¹⁰⁶ enough time has now passed and financial resources spent to expect a better outcome.

These provisions need to be considered at least twice when an offender is apprehended. First, authorities need to determine if they have grounds to lay charges. Following this, they need to determine if they can actually establish a conviction.¹⁰⁷ While it is important to keep in mind that there are different standards to meet in order to lay charges and achieve convictions (the standard being significantly higher in the latter), it is also worth remembering that there is an inter-play that goes on between charges and conviction. That is, fewer successful convictions can lead to fewer charges because officers may become reluctant to lay charges if they think convictions are unlikely. Similarly, a more limited number of charges will lead to fewer convictions simply because there are fewer cases to bring before the courts.

¹⁰⁴ *HC Debates*, 38th Parl *supra* note 14 at 1225 (Hon Paul Harold Macklin).

¹⁰⁵ Frederick Desroches, “The Use of Organized Crime and Conspiracy Laws in the Investigation and Prosecution of Criminal Organizations” (2013) 7:4 *Policing* 401 at 409; Kaye, Winterdyk & Quarterman, *supra* note 3 at 25.

¹⁰⁶ Bruckmüller & Schumann, *supra* note 48 at 113.

¹⁰⁷ Kaye, Winterdyk & Quarterman, *supra* note 3 at 35.

Charges

While I do not plan to address the difficulties that exist with respect to detecting and investigating human trafficking, it is important to acknowledge that there are significant hurdles that exist at this stage, which directly impact the number of charges and convictions obtained.¹⁰⁸ However, for the purposes of this paper, the focus will remain on exploring the hurdles that officers and prosecutors face once human trafficking suspects have been arrested.

Table 1. Human Trafficking Charges Laid in Canada, by Province and Territory

	2005	2006	2007	2008	2009	2010	2011	2012	TOTAL
Canada	0	1	7	1	23	11	36	46	125
Alberta	0	0	0	0	5	0	1	0	6
British Columbia	0	1	0	0	0	0	5	7	13
Manitoba	0	0	0	0	0	0	0	0	0
New Brunswick	0	0	1	0	0	0	0	0	0
Newfoundland & Labrador	0	0	0	0	0	0	0	0	0
Northwest Territories	0	0	0	0	0	0	0	0	0
Nova Scotia	0	0	0	0	1	0	0	0	0
Nunavut	0	0	0	0	0	0	0	0	0
Ontario	0	0	6	0	15	9	22	36	88
Prince Edward Island	0	0	0	0	0	0	0	0	0
Quebec	0	0	0	1	2	2	8	3	16
Saskatchewan	0	0	0	0	0	0	0	0	0
Yukon	0	0	0	0	0	0	0	0	0

Source: Statistics Canada (2013).

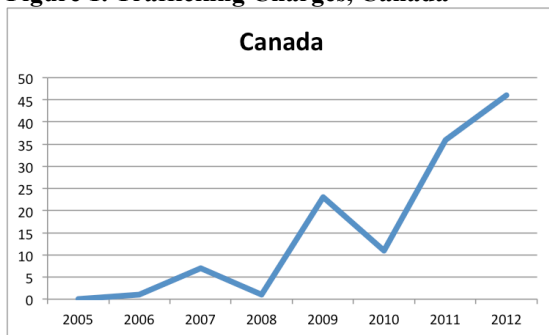
According to Statistics Canada, 125 human trafficking charges were issued between 2005 and 2012 (See Table 1 and Figure 1).¹⁰⁹ Charges have been most prevalent in Ontario (88), followed by Quebec (16), British Columbia (13) and Alberta (6) (see Table 1 and

¹⁰⁸ *National Action Plan* (2012), *supra* note 1 at 6.

¹⁰⁹ Statistic Canada, "Incident-based crime statistics, by detailed violation" in *CANSIM* (Ottawa: StatCan, 2013), available online at: <<http://www5.statcan.gc.ca/cansim/>>

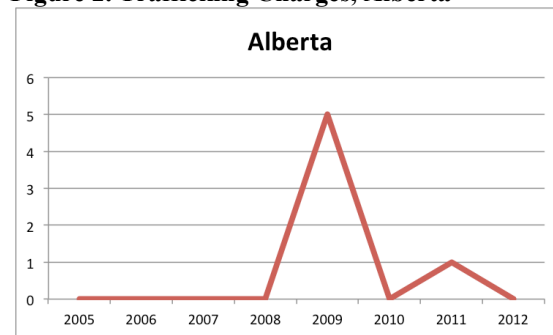
Figures 2-4). At least one additional charge was laid in Alberta in 2013.¹¹⁰ Most charges have been made in major urban centres. For example, all of the Alberta charges were issued in Edmonton (3) and Calgary (3).¹¹¹ Most charges have been for sexual exploitation. However charges for forced labour have been issued in Alberta, Ontario and British Columbia as well.¹¹²

Figure 1. Trafficking Charges, Canada



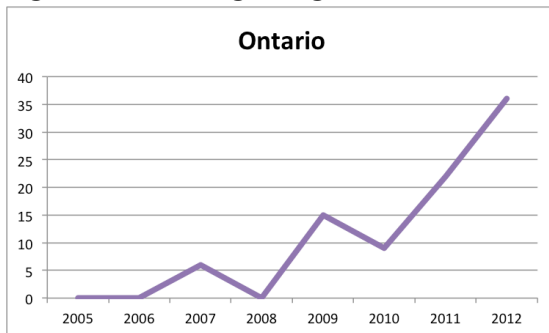
Source: Statistics Canada, 2013

Figure 2. Trafficking Charges, Alberta



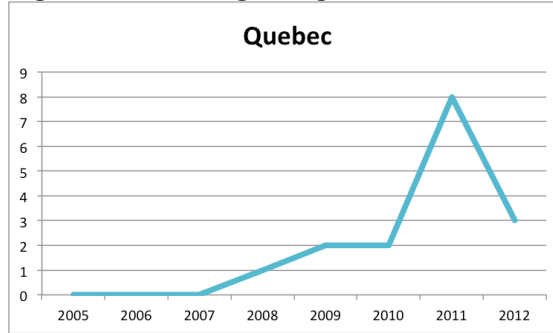
Source: Statistics Canada, 2013

Figure 3. Trafficking Charges, Ontario



Source: Statistics Canada, 2013

Figure 4. Trafficking Charges, Quebec



Source: Statistics Canada, 2013

¹¹⁰ Smith, *supra* note 78 at 3.

¹¹¹ 15 of the Quebec charges came from Montreal, 55 of the Ontario charges came from Toronto and 12 of the charges laid in BC were in Vancouver (Statistics Canada, *supra* note 109).

¹¹² *National Action Plan* (2012), *supra* note 1 at 7; Kaye, Winterdryk, Quarterman, *supra* note 3 at 26.

One of the first challenges to arise after a human trafficking suspect has been arrested is deciding how to charge that person. This can be a strategic decision, dependent upon existing evidence. That is, if an officer thinks that s/he does not have enough evidence to meet the burden required to achieve a human trafficking conviction, s/he may choose to proceed on the basis of other offences, which are more likely to succeed.

This choice can be problematic because if charges are not issued under the human trafficking provisions, there will be no cases to prosecute under these provisions. The lack of prosecutions prevents case law from developing, which can help elaborate and expand upon the terms and concepts included in the human trafficking offences. The limited number of charges made under the human trafficking provisions in the *Criminal Code* seems to be a concern, as evident from the following law officer's testimony:

[the human trafficking offence] is so unbelievably onerous... that we can't lay charges to actually create the case law that defines the Criminal Code ... it's been on the books for several years and it is almost to the point where investigators are realizing we really can't hit that standard and the prosecutors are very reluctant to try and prosecute on that standard.¹¹³

Indeed, it has proven difficult to convict suspects of human trafficking. For example, in the case of *R v Downey*, two men were charged with a number of offences, including human trafficking and theft of an identity card to facilitate human trafficking.¹¹⁴ The victim explained to police that after being kidnapped and sexually assaulted, her assailants told her that they were planning to force her into prostitution. In addition, the police were aware that both men belonged to a gang suspected of engaging in human

¹¹³ Kaye, Winterdyk & Quarterman, *supra* note 3 at 34-35.

¹¹⁴ *R v Downey*, 2010 ONSC 1531, [2010] OJ no 1038 (QL).

trafficking for sexual services. However, the accused abandoned the victim before this occurred. Thus, while both offenders were found guilty of several charges, there was not enough evidence to convict them under the human trafficking provisions.¹¹⁵

Not proceeding with human trafficking charges may also be the result of other factors. For example, officers may proceed with older and more established offences simply because they are more familiar.¹¹⁶ European criminal law professor Marianne Wade points out that “[t]rafficking-specific offences are new and often untested, thus placing prosecutors before a number of uncertainties in comparison with more traditional crimes committed as part of the trafficking and exploitation scenario.”¹¹⁷ She goes on to note that prosecutors are often more likely to get convictions if they proceed on the basis of provisions that they are more familiar with.¹¹⁸

Officers may also proceed on the basis of other offences because they are simply unaware of the newer trafficking provisions or that human trafficking is even taking place in Canada. For example, in the case of *R v Tynes*,¹¹⁹ two accused were charged with a number of offences, including human trafficking under the *Criminal Code*. The accused were found guilty of several offences. However, they were not found guilty of human trafficking. They were not found guilty of human trafficking because the Crown had

¹¹⁵ *Ibid.*

¹¹⁶ Wade, *supra* note 13 at 161; Shoaps, *supra* note 59 at 949.

¹¹⁷ Wade, *supra* note 13 at 161.

¹¹⁸ *Ibid.*

¹¹⁹ *R v Tynes*, 2010 QCCQ 9767, [2010] QJ No 11604 (QL).

failed to initially charge the accused with human trafficking.¹²⁰ The court refused to allow the Crown to later amend this mistake on the basis that it would prejudice the accused. This case illustrates why there is reason to be concerned that police officers and prosecutors may not be familiar with or attuned to human trafficking.

Similarly, officers may proceed under other offences because they are unaware what distinguishes human trafficking from other crimes. Katrin Roots notes that in cases of sexual exploitation, sections 279.01 and 212 of the *Criminal Code* are almost identical.¹²¹ Similarly, individuals working in the area of human trafficking have identified that it is difficult to distinguish between human trafficking and prostitution and procurement.¹²² Others note that it is difficult to distinguish cases of child pornography from human trafficking of children for sexual exploitation.¹²³

While some assert that using alternative provisions is nothing to be alarmed about as long as offenders are convicted, not charging human traffickers under the human trafficking provisions raises several concerns in addition to the ones already mentioned. First, there is a fear that law enforcement officers, the judiciary and the broader public will remain

¹²⁰ *Ibid* at paras 24-26, 82, 99, [2010] QJ No 11604 (QL).

¹²¹ Roots, *supra* note 52 at 31. In the decision of *Canada (Attorney General) v Bedford*, 2013 SCC 72, section 212(1)(j) of the *Criminal Code* was found to be inconsistent with the *Charter*, which could have an impact on this analysis.

¹²² Ogradnik, *supra* note 95 at 12-13.

¹²³ *Ibid*. While alternative available offences may pose challenges for ensuring that human traffickers are charged under human trafficking provisions, these alternative offences *could* serve as an asset to prosecutors. For example, when dealing with cases involving sexual exploitation, prosecutors could look to case law and strategies used to obtain convictions under section 212 of the *Criminal Code*, which might assist them in obtaining human trafficking convictions.

unaware of the extent that this crime is taking place in Canada. Second, there is a concern that traffickers will not face charges that are commensurate with the offence(s) committed; that is, traffickers may face lesser or partial charges if prosecuted under other provisions.¹²⁴ Third, by proceeding on the basis of alternative offences alone, traffickers will not be identified and labeled as traffickers.¹²⁵ Lastly, it would defeat the purpose of introducing the provisions in the first place. To be clear, this is not to say that traffickers should not be charged under other provisions. In most cases of human trafficking a number of crimes will have been committed, such as sexual assault, kidnapping or organized crime. However, in my view, it would be a mistake to proceed on the basis of these offences *alone*.

With all of this said, it should be pointed out that there are some who have voiced concerns that too many human trafficking charges are being issued in Canada. They believe human trafficking charges are being issued against individuals without adequate evidence.¹²⁶ For instance, research published by Katrin Roots suggests that increased political and media attention towards human trafficking has pressured officers to increase the number of trafficking charges issued.¹²⁷

While there has been increased attention to this area, the Government of Canada explains that the increase is likely due, at least in part, to increased efforts to train and equip

¹²⁴ Wade, *supra* note 13 at 165.

¹²⁵ *Ibid.*

¹²⁶ Roots, *supra* note 52 at 35-36.

¹²⁷ *Ibid* at 36.

officers to identify incidents of human trafficking.¹²⁸ Further, considering the statistics available, and the fact that there has not been a steady increase in convictions in all provinces (see Table 1 and Figures 2 and 4), there does not seem to be much reason for concern. While there has been an increase in the number of charges laid since 2009,¹²⁹ the overall number of charges has remained limited, particularly in comparison with other countries (See Table 2).¹³⁰

Convictions

Human trafficking convictions have also remained low. According to Canada's *National Action Plan*, there were a total of 35 human trafficking convictions between 2005 and 31 March 2013.¹³¹ Almost all convictions have involved Canadian traffickers and victims, and not surprisingly given the distribution of charges, have taken place in Ontario and Quebec.¹³² While a fall in the number of suspects, charges, prosecutions and convictions is expected with respect to any offence,¹³³ in this instance the severity of the drop is surprising. It is surprising because of the amount of emphasis that has been placed on raising awareness about, training for and resources devoted to human trafficking. In light of this, one would expect the number to be higher.¹³⁴

¹²⁸ *National Action Plan* (2012), *supra* note 1 at 12.

¹²⁹ *Roots*, *supra* note 52 at 34.

¹³⁰ US, *TIP Report* (2013), *supra* note 3.

¹³¹ *National Action Plan* (2013), *supra* note 1 at 4. In addition, 80 cases remained before the courts at that time.

¹³² *Ibid.*

¹³³ *Wade*, *supra* note 13 at 160.

¹³⁴ *Ibid.*

Because there have been so few cases prosecuted under these provisions, it remains difficult to determine why obtaining convictions for human trafficking continues to be so challenging in Canada. In addition, almost all convictions obtained have resulted from guilty pleas,¹³⁵ which means that the difficulties in establishing human trafficking offences cannot yet be fully appreciated. However, with this said, the available cases may help provide some insight on the matter.

Most cases suggest that challenges relate to the Crown's reliance on victims' testimony to convict traffickers. This is problematic for several reasons. For one, it can be difficult to get victims to testify at all. This difficulty may arise because the victim is terrified of his/her trafficker. It may be because the victim is in a romantic relationship with the trafficker. Victims may also distrust law enforcement officers.

Even when a victim is willing to testify, it can be difficult to establish that a victim was forced, and did not choose, to partake in an activity.¹³⁶ Victim credibility is also a factor in these cases. This can be difficult to establish, particularly if the victim has engaged in some form of illegal behaviour.¹³⁷ These challenges can be better understood by examining several cases more in depth.

¹³⁵ Roots, *supra* note 52 at 39.

¹³⁶ Wade, *supra* note 13 at 165.

¹³⁷ Also see UNODC's "Human Trafficking Case Law Database", available online at: <www.unodc.org>.

In 2008, Imani Nakpangi was the first suspect to be convicted under section 279.01.¹³⁸ Nakpangi was charged with the human trafficking of two minors. He pled guilty to one count, and not guilty to the second. No conviction was obtained for the second count because the victim believed that she and Nakpangi were in a romantic relationship, which led the court to conclude that she did not fear for her safety.¹³⁹ In other words, it appeared that she had consented to engaging in the sexual activities arranged by Nakpangi, instead of being coerced into them.

In *R v Urizar*¹⁴⁰ and *R v Byron*,¹⁴¹ both cases relied heavily on establishing that the victims' testimony was credible.¹⁴² In *R v Urizar*, the victim had just turned eighteen, and was coerced into performing sexual services.¹⁴³ Similarly, in *R v Byron*, the victim was seventeen, and also coerced into performing sexual services.¹⁴⁴ In both cases, the courts found the victims to be credible and believable. However, in both instances, the Crown was able to produce corroborating evidence to support the victim's testimony.¹⁴⁵ In addition, it was clear that the court viewed both victims as vulnerable and impressionable.

¹³⁸ *R v Nakpangi* [2008] OJ no 6022 (QL) at para 1.

¹³⁹ *Roots*, *supra* note 52 at 33; See also *R v St. Vil* [2008] OJ no 6023 (QL) where the suspect pled guilty to trafficking his girlfriend.

¹⁴⁰ *R v Urizar*, 2010 QCCQ 4475, at paras 6, 9, 123-164. [2010] JQ no 9186 (QL), *aff'd* 2013 QCCA 46, [2012] RJQ 43.

¹⁴¹ *R v Byron*, 2013 ONSC 6427, [2013], OJ no 5396.

¹⁴² *Ibid* at para 164.

¹⁴³ *R v Urizar*, *supra* note 140.

¹⁴⁴ *R v Byron*, *supra* note 141.

¹⁴⁵ *Ibid* at paras 10-14, 28, 39.

In most instances, garnering evidence that convinces the court beyond a reasonable doubt will be more challenging.¹⁴⁶

PART IV: ALTERNATIVE APPROACHES

Canada is not alone in its struggle to effectively combat human trafficking. In most countries, human trafficking charges and convictions have remained low. Indeed, a 2012 UNODC report notes that while 134 countries and territories have specific offences that criminalize human trafficking,¹⁴⁷ 21 of them did not record a single conviction between 2007 and 2010.¹⁴⁸ Acknowledging that there appears to be no ideal model that exists to combat human trafficking, and that national approaches will need to differ depending on the type of human trafficking taking place and the legal system in place in a country, there are still lessons that can be gained from examining approaches used in other jurisdictions. Looking to the criminal law systems in the United States, Italy and Belgium, several methods stand out that Canada, as well as other countries, could usefully consider in order to improve its record on prosecuting human traffickers. This is not to say that these are the only jurisdictions where such measures are used, but rather, they serve as a platform to assess their impact.

¹⁴⁶ See *R v Ng*, 2008 BCCA 535 at paras 4-8, 241 CCC (3d) 340.

¹⁴⁷ *Global Report on Trafficking in Persons*, *supra* note 5 at 7, 14, 84-88.

¹⁴⁸ *Ibid* at 84-88.

Table 2. Trafficking Statistics in Belgium, Italy and the United States

	Belgium	Italy	United States
Investigations	NA	2,471 (2011)	2,493 (2012 FY)
	NA	2,333 (2010)	2,311 (2011 FY)
Prosecutions	381 (2012)	244 (2011)	201 (2012 FY)
	358 (2011)	621 (2010)	NA
Convictions	At least 48 (2012)	179 (2011)	138 (FY 2012)
	68 (2011)	174 (2010)	151 (FY 2011)

Source: US, TIP Report (2013).

United States

Because of their geographic proximity, it is particularly important for Canada and the U.S. to have complementary, if not consistent, human trafficking legislation and policies.¹⁴⁹ The U.S. has had specific legislation to tackle human trafficking in place longer than Canada. It is much more comprehensive than Canada's, and covers a wider range of issues. The *Victims of Trafficking and Violence Protection Act of 2000*¹⁵⁰ is a statute devoted entirely to combatting human trafficking. The *Act* criminalizes human trafficking,¹⁵¹ with its provisions being more comprehensive and descriptive than those contained in Canada's *Criminal Code*. Further, because of the way the legislation is structured, it facilitates interplay between government departments and aspects of human trafficking, such as prosecuting traffickers and protecting victims.¹⁵² For instance, professor of criminology and criminal justice Amy Farrell notes that it has become clear in the U.S. that:

¹⁴⁹ Benjamin Perrin, "Trafficking in persons & transit countries: a Canada-U.S. case study in global perspective" a paper published as part of Working Paper Series No 10 (Vancouver: Metropolis British Columbia, 2010) at 9.

¹⁵⁰ Pub L No 106-386, 114 Stat. 1464 [VTVPA].

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, §107.

law enforcement agencies participating in multiagency trafficking partnerships with other investigative agencies, prosecutors and victim service providers are more likely to have training, protocols, and specialized units or personnel devoted to human trafficking investigations and are more likely to identify and prosecute human trafficking in their community.”¹⁵³

Canada could benefit from placing more emphasis on inter-departmental working groups. The criminal justice system can only do so much, and would likely be more effective if there were better mechanisms in place for collaboration amongst government agencies, particularly those that have more exposure to victims.¹⁵⁴ While Canada’s *National Action Plan* recognizes the need for an inter-governmental approach, it has remained limited in comparison to the United States. Efforts should be stepped-up and improved upon.

Second, the U.S. human trafficking legislation has been frequently reviewed and amended to account for new information on how to better identify and prosecute human traffickers. The *VTVPA* was reauthorized in 2003,¹⁵⁵ 2005,¹⁵⁶ 2008,¹⁵⁷ and most recently again in March 2013.¹⁵⁸ While Canada has taken steps to amend the *Criminal Code* in recent years, it should commit to reviewing and amending these provisions to account for new evidence and insight that would improve their effectiveness. Efforts should be made to consult with police officers, prosecutors and other experts in the field to make

¹⁵³ Amy Farrell, “Improving Law Enforcement Identification and Response to Human Trafficking” in Winterdyk, Perrin & Reichel, *supra* note 7, 181 at 201.

¹⁵⁴ Kaye, Winterdyk & Quarterman, *supra* note 3 at 36.

¹⁵⁵ *Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003*, Pub L No 108-193, 177 Stat 2875.

¹⁵⁶ *TVPRA of 2005*, Pub L No 109-164, 119 Stat 3558.

¹⁵⁷ *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, Pub L No 110-457, 122 Stat 5044 [*TVPRA*, 2008].

¹⁵⁸ *TVPRA of 2013*, Pub L No 113-4, 127 Stat 54.

informed decisions. This ongoing review is something that could be incorporated into Canada's *National Action Plan*. As one UN special rapporteur rightly noted, anti-trafficking measures put in place “require [continual] monitoring and evaluation if significant progress is to be made and the vicious cycle broken.”¹⁵⁹

Third, the *TVPA* instructs that any person found guilty of human trafficking in the United States shall have their assets seized.¹⁶⁰ This type of mechanism is important because it directly attacks why individuals engage in human trafficking – financial reward.¹⁶¹ Section 279.02 of the Canadian *Criminal Code* allows for the imprisonment of offenders who receive a financial benefit from trafficking, but it does not instruct the seizure of offenders' assets. Similarly, while Canada has other legislation in place to deprive offenders of the proceeds of crime,¹⁶² it has not been utilized to combat human traffickers. Canada should consider either amending section 279.02 or using existing legislation to target assets.

Italy

Although human trafficking has been increasing in Italy in recent years,¹⁶³ there are still areas where Italy has remained a leader in efforts to prosecute traffickers. This leadership

¹⁵⁹ “Italy must do more to combat human trafficking and sexual exploitation – UN expert”, *UN News Centre* (20 September 2013), available online at: <www.un.org>.

¹⁶⁰ *VTVA*, *supra* note **Error! Bookmark not defined.** at § 1594(b),(c); *TVPA*, 2008, *supra* note 157. These funds are used to compensate victims and improve efforts to address human trafficking.

¹⁶¹ See Polaris Project, “Asset Forfeiture for Human Trafficking” (2013), available at <www.polarisproject.org>; Charlene Whitman, “Hitting The Where It Hurts: Strategies for Seizing Assets in Human Trafficking Cases” (2013) *AEquitas* 20.

¹⁶² *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000 c 17.

stems largely from Italy's long experience of dealing with the mafia. Articles 600 and 601 of Italy's Penal Code criminalize human trafficking.¹⁶⁴ These provisions are considered to be among the most serious in Italian law.¹⁶⁵

In addition to articles 600 and 601, Italy has developed sophisticated laws to ensure witnesses are protected and assets are seized in human trafficking cases.¹⁶⁶ These laws have proven useful in prosecuting human traffickers. For instance, in 2012 an Italian court awarded seventeen trafficking victims €50,000 each, using assets confiscated from their traffickers.¹⁶⁷ Victim-focused measures, such as these, can help prosecutors to achieve successful convictions by encouraging victims to come forward and provide testimony. As Bruckmüller and Schumann note: “the better the victims feel protected, the higher the [chance] to get a usable testimony to convict the offender.”¹⁶⁸ Canada could benefit from similar practices, particularly because of the importance of victims testifying in human trafficking cases. Thus, even though prosecutions and victim protection have been treated as separate elements, there is no denying that they are integrally linked. In

¹⁶³ *Supra* note 159.

¹⁶⁴ *Italian Penal Code*, Act No 1398, 19 October 1930, amended Act No 228, 11 August 2003, arts 600, 601.

¹⁶⁵ Laura Guerico, “The Legal Defence of Victims of Trafficking Legislative and Jurisdictional Problems and Gaps” (2011) 14:3 *Juridical Current* 38 at 43; Katalin Kelemen & Märta C. Johansson, “Still Neglecting the Demand that Fuels Human Trafficking: A Study Comparing the Criminal Laws and practice of Five European States on Human Trafficking, Purchasing Sex from Trafficked Adults and from Minors” (2013) 21 *Eur J Crime, Crim J & Crim J* 247 at 264, 268.

¹⁶⁶ *Italian Special Witness Protection Scheme*, Act no 45 (2001); *Italian Measures against Trafficking in Persons*, Act no 228 (2003), arts 5, 15.

¹⁶⁷ Corte di Assizes, L'Aquila, *Sahel Case*, 12 May 2012, available online at: <<http://ec.europa.eu/>>.

¹⁶⁸ Bruckmüller & Schumann, *supra* note 48 at 122. The newly proposed *Victim's Bill of Rights Act* might help in this regard (see Prime Minister of Canada, “Overview of Canadian Victims Bill of Rights” (3 April 2014), available online at: <<http://pm.gc.ca/>>).

order to secure more charges and convictions, better victim protections should be put in place.¹⁶⁹

Belgium

The approach employed in Belgium suggests that a more lenient definition of human trafficking can help secure more convictions.¹⁷⁰ Due to its geographical position in Europe, Belgium has long been aware of human trafficking, and legislation has been in place to combat the problem since the mid-1990s. Belgium has also devoted significant human and financial resources to addressing this crime, and works closely with other countries to investigate cases. Although the population at 11 million is significantly smaller than Canada's 35 million, Belgium has consistently produced a high number of human trafficking charges and convictions (See Table 2).¹⁷¹

Currently, Belgium prosecutes human trafficking offenders under a 2005 amendment to its *1995 Act Containing Measures to Repress Trafficking in Persons*.¹⁷² The country takes a broader approach to defining human trafficking than elsewhere. In particular, Belgian trafficking laws do not require coercion to be established in order to secure convictions.

¹⁶⁹ Bruckmüller & Schumann, *supra* note 48 at 122.

¹⁷⁰ In fact, in the 2013 *Trafficking in Persons Report*, Belgium's legislation was criticized for being overbroad (*supra* note 3 at 93).

¹⁷¹ *Ibid* at 93; Serena Bressan, "Criminal Law against Human Trafficking within the EU: A Comparison of an Approximated Legislation?" (2012) 20 *Eur J Crim, Crim L & Crim Just* 137 at 156.

¹⁷² *Belgium Act to Amend Several Provisions with a View to Combating More Effectively Trafficking of Human Beings and the Practices of Abusive Landlords*, August 2005, article 433. Several of the Belgian provisions are available in english in the *Model Law against Trafficking in Persons* (Vienna: United Nations Office on Drugs and Crime, 2009) at 10, 28, available online at: <www.unodc.org>.

Instead, coercion is considered during sentencing.¹⁷³ This approach has made it easier to achieve convictions, and is one from which Canada might also benefit from.

In addition, UNODC has highlighted that the definition of exploitation in Belgium's *Penal Code* is a model for other countries.¹⁷⁴ Belgium defines exploitation as "the intent to put somebody to work or permitting the person to be put into work where conditions are contrary to human dignity."¹⁷⁵ This definition is broader than the definition provided in section 279.04 of Canada's *Criminal Code* and does not require that fear be proven, which has been problematic in several Canadian cases.¹⁷⁶ In the future Canada may want to consider amending section 279.04 if the recent changes do not prove useful.

CONCLUSIONS AND RECOMMENDATIONS

It is clear that Canada has solidified its commitment to combatting human trafficking by participating in the *Palermo Protocol* negotiations, ratifying the *UNCTOC* and *Palermo Protocol*, introducing human trafficking provisions into its *Criminal Code*, and later amending these provisions. An inter-departmental taskforce has been created to improve upon efforts to combat the problem. These have been important steps, which have provided Canada with a foundation upon which it can continue to build and the

¹⁷³ US, *TIP Report* (2013), *supra* note 3 at 93.

¹⁷⁴ *Model Law against Trafficking in Persons*, *supra* note 172 at 28.

¹⁷⁵ *Ibid.*

¹⁷⁶ See the discussion on *R v Nakpangi*, *supra* note 138. One also needs to take into consideration that any statutory provisions cannot be so broad or vague that they do not comply with the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. See also the discussion of *R v Beckford*, *supra* note 93.

government should be encouraged to continue to support many of the efforts that it has identified in its *National Action Plan*. However, as evident from the limited number of charges and convictions, additional work remains to be done.

Efforts need to be made to ensure that Canada adopts an effective definition of human trafficking, with elements that are understandable to police offices and prosecutors, and demonstrable in court. Article 3 of the *Palermo Protocol* provided a basis, but Canada must go further to ensure that convictions can be secured under its human trafficking provisions. Adopting an effective definition will help to ensure that police officers and prosecutors know what to look for when investigating and prosecuting these crimes.

Law enforcement officers must be made to understand the importance of charging and prosecuting human trafficking suspects under the human trafficking provisions.

Prosecuting more cases under the human trafficking provisions will lead to more case law, which can help to develop and clarify terms included in these provisions. More prosecutions and jurisprudence will also assist in identifying any limitations that remain, and thus where further amendments should be made. More broadly, increasing the number prosecutions will also help to increase awareness of human trafficking in Canada, and lead to more discussion about how to improve efforts to address human trafficking.

Canada could usefully think about adopting several alternative or additional approaches that have been implemented in other jurisdictions. For example, Canada might consider introducing more comprehensive legislation. The human trafficking provisions in the

Criminal Code could be amended to ensure that human traffickers' assets are seized upon conviction. It is my view that Canada could also consider more drastic measures, such as re-vamping the current provisions to not require proof of coercion.

Reichel, Perrin and Winterdyk note “there is no ‘one size fits all’ solution, but a need to develop a comprehensive approach to combatting human trafficking which can account for the complexities and overlapping issues inherent in this crime.”¹⁷⁷ Canada must continue to build on the foundation it has created to develop an approach that adequately addresses this clandestine, complex and heinous crime. Important steps have been taken, but many more are required.

¹⁷⁷ “Epilogue”, *supra* note 13 at 291.

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