



# Trafficking or Pimping? An Analysis of Canada's Human Trafficking Legislation and its Implications<sup>1</sup>

Katrin Roots

## Abstract

In 2005, Canada implemented its first-ever domestic human trafficking legislation under sections 279.01 through 279.04 of the *Criminal Code of Canada*. The first conviction under this legislation came about three years after its implementation, with a total of only five convictions having been obtained as of January of 2011. This article examines the legislation and the legislative definition of human trafficking in Canada, arguing that the vagueness of this legislation, the breadth of the legislative definition, and its similarity to other provisions within the *Criminal Code* make it difficult to distinguish human trafficking from other criminal offences, particularly procurement, or in lay language—pimping, which is governed under section 212 of the *Code*. Analyzing cases identified as human trafficking by Canadian police and legal authorities, this article demonstrates the problematic effects of Canada's human trafficking legislation. The article points out the challenges arising from identifying non-trafficking cases as human trafficking, including undermining the severity of human trafficking and impeding efforts to combat it.

**Keywords:** human-trafficking, sex-trafficking, procurement, pimping, prostitution

## Résumé

En 2005, Canada a adopté pour la toute première fois une réglementation contre la traite des êtres humains en vertu de l'articles 279.01–279.04 du Code criminel canadien. La première condamnation en vertu de cette loi survenait trois ans après sa mise en œuvre, avec un total de cinq condamnations seulement jusqu'en janvier 2011. Cet article analyse la réglementation ainsi que la définition législative de la traite des êtres humains au Canada. Selon l'auteure, le caractère vague de la législation, l'ampleur de la définition législative, ainsi que sa similarité à d'autres provisions du Code criminel fait en sorte qu'il est difficile de distinguer entre le trafic des personnes et d'autres crimes, notamment le proxénétisme régi en vertu de l'article 212 du Code criminel. En analysant les cas que les autorités policières et gouvernementales canadiennes ont classifiés comme trafic de personnes, cet article démontre les conséquences problématiques de la réglementation contre la traite des êtres humains. Cet article souligne les défis que surviennent lorsque les autorités

<sup>1</sup> I would like to thank Mariana Valverde and the anonymous reviewers of this journal for their comments and suggestions. A special thank you to Drs. Rachel Ariss and Tony Puddephatt for all their help.

identifient d'autres crimes comme traite de personnes, minant, par ce fait même, la sévérité ainsi que les efforts afin de combattre celle-ci.

**Mots clés :** traite de personnes, trafic du sexe, proxénétisme, prostitution

## Introduction

Human trafficking is a term that describes the recruitment, transportation, and exploitation of people. It is important to distinguish trafficking from smuggling, as smuggling “involves the facilitation, transportation or procurement of the illegal entry of a person or persons across international borders”<sup>2</sup> and occurs with the consent of the individual. Trafficking, on the other hand, “involves the use of threats, force, coercion or fraud, resulting in the conditions of servitude, slavery or commercial sexual exploitation of an individual.”<sup>3</sup> Thus, individuals smuggled into a country are free at the end of the journey, whereas victims of trafficking are kept under the control of their traffickers.<sup>4</sup> Trafficking is further complicated by its multistage process, which consists of recruitment, transportation, and exploitation that are often inconsecutive and overlapping. Trafficking can also start off as smuggling (with the consent of the individual), and turn into trafficking at any stage during the journey.<sup>5</sup>

The re-emergence of social concern over trafficking in the last two decades has been attributed to the globalization of capitalism and the consequent increases in the movement of people. Estimates regarding the extent of the problem range from 700,000<sup>6</sup> to 4 million people per year.<sup>7</sup> However, experts argue that these estimates are not supported by sound empirical evidence, and they are hard pressed to explain what an increase in human trafficking means in real terms.<sup>8</sup> Despite the lack of evidence, forceful statements announcing the growth of global human trafficking, often labeled as “modern-day slavery,” prevail. Canada has also been identified as a source, transit, and destination country for human trafficking. Canada joined the international fight against trafficking in 2002 by ratifying the United Nations’ *Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children*, also known as the *Palermo Protocol*. In an effort to

<sup>2</sup> United States Department of Justice and Government of Canada, “Bi-National Assessment of Trafficking in Persons” (2006): 1. [http://www.publicsafety.gc.ca/prg/le/\\_fl/1666i-en.pdf](http://www.publicsafety.gc.ca/prg/le/_fl/1666i-en.pdf).

<sup>3</sup> Ibid.

<sup>4</sup> Jacqueline Oxman-Martinez, Andrea Martinez, and Jill Hanley, “Human Trafficking: Canadian Government Policy and Practice,” *Refugee* 19, 4 (2000): 14–23.

<sup>5</sup> US Department of Justice and Government of Canada, “Bi-National Assessment of Trafficking in Persons.”

<sup>6</sup> Royal Canadian Mounted Police, “Human Trafficking in Canada,” RCMP Criminal Intelligence, Human Trafficking National Coordination Centre, 2010.

<sup>7</sup> Jacqueline Oxman-Martinez and Jill Hanley, “A Follow-up Study of Canadian Policy on Human Trafficking Impacts of the Immigration and Refugee Protection Act,” Centre de recherche inter-universitaire de Montréal sur l’immigration, l’intégration et la dynamique urbaine, 2004.

<sup>8</sup> United Nations Global Initiative to Fight Human Trafficking (UN GIFT), “Profiling the Traffickers in the Vienna Forum to Fight Human Trafficking: 016 Workshop [Vienna, Austria],” United Nations Office of Drugs and Crime (UNODC) (2008): 60. [http://www.unodc.org/documents/human-trafficking/Marika\\_Misc/BP016ProfilingtheTraffickers.pdf](http://www.unodc.org/documents/human-trafficking/Marika_Misc/BP016ProfilingtheTraffickers.pdf).

satisfy the stipulations of the *Protocol*, Canada implemented sections 279.01 through to 279.04 into its *Criminal Code*. The new provision was Canada's first ever legislation governing trafficking into and within Canada. In recent years the effectiveness of this law has been brought under scrutiny due to the low number of charges laid and even fewer convictions obtained in the five years since its implementation. Canada's overall efforts in the global battle have been criticized as mediocre by the international community and especially by the United States.

In this article, I consider the role of Canada's anti-trafficking legislation and legal decisions in constructing human trafficking as a social crisis in Canada. Placing Canada's approach to the issue of human trafficking within the context of international politics, I outline the role of the United States, the events of 9/11, and the subsequent pressures placed on Canada to increase its anti-trafficking efforts. I then examine the differences and similarities between Canada's anti-trafficking legislation found in both section 279.01 of the *Criminal Code of Canada* and section 118 (1) of the *Immigration and Refugee Protection Act (IRPA)*, as well as the *Palermo Protocol*. Examining the concept of consent in the context of human trafficking, I demonstrate that the broadness of the legislative definition has placed the discretionary power of interpretation in the hands of individual law enforcement officials to evaluate the situation based on their own moral compass. I compare section 279.01 of the *Criminal Code* with the procurement law in section 212 (1) of the *Code* to demonstrate a lack of a concrete legislative definition of human trafficking, exacerbated by the numerous versions of the definition; and I suggest that this has blurred the lines between human trafficking and other offences, such as procurement for the purpose of sexual exploitation, or in lay language, pimping. Discussing Canada's trafficking-related legal decisions and pending cases, I illustrate the use of the anti-trafficking legal framework in the engagement of politics of substitution, which resonates in the use of human trafficking concerns to increase surveillance over sex workers, pimps, migrants, and other marginalized groups.

## Historical and Theoretical Framework

Globalization of capitalism and the consequent internationalization of waged labour in the beginning of the twentieth century led to mass migration of both male and female labourers, mostly from lower class backgrounds, across international borders. As a result of the gendered and racially defined division of labour, women's jobs as migrant workers often involved domestic and sexual servitude.<sup>9</sup> However, the potential for women's independence through this newfound employment opportunity was seen as a threat to the existing patriarchal order, causing enormous anxiety amongst the ruling classes.<sup>10</sup> Under the rubric of patriarchal protection, women's migration was constructed as involuntary entrapment and enslavement known as "the white slave trade," which associated female migrant workers with notions of degraded sexuality, prostitution, and

---

<sup>9</sup> Kamala Kempadoo, "From Moral Panic to Global Justice: Changing Perspectives on Trafficking," introduction to *Trafficking and Prostitution Reconsidered*, Kempadoo et al. (2005): vvii–xxxiv.

<sup>10</sup> Ibid.

immorality.<sup>11</sup> Myths around “white slavery” were therefore developed in response to the perceived need to regulate female sexuality.<sup>12</sup> Relegated to a backburner in the years surrounding World Wars I and II, the issue resurfaced in the 1970s, becoming one of great importance on the international agenda by the 1980s.<sup>13</sup> The most recent wave of moral panic began in the 1990s as a result of the increased rate of social, political, cultural, and economic changes taking place on a global scale.<sup>14</sup> Feminist organizations have played a key role in human trafficking campaigns from the beginning of the twentieth century to the present day.<sup>15</sup>

There are two main perspectives governing human trafficking discussions. The dominant anti-trafficking perspective argues that human trafficking is a form of “modern day slavery” that violates basic human rights. This perspective is represented by anti-prostitution advocates, who argue that prostitution is inherently exploitive and violates the human rights of its victims.<sup>16</sup> Proponents of this perspective emphasize the need to take action against human trafficking, advocating a criminal justice approach and harsher punishments for the crime.<sup>17</sup> The opposing side, represented by sex workers’ rights activists, argues that not every prostitute and migrant sex worker is forced or coerced into their situation. Therefore, assumptions regarding their lack of consent remove sex workers’ agency and violate their human rights. Advocates of this perspective call into question the effectiveness and ethical responsibility of labeling all cases of prostitution as trafficking, when the alleged victims are choosing to escape from the protection and rehabilitation provided through anti-trafficking efforts.<sup>18</sup> The historical and continuing connection between human trafficking and sex work is long-standing and highly problematic. Tied into this confusion is the subsequent lack of distinction between pimping and trafficking.

## Consent

The issue of consent is a fiercely debated one in discussions of prostitution and human trafficking. Therefore, it is beneficial to lay out the history and importance of this concept, as it has been used in legal documents, at the outset. Consent is the term used in the *Palermo Protocol* to distinguish between trafficking and other forms of exploitation.<sup>19</sup> The consent provision specifies that one cannot consent to being trafficked, since consent based on deception, coercion, control, threats,

<sup>11</sup> Ibid.

<sup>12</sup> Jo Doezema, “Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in the Contemporary Discourses of Trafficking in Women,” *Gender Issues* 18, 1 (2000): 23.

<sup>13</sup> Kempadoo, “From Moral Panic to Global Justice.”

<sup>14</sup> Richard Parker et al., “Global Transformations and Intimate Relations in the 21st Century: Social Science Research on Sexuality and the Emergence of Sexual Health and Sexual Rights Framework,” *Annual Review of Sex Research* 15 (2004): 363.

<sup>15</sup> Doezema, “Loose Women or Lost Women?”

<sup>16</sup> Jo Doezema, “Who gets to choose? Coercion, consent and the U.N. Trafficking Protocol,” in *Gender, Trafficking and Slavery*, ed. R. Masika (London: Oxfam Focus on Gender, 2007), 20–27.

<sup>17</sup> Ibid.

<sup>18</sup> Gretchen Soderlund, “Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition,” *NWSA Journal* 17, 3 (2005): 64–87.

<sup>19</sup> Doezema, “Who gets to choose?”

force, or abduction is not valid.<sup>20</sup> The topic was highly contested during the development of the *Palermo Protocol*.<sup>21</sup> Arguments were mainly presented from the two perspectives outlined above.<sup>22</sup> The 1933 International Convention for the Suppression of the Traffic in Women, and the 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, which remained in effect until 2000, were heavily influenced by the anti-prostitution perspective and deemed all prostitution as incompatible with human dignity.<sup>23</sup> The opposing side of the debate was concerned about the oppressive outcome of such legislation on the lives of sex workers and argued that the *Protocol* should avoid adopting a patronizing stance in the name of “protecting” women, especially because “such a stance historically has ‘protected’ women from the ability to exercise their ‘rights’” to engage in sex work.<sup>24</sup>

Unlike the previous two conventions, the most recent being the 1949 Convention, the *Palermo Protocol* distinguishes between voluntary prostitution and trafficking, allowing each state the freedom to recognize sex work as legitimate labour. However, there are still a number of significant shortcomings in the anti-trafficking legislation, and some argue that the difference between the current and historical approaches to human trafficking is merely symbolic. Even though the international legislation no longer criminalizes all prostitution, it offers trafficking victims limited human rights protection, despite contrary allegations of more protections, and it offers none for those voluntarily migrating for the purpose of sex work.<sup>25</sup> It furthermore provides governments with a justification for violating sex workers’ rights to equal protection under the law in the name of fighting trafficking, as evidenced by the numerous human trafficking investigations outlined in the recent Royal Canadian Mounted Police (RCMP) report.<sup>26</sup> Thus, despite the re-construction of sex workers as potential victims, as opposed to perpetrators of crime, the outcome of the paradigm remains unchanged, removing women’s agency over their bodies and constructing them as incapable of responsible decision making and, consequently, requiring the intervention of the law.

The concept of consent as set out in the *Protocol* is further problematized by the introduction of psychological methods of exploitation. Psychological methods of exploitation, such as manipulation, deception, and threats of violence, are argued to be even more powerful and less obvious than physical methods.<sup>27</sup> The use of psychological methods is said to result in victims being aware of the exploitation but unable to leave the situation as a result of manipulation.<sup>28</sup> The expansive

---

<sup>20</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* [hereafter *Palermo Protocol*], UN General Assembly, 15 November 2000.

<sup>21</sup> Doezema, “Who gets to choose?”

<sup>22</sup> *Ibid.*, 4.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, 21.

<sup>25</sup> *Ibid.*

<sup>26</sup> RCMP, “Human Trafficking in Canada.”

<sup>27</sup> Benjamin Perrin, *Invisible Chains: Canada's Underground World of Human Trafficking* (Toronto, ON: Penguin Group, 2010). Perrin currently holds the position of special adviser in legal affairs and policy with the Prime Minister’s Office.

<sup>28</sup> *Ibid.*

notion of psychological exploitation leaves a significant amount of discretionary power in the hands of law enforcement officials to evaluate the situation based on their own moral compass and subjective understanding of the gendered psychology of migration and of sex work. This ambiguity may create an atmosphere where police suspicion of sex workers' consent is legitimized, consequently increasing police surveillance over the sex trade. Evidence of this can be seen in the 2010 RCMP report, which emphasized that its findings were based on human trafficking investigations, despite the fact that these investigations seldom discovered actual cases of human trafficking. Therefore, although the implementation of the consent factor in the existing definition of human trafficking was seen as a victory by those concerned for the rights of sex workers, it may nonetheless be largely a symbolic change.

### International Context

In order to understand Canada's response to the international fight against human trafficking, it is important to contextualize it in the broader scope of international politics and to understand the role of the United Nations in the global fight against human trafficking. The United Nations is the largest global regulatory institution to declare "war" on human trafficking.<sup>29</sup> The United States has become a self-appointed monitor of the international anti-trafficking campaign, a position that allows it a significant amount of influence over international politics.<sup>30</sup> As the monitor of the global anti-trafficking campaign, the United States evaluates the efforts of individual countries in their fight against trafficking. This evaluation is based on a three-tier ranking system, with Tier One status being awarded to countries who have fully complied with US anti-trafficking recommendations, while Tier Three status is attributed to countries who have put forth poor efforts.<sup>31</sup> Although in theory the United States evaluation of anti-trafficking efforts is based on international standards, in reality US perceptions, moral views, and legislation have a significant impact on the evaluation.<sup>32</sup> The strong impact of conservative and Christian lobbyist groups in the United States, and the anti-prostitution views of feminist lawyers whose voices are influential in Hillary Clinton's State Department, have resulted in the embedding and application of anti-prostitution perspectives in the international community, under the rubric of combating human trafficking.<sup>33</sup>

The events of 9/11 had a significant influence on reshaping the landscape of the anti-trafficking approach, exacerbating its use by combining it with the "war on terrorism" and a consequent focus on national security. According to Kapur,

<sup>29</sup> Soderlund, "Running from the Rescuers," 67.

<sup>30</sup> Sally Cameron, "Trafficking of Women for Prostitution," in *Trafficking in Humans: Social, Cultural and Political Dimension*, eds. S. Cameron and E. Newman (New York: United Nations University Press, 2008), 89.

<sup>31</sup> Soderlund, "Running from the Rescuers"

<sup>32</sup> Anne Gallagher, "Human Rights and Human Trafficking in Thailand: A Shadow TIP Report," in *Trafficking and the Global Sex Industry*, eds. K. Beeks and D. Amir (Oxford, UK: Lexington Books, 2006), 139–163.

<sup>33</sup> Penelope Saunders and Gretchen Soderlund, "Threat of Opportunity: Sexuality, Gender and the Ebb and Flow of Trafficking as a Discourse," *Canadian Women's Studies* 22, 3/4 (2003): 16–28.

“the War on Terror has acquired a supernatural life and existence outside of the international legal order, while simultaneously being pursued in and through the processes and institutions of the international regime” (2005 33). It has also created a space where stringent approaches to global migration are more readily accepted; consequently, discourses of terrorism and trafficking are eroding the space for migrants (ibid.). In light of these changes, Canada, a country geographically close to the United States, felt notable US pressure to tighten border controls. Several countries, including the United States, “accused Canada of being a ‘jumping off point’ for terrorists and of being too lenient in its acceptance of immigrants and refugees.”<sup>34</sup> It was even suggested that Canada’s immigration policies facilitate human trafficking and provide a destination and a transit point for the victims being taken to the United States.<sup>35</sup>

According to Collacott, “the State Department Trafficking in Persons annual reports suggested that, if anything, the United States was becoming somewhat frustrated by the lack of Canadian action in this area.”<sup>36</sup> A paper by the Center of Immigration Studies in Washington also found that “Canada is the ‘weak link’ in America’s defence against terrorist operations. U.S. security is only as good as Canadian security since the United States has no control over who comes into Canada and since the border is so easily crossed.”<sup>37</sup> Criticisms of Canada’s immigration policies are also evident in the annual Trafficking in Persons Reports, which demonstrate US pressure on Canada to toughen all aspects of its approach to trafficking. Year after year, the reports recommend intensification of Canada’s efforts to investigate and prosecute human trafficking offences, increase proactive investigation techniques, and improve coordination between national, provincial, and international law enforcement.<sup>38</sup>

In 2003, the US Department of State ranked Canada at a Tier Two level in its efforts to combat human trafficking, in contrast with its usual Tier One standing.<sup>39</sup> Canada’s border control strategy was further criticized in the 2003 *Department of State Report on Human Rights*. The report claimed that a number of Canadian cities served as hubs for criminal organizations involved in human trafficking.<sup>40</sup> According to the report, 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.<sup>41</sup> The interconnectedness between the United States and Canada, on a number of different fronts, may have resulted

---

<sup>34</sup> Jacqueline Oxman-Martinez, Andrea Martinez, and Jill Hanley, “Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector,” Department of Justice Canada, Research and Statistics Division (2005): 12.

<sup>35</sup> Ibid.

<sup>36</sup> Martin Collacott, *Canada’s Inadequate Response to Terrorism: The Need for Policy Reform*, Fraser Institute Digital Publication (2006): 21. <http://immigrationreform.ca/doc/canadas-inadequate%20Response-to-terrorism-the-need-for-policy-reform-martin-collacott-fraser-institute.pdf>.

<sup>37</sup> Glynn Custred quoted in Collacott, *Canada’s Inadequate Response to Terrorism*, 22.

<sup>38</sup> Leslie Ann Jeffrey, “Canada and Migrant Sex-Work: Challenging the ‘Foreign’ in Foreign Policy,” *Canadian Foreign Policy* 12, 1 (2005): 33–48.

<sup>39</sup> Ibid.

<sup>40</sup> Collacott, *Canada’s Inadequate Response to Terrorism*.

<sup>41</sup> Ibid., 21.

in US expectations that Canada put forth greater efforts in the global fight against human trafficking.

### Canada's Response to Criticism

According to a *Trafficking in Persons in North America* report, US pressures have led Canada to increase its attention to human trafficking.<sup>42</sup> Canada began placing greater emphasis on security and renegotiated a number of border control measures with the United States, including increased security checks for refugee determination processes, extended detention of migrants unable to prove their identity, intensification of deportation, and harsher penalties for using false documents, to name a few.<sup>43</sup> Canada also pointed to initiatives underway, such as the Inter-Departmental Working Group on Trafficking in Persons (IWGTIP), composed of seventeen federal departments and agencies, including the Departments of Justice, Foreign Affairs, Immigration, and Status of Women, as well as the RCMP, CSIS, and Border Agency.<sup>44</sup> Since then, many more steps have been taken to demonstrate Canada's efforts to combat human trafficking, including the implementation of section 279.01 through 279.04 of the *Criminal Code of Canada*, the 2005 establishment of a National Human Trafficking Coordination Centre, headed by the RCMP, and increases in funding for anti-trafficking measures.

### The Palermo Protocol

The current international anti-trafficking convention, known as the *Palermo Protocol*, was implemented by the United Nations in 2000. The *Protocol* sets out a number of criteria to be met by member countries, including the implementation of domestic legal provisions to ensure the international cooperation of police services, targeting of organized criminal operations, and criminalizing activities associated with human trafficking.<sup>45</sup> Focusing on the prevention of trafficking, the protection of victims, and the prosecution of offenders,<sup>46</sup> the *Protocol* specifies that in order to uncover trafficking networks, it is crucial to treat trafficked individuals as victims and not perpetrators of crime.<sup>47</sup> According to Article 3 (a) of the *Palermo Protocol*, trafficking in persons is the recruitment, transportation, transfer, harbouring, or receipt of persons through coercion, including threats; force; abduction; fraud; deception; abuse of power; or payment in exchange for the consent of a person having control over another person, for the purpose of exploitation.<sup>48</sup> The *Palermo Protocol* defines exploitation as any form of sexual exploitation, forced labour or services, slavery or like-practices, servitude, or the removal of organs.<sup>49</sup>

<sup>42</sup> Global Alliance Against Trafficking in Women, n.d., *Trafficking in Persons in North America*. [http://gaatw.org/working\\_papers/N%20America/United%20States%20Report.pdf](http://gaatw.org/working_papers/N%20America/United%20States%20Report.pdf).

<sup>43</sup> Oxman-Martinez et al., "Victims of Trafficking in Persons," 13.

<sup>44</sup> Jeffrey, "Canada and Migrant Sex-Work."

<sup>45</sup> Christine Bruckert and Colette Parent, *Organized Crime and Human Trafficking in Canada: Tracing Perceptions and Discourses* (Ottawa, ON: Royal Canadian Mounted Police, Community, Contract and Aboriginal Policing Services Directorate, Research and Evaluation Branch, 2004).

<sup>46</sup> Oxman-Martinez and Hanley, "A Follow-up Study of Canadian Policy on Human Trafficking Impacts."

<sup>47</sup> *Palermo Protocol*.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, 2.



Article 5 of the *Protocol* specifies that the conduct set out in Article 3 must be criminalized in the domestic legislation of participating states.<sup>50</sup> According to the United Nations Global Initiative to Fight Human Trafficking (UN GIFT), domestic anti-trafficking legislation may depart from the specific language used in the *Protocol*; however, it should criminalize the concepts set out by the United Nations.<sup>51</sup> According to Article 4, the *Protocol* applies to “offences that are transnational in nature and involve an organized criminal group,” (UN 2000, 3) although the same requirements do not apply to domestic legislation. The goal of this international definition is to provide international consistency and consensus on the issue of human trafficking. Yet according to the United Nations, “at the formulation of these normative frameworks, at both the national and the regional level, there is little consistency in the core definition of trafficking in persons and national legislation often falls short of the comprehensive provisions of the *Protocol*.”<sup>52</sup> Canada’s efforts to implement the *Protocol* suffer from similar shortcomings, with disparities not only between the legislative definitions of human trafficking outlined in the *Palermo Protocol* and the domestic legislation, but also between the *Criminal Code of Canada* and the *Immigration and Refugee Protection Act (IRPA)*.

### Canada’s Anti-Trafficking Legislation

The *Palermo Protocol* requires domestic legislation to adopt a definition of trafficking that includes both domestic and transnational trafficking, a variety of purposes for trafficking, and trafficking that takes place with or without the involvement of criminal organizations.<sup>53</sup> With this in mind, sections 279.01 to 279.04 were added into the *Criminal Code of Canada* in 2005. According to section 279.01 (1) of the *Code*,<sup>54</sup> human trafficking is defined as the recruitment, transportation, concealment, harbouring, or exercising control, direction, or influence over an individual’s movements for the purpose of exploitation.

Another piece of legislation regulating human trafficking in Canada is found in section 118 of *IRPA*. According to this provision, human trafficking is defined as knowingly organizing (through recruitment, transportation, receipt, or harbouring) the entry of an individual into Canada by means of abduction, fraud, deception, or use or threat of force or coercion.<sup>55</sup> This section has been in force since the implementation of *IRPA* in 2002. The definitions in both the *Criminal Code* and in *IRPA* are slightly broader than the one established in the *Palermo*

---

<sup>50</sup> United Nations Office of Drugs and Crime (UNODC), “Criminalization of Human Trafficking,” from *What is Human Trafficking?*, UNODC website, 2011.

<sup>51</sup> UN GIFT, “The Effectiveness of Legal Framework and Anti-trafficking Legislation in the Vienna Forum to Fight Human Trafficking: 023 Workshop [Vienna, Austria],” UNODC (2008): 4. <http://www.unodc.org/documents/human-trafficking/Marika-Misc/BP023TheEffectivenessofLegalFrameworks.pdf>.

<sup>52</sup> Ibid., “An Introduction to Human Trafficking: Vulnerability, Impact and Action [Vienna, Austria],” UNODC (2008): 11. [http://www.unodc.org/documents/humantrafficking/An\\_Introduction\\_to\\_Human\\_Trafficking\\_-\\_Background\\_Paper.pdf](http://www.unodc.org/documents/humantrafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf).

<sup>53</sup> UNODC, “Criminalization of Human Trafficking.”

<sup>54</sup> *Criminal Code of Canada*, RS 1985, c C-46, ss 279.01–279.04.

<sup>55</sup> *IRPA*, SC 2001, c 27, s 118 (1).

*Protocol*. The primary distinction between the legislative definition in *IRPA* and the definition established in the *Palermo Protocol* is the ability to apply *IRPA*'s anti-trafficking provision to the activities of any one individual rather than just criminal organizations.<sup>56</sup> Furthermore, while the *Palermo Protocol* requires evidence to demonstrate that border crossing is for the purpose of exploitation, the only thing required to establish the crime of human trafficking, according to *IRPA*, is the transportation of an individual into Canada by means of abduction, fraud, or other means of coercion.<sup>57</sup> Therefore, *IRPA*'s criteria for establishing the crime of trafficking is significantly less demanding than that of the *Palermo Protocol*.

Section 279.01 of the *Code*, much like the provision outlined in *IRPA*, can be applied to an individual operating independently, not just to criminal organizations, as is the case with the UN definition of trafficking. However, unlike *IRPA* and the *Palermo Protocol*, applying the *Criminal Code*'s anti-trafficking provision is not dependent on the use of fraud, deception, or force in carrying out the act of recruiting, transporting, transferring, or controlling the victim's movements.<sup>58</sup> Therefore, according to the *Criminal Code*'s definition of human trafficking, the victim can be aware of the reasons for their recruitment, transport, and exploitation. This, however, contradicts a fundamental aspect of the definition of human trafficking—consent, since the victim's lack of consent is central in defining the crime of human trafficking.<sup>59</sup> It is also an important factor contributing to the resemblance between human trafficking and procurement offences in Canada and the charging of procurement offences under human trafficking legislation.

A further factor distinguishing section 279.01 of the *Criminal Code of Canada* from section 118 (1) of *IRPA* and the *Palermo Protocol* is the fact that the *actus reus* in the *Criminal Code* does not have to be physical.<sup>60</sup> Exploitation of a person may be established when one individual exercises influence over another through psychological, emotional, or mental influence.<sup>61</sup> Thus, while the *Palermo Protocol* requires exploitation to have actually taken place in order to establish the occurrence of an offence, the *Criminal Code* requires the victim to have had a reasonable belief that failure to comply with the demands of the trafficker would have jeopardized their safety.<sup>62</sup> Furthermore, the fact that the *actus reus* does not have to be physical means that an individual can be found guilty of human trafficking if they have "exercised control, direction or influence over the movements of a person."<sup>63</sup> Thus, according to the definition outlined in the *Criminal Code*, the offender is "not actually required to move a victim."<sup>64</sup> This is a noteworthy difference, since the physical transportation of a victim is often believed to be the central aspect of

<sup>56</sup> Annette Sikka, "Trafficking of Aboriginal Women and Girls in Canada," Aboriginal Policy Research Series, Institute on Governance, Federal Interlocutor for Métis and Non-Status Indians, Ottawa (2009): 4.

<sup>57</sup> *Ibid.*, 5.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, 5.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, 5.

<sup>63</sup> *Criminal Code of Canada*, RS 1985, c C-46, ss 279.01–279.04.

<sup>64</sup> Sikka, "Trafficking of Aboriginal Women and Girls in Canada."

trafficking.<sup>65</sup> Based on this understanding of human trafficking, there are many interlocking offences that may be categorized as trafficking. The language used in the anti-trafficking provision to criminalize the movement of a victim is identical to that of the procurement provision in section 212 of the *Criminal Code*.<sup>66</sup> Thus, eliminating the transportation requirement from the legislative definition and replacing it with the exercise of control over one's movements alters the meaning of human trafficking, reducing it to an offence that is strikingly similar to procurement, also known as pimping.

There are subtle distinctions between the role of the consent concept in the *Palermo Protocol* and section 279.01 of the *Criminal Code*. According to Article 3 (b) of the *Palermo Protocol*, "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 means set forth in subparagraph (a) have been used."<sup>67</sup> Based on this provision, consent is irrelevant if it is given under the circumstances outlined in Article 3 (a) of the *Protocol*, which describes the recruitment, transportation, and exploitation of an individual by means of threat, coercion, fraud, and so on. United Nations asserts that, "consent is only possible and legally recognizable, when all the relevant facts are known and a person is free to consent or not."<sup>68</sup> Trafficking occurs if consent is dissolved by the application of any improper means by the trafficker.<sup>69</sup> However, the requirement to ignore the "victims" declaration of consent has given police the freedom to label a variety of offences as human trafficking, since all that is required is evidence of exploitation. This ignores the fact that not all forms of exploitation are determinants of human trafficking. Such assumptions are based on the idea that victims of trafficking are unable to recognize or are reluctant to admit to being exploited due to coercion and threats from their traffickers, psychological manipulation, or threats of physical harm to themselves or their families.<sup>70</sup>

## Procurement

A pimp, as determined by the Superior Court of Justice in *R v Downey*, "is a person who lives parasitically<sup>71</sup> off a prostitute's earnings."<sup>72</sup> According to the judge in *R v Downey*, pimps encourage and enforce prostitutes' activities, often through violence.<sup>73</sup> This is seen as a "social evil," which justifies the need for procurement laws.<sup>74</sup> Despite the alleged evilness of pimps, four major studies presented in the

---

<sup>65</sup> Ibid.

<sup>66</sup> Section 211 of the *Criminal Code of Canada* criminalizes directing or transporting an individual to a common bawdy-house. This differs from the transportation component in human trafficking, since it refers to a voluntary act that can be performed by the sex worker, the "pimp," or the client.

<sup>67</sup> *Palermo Protocol*.

<sup>68</sup> UN GIFT, "The Effectiveness of Legal Framework and Anti-trafficking Legislation."

<sup>69</sup> Ibid.

<sup>70</sup> RCMP, "Human Trafficking in Canada," 39.

<sup>71</sup> The term "parasitic" is a vague notion, which has created considerable debate around its implications in the lives of sex workers (Van der Meulen 2010).

<sup>72</sup> *R v Downey*, 1992 SCC 190 (available on CanLII), 3.

<sup>73</sup> Ibid., 5.

<sup>74</sup> Ibid.

case of *R v Downey* found that many sex workers have strong attachments and feelings of love for their pimps—a finding that came as a surprise to the court.<sup>75</sup> Interviews conducted with sex workers reveal that they see procurement laws as built on unfounded notions and mythologies around pimping and based on a lack of understanding about the industry.<sup>76</sup> The use of terms such as “social evil” in *R v Downey* and the striking contradiction between the views of the court and those of the sex workers demonstrates the moralistic undertone in procurement laws as well as the cultural stereotype of the pimp. There are a number of ways that trafficking varies from the above described concept of pimping. For instance, human trafficking involves a multi-step process that includes recruitment, transportation, and exploitation. Although different individuals/groups may be involved at each stage of the process, the chain of events is a defining characteristic of human trafficking. Trafficking is also defined by the victim’s lack of consent in being trafficked and thus differs from the ambiguous personal relationships between some sex workers and those with whom they share their earnings or household, and which sometimes fall under the legal definition of procurement or “living on the avails.”

According to section 212 (h) of the *Criminal Code*, procurement is defined as the attempt to procure or solicit a person to have illicit sexual intercourse with another person.<sup>77</sup> The most obvious difference between section 212 (1) and section 279.01 of the *Code* stems from the anti-trafficking provision’s broad definition of the term exploitation, which covers the various purposes for trafficking in humans, including organ harvesting, forced labour, and begging, whereas procurement focuses solely on sexual exploitation.

While the procurement provision section 212 (1) of the *Criminal Code* does not address the sex worker’s consent, it does criminalize the “procurer who entices, encourages, or importunes a person to engage in prostitution.”<sup>78</sup> The fragile distinction between trafficking and procurement is further problematized by the fact that pimps have long been associated with exhibiting control over prostituted women through violence, threats, and psychological manipulation in the relevant case law. According to arguments made in the Alberta Court of Appeal decision in *R v Downey*, a prosecution under the procurement section 212 (1) of the *Criminal Code*, “Pimps encourage and enforce often through violence the activities of prostitutes—a particularly vulnerable segment of society.”<sup>79</sup> Moreover, the assumption that trafficking victims are unwilling to cooperate with the police due to fear of reprisal by the traffickers also applies to prostitutes. This is demonstrated in a number of provincial court procurement decisions, including *R v G*,<sup>80</sup> *R v Willis*,<sup>81</sup> as well as in arguments made in *R v Downey*, which confirmed that “evidence of

<sup>75</sup> Ibid.

<sup>76</sup> Emily Van der Meulen, “Ten Illegal Lives, Loves and Work: How the Criminalization of Procuring Affects Sex Workers in Canada,” *Wagadu* 8 (2010).

<sup>77</sup> *Criminal Code of Canada*, RS 1985, c C-46, ss 211, 212 (1).

<sup>78</sup> *Bedford v Canada*, 2010 ONSC 4264 (available on CanLII), 74.

<sup>79</sup> *R v Downey*, 1992 SCC 190 (available on CanLII), 5.

<sup>80</sup> *R v G*, 2001 SKPC 369 (available on CanLII).

<sup>81</sup> *R v Willis*, 1997 ABPC AJ no 640 (available on QL).

pimps living on avails is difficult, if not impossible, to obtain without the cooperation of the prostitutes, who are often unwilling to testify for fear of violence against them by their pimps.<sup>82</sup> Therefore, a belief that a sex worker, just like a trafficking victim, is uncooperative due to psychological manipulation or fear for her life or the lives of her loved ones, further dissolves the difference between procurement and trafficking.

### Canada's Trafficking Cases

While the above examination demonstrates the ambivalence of Canada's legislative definition of human trafficking, this section shows how definitions are contextualized in Canada's charged and convicted trafficking cases. Despite the implementation of Canada's anti-trafficking legislation in 2005, the following three years saw very few charges and no convictions under this law. Since 2008, there has been a slight increase in the number of trafficking-related charges as well as convictions.

Imani Nakpangi was the first trafficker in Canada to be convicted under section 279.01 of the *Criminal Code of Canada*. In 2007, Nakpangi was charged with human trafficking for his involvement in prostituting two underage girls. One of Nakpangi's alleged victims insisted on her romantic involvement with the accused—a proclamation that, although suspected by the police and the justice system to be the result of psychological manipulation, had to be considered in determining Nakpangi's guilt.<sup>83</sup> Nakpangi pled guilty to trafficking his second victim and was convicted of "living off the avails of juvenile prostitution" under section 212 (2) of the *Criminal Code* and in relation to his first victim. The court was unable to convict Nakpangi of trafficking his first alleged victim, since she did not fear for her safety. According to the *Criminal Code*, the victim must believe that her safety or the safety of her loved ones is in danger in order to satisfy the criteria of a human trafficking offence. Nakpangi was sentenced to three years imprisonment for human trafficking and two years for living off the avails of juvenile prostitution, for a total of five years.<sup>84</sup>

In 2007, Jacques Leonard-St. Vil was the first person to be charged with human trafficking in Canada for luring his twenty-year-old girlfriend into prostitution. The couple relocated from Montreal to Toronto, where he forced her into stripping and prostitution. When she tried to leave, the accused threatened and assaulted her. Leonard-St. Vil pled guilty to trafficking and was sentenced to three years imprisonment and three years probation for human trafficking and living off the avails of prostitution.<sup>85</sup>

Vytautas Vilutis, in 2009, became Canada's third convicted human trafficker. He was accused of "pimping" a young woman who had engaged in sex work and exotic dancing prior to meeting the accused. Vilutis and the young woman met in Toronto, where they remained until his arrest.<sup>86</sup> According to the 2010 RCMP

---

<sup>82</sup> *R v Downey*, 1992 SCC 190 (available on CanLII), 4.

<sup>83</sup> Perrin, *Invisible Chains*.

<sup>84</sup> RCMP, "Human Trafficking in Canada."

<sup>85</sup> *Ibid.*

<sup>86</sup> Perrin, *Invisible Chains*.

report, the accused exerted control over the alleged victim by forcing her to adhere to a set of rules, which included restrictions on her movement through threats and physical assault. Vilutis pled guilty to human trafficking and was sentenced to two years less a day.<sup>87</sup>

The longest sentence for a human trafficking offence in Canada was handed down in 2009 to Canada's only convicted female trafficker. Laura Emerson pled guilty to three counts of human trafficking, living off the avails of prostitution, assault, and forcible confinement.<sup>88</sup> Emerson was convicted of prostituting three teenage girls, controlling them with threats, assault, forcible confinement, and drug dependencies.<sup>89</sup> Emerson received a seven-year prison sentence in addition to the eight months and ten days she had already served in pre-trial custody.

Michael Mark Lennox pled guilty to human trafficking in 2009.<sup>90</sup> According to the RCMP (2010), Lennox seduced a seventeen-year-old woman in Montreal and brought her to Toronto, forcing her into prostitution and taking control of her earnings. Based on the 2010 RCMP report, when the alleged victim expressed a desire to leave the sex trade, the accused threatened and intimidated her. Lennox was sentenced to two years imprisonment and two years probation.<sup>91</sup>

### Additional Cases of Trafficking

As of November 15, 2009, thirty-three individuals had been charged with human trafficking in Canada,<sup>92</sup> with additional charges laid since that date. The following cases are noteworthy examples of the types of situations being categorized as human trafficking in Canada.

In 2009, Marlo Williams was charged with human trafficking after he reportedly forced a nineteen-year-old woman, who was visiting Toronto from Edmonton, into stripping and prostitution, and collected her earnings. When she attempted to escape, the accused reportedly beat and choked her. Williams pled guilty to a series of assault-related offences but was not convicted of human trafficking.<sup>93</sup> The judge concluded that the woman had exercised free will when engaging in stripping and handing Williams her money.<sup>94</sup>

Enoch Johnson was charged with human trafficking in 2009 for allegedly luring two women from North Bay to Mississauga, Ontario. Upon arrival, the women were reportedly forced into prostitution and instructed to turn over their earnings.<sup>95</sup> On February 4, 2011, Johnson was acquitted of all charges.<sup>96</sup> According to

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> RCMP, "Human Trafficking in Canada."

<sup>91</sup> Perrin, *Invisible Chains*.

<sup>92</sup> RCMP, "Human Trafficking in Canada," 20.

<sup>93</sup> Tamara Cherry, "Pimp gets three years for exploiting 19-year-old," *Toronto Sun*, June 11, 2010. <http://www.torontosun.com/news/torontoandgta/2010/06/11/14355376.html>.

<sup>94</sup> Ibid., "Stripper's case about 'human-trafficking,'" *Canoe Inc.*, May 7, 2010. <http://cnews.canoe.ca/CNEWS/Crime/2010/05/07/13857561.html>.

<sup>95</sup> Bob Mitchell, "Mississauga man charged with human trafficking," *Toronto Star*, March 16, 2009. <http://www.thestar.com/article/602988>.

<sup>96</sup> Louie Rosella, "Man acquitted of pimping charges," *Mississauga.com*, February 4, 2011. <http://www.mississauga.com/news/article/938647--man-acquitted-of-pimpcharges>.

the trial judge, although there was evidence of the women working in a strip club, the evidence did not prove beyond a reasonable doubt that they had been forced to do so, nor did it prove that they had been forced to turn their earnings over to Johnson.<sup>97</sup> In fact, according to the evidence provided at the trial, both victims had been engaging in exotic dancing prior to meeting the accused, and they continued to do so after they had ceased contact with him.<sup>98</sup> The victims admitted to having kept their earnings during the time they were reportedly controlled by Johnson.<sup>99</sup> The police had thus charged Johnson with an offence as severe as human trafficking based on what appeared to be a series of coincidences, including the fact that the women had traveled to Southern Ontario, their involvement in exotic dancing (which, according to their testimony in court, was voluntary), as well as the fact that they had been living in Johnson's apartment. The lack of evidence to justify human trafficking from the outset of this case is concerning, especially given the seriousness of the allegations.

In 2007, Anthony Christopher Roberts, Ernest Downey, Spencer Sinclair Thompson, and Thomas Junior Downey were charged with human trafficking, gang sexual assault, kidnapping, forcible confinement, assault, and withholding documents. The charges stemmed from a report of a brutal sexual assault of a nineteen-year-old Nova Scotia woman who was visiting her relatives in Mississauga, Ontario. The woman was held captive for twenty-four hours, during which time she was sexually and physically assaulted. The accused were believed to be part of North Preston's Finest, a Nova Scotia-based gang known for operating a prostitution ring. According to the police, the purpose of the assault was to "instill fear into this girl and force her into some illicit sex trade."<sup>100</sup> Upon investigation, the violent assault revealed itself to be an act of vengeance against the woman's boyfriend.<sup>101</sup> Charges against Roberts were dropped before the trial, while the outcome of Ernest Downey's case is unknown, as it ceased to be reported shortly after the arrests. Thompson and Thomas Junior Downey were convicted of kidnapping, sexual assault, gang sexual assault, and aggravated assault, but they were acquitted of human trafficking.<sup>102</sup> This case is particularly noteworthy due to the extremely vague nature of the connections drawn by police in order to lay human trafficking charges. Furthermore, the case did not involve, nor was there any evidence of intent on the part of the assailants to prostitute the young woman. What this case demonstrates very clearly is the swiftness of police in laying human trafficking charges, despite the ambiguity of existing evidence.

## Discussion of Cases and Judicial Decisions

The above discussion of trafficking cases reveals several gaps in police treatment of human trafficking cases, demonstrating police inclination towards laying human

---

<sup>97</sup> Ibid.

<sup>98</sup> *R v Johnson*, 2011 ONSC 195 (available on CanLII).

<sup>99</sup> Ibid.

<sup>100</sup> Rosella, "Pair get 15 years in violent sex trade ring," Mississauga.com, March 16, 2010. <http://www.mississauga.com/news/news/article/651506>.

<sup>101</sup> *R v Downey and Thompson*, 2010 ONSC 1531 (available on CanLII).

<sup>102</sup> Rosella, "Pair get 15 years."

trafficking charges despite vague evidence. This raises questions, not only around the internal requirements for police to increase the number of charges laid under the human trafficking provision, but also around their knowledge and understanding of the facets of the crime. Furthermore, police propensity to lay these charges, despite questionable evidence of trafficking, suggests the existence of a political mandate to increase trafficking-related charges. A number of common factors emerge from Canada's five convicted cases of human trafficking, which are presented in the next section.

### Domestic Trafficking and Transportation

To date, all five of Canada's human trafficking convictions and the vast majority of charges involve Canadian citizens as both victims and traffickers.<sup>103</sup> The trafficking in all convicted cases took place within Canada, mostly in the same province and often in the same city. For example, convicted trafficker Vilutis met the young woman in Toronto, where the alleged exploitation occurred, while Leonard-St. Vil and Lennox both met their alleged victims in Montreal and moved to Toronto, taking the women with them. These cases are specific not only to Canada but also, largely, to Ontario and particularly Toronto. Although metropolises such as Toronto have seemingly more opportunities for exploitation, the greater number of trafficking charges in this city may also be a result of increased police surveillance over sex workers. Furthermore, in the vast majority of the cases (both charged and convicted), the alleged victims traveled with or to the traffickers of their own free will.

The police emphasis on domestic trafficking increases the likelihood of procurement cases being dealt with under human trafficking provisions. It is particularly problematic as a result of the ambivalent requirements outlined in Canada's anti-trafficking laws. In order to satisfy the requirement for human trafficking, Canada's anti-trafficking law only requires one to exercise control, direction, or influence over the movement of a person.<sup>104</sup> Yet the same requirements are set out in the procurement provision, section 212 (h) of the *Criminal Code*. In fact, a judge in a lower court decision approved the sentencing guidelines for procurement cases established in the 1997 Alberta Court of Appeal decision *R v Tang*, where one of the factors in evaluating the aggravating and mitigating circumstances towards sentencing is the degree of coercion or control imposed by the pimp over the prostitute's activities.<sup>105</sup>

There are numerous examples of this among procurement convictions. For example, in *R v Cole* the Municipal Court of Montreal found the accused guilty of "unlawfully exercising influence over a prostitute as to aid her to engage in prostitution."<sup>106</sup> The Supreme Court of Newfoundland in *R v Martinez*<sup>107</sup> convicted the accused of controlling, directing, and influencing the victim for the purpose of

<sup>103</sup> RCMP, "Human Trafficking in Canada."

<sup>104</sup> *Criminal Code of Canada*, RS 1985, c C-46, ss 279.01 (1).

<sup>105</sup> *R v AR*, 1998 ABPC 8 (available on CanLII).

<sup>106</sup> *R v Cole*, 2004 QCCM 58282 at para 1 (available on CanLII).

<sup>107</sup> *R v AKG*, 1998 ABPC 137 (available on CanLII).



prostitution. Furthermore, the Alberta Court of Appeal in *R v AKG* found the accused guilty of controlling the movement of the victim in an effort to engage her in prostitution.<sup>108</sup> Similar examples are provided by the Supreme Court of Nova Scotia decision in *R v VJS*<sup>109</sup> and Superior Court of Ontario decision in *R v B* where the “appellant was convicted of controlling her movements with a view to aiding or compelling her to engage in prostitution.”<sup>110</sup> These cases demonstrate that a pimp’s control over prostitutes’ movements and activities is as much a part of procurement offences as it is of human trafficking. It also demonstrates the need to distinguish between a certain type of movement of the alleged victim by the perpetrator, such as taking the alleged victim to meet her client, which is governed under section 211 of the *Criminal Code of Canada*,<sup>111</sup> and the transportation of a victim across geographic areas, whether within or across national borders, for the purpose of exploitation.

Transportation of victims is one of the key elements in identifying an offence as human trafficking and distinguishing it from other *Criminal Code* offences. Human trafficking, as I see it, involves the movement of victims, at minimum across city borders, since the unfamiliar surroundings decrease victims’ ability to escape or to know where to go for help. Based on my research, I found that removing the transportation factor as a requirement of human trafficking results in the application of trafficking laws to procurement, or to pimping and other related offences. While sex trafficking does exhibit characteristic similarities to pimping, I suggest that the two offences are of a very different caliber, particularly as a result of the transportation component in trafficking.

### The Relationship between Victim and Offender

All five convicted cases of trafficking took place for the purpose of sexual exploitation, and in four out of the five cases, the perpetrator and the alleged victim were involved in a romantic relationship prior to and/or during the suggested exploitation. For instance, Nakpangi had been in a romantic relationship with the young woman who was suspected of being his second victim and which resulted in her pregnancy. Leonard St-Vil, Vilutis, and Lennox were also romantically involved with their alleged victims to various degrees. Such relationship patterns illustrate pimp/prostitute dynamics, not uncommon in procurement cases. This is evident in the Municipal Court of Montreal decision in *R v Crichlow*, where “the person who worked as a prostitute for the accused’s advantage was his wife Paula Kelley, the mother of his children.”<sup>112</sup> It is also demonstrated by the Ontario Court of Appeal decision in *R v B*, where “the appellant doubled as her boyfriend and her pimp.”<sup>113</sup> Further evidence is provided in the Provincial Court of Quebec decision in

<sup>108</sup> *R v AKG*, 1998 ABPC 137 at para 17 (available on CanLII).

<sup>109</sup> *R v VJS*, 1994 NSSC 7589 (available on CanLII).

<sup>110</sup> *R v B*, 2004 ONCA 36124 at para 2 (available on CanLII).

<sup>111</sup> According to s 211, “Every one who knowingly takes, transports, directs, or offers to take, transport or direct, any other person to a common bawdy-house is guilty of an offence” (*Criminal Code of Canada*).

<sup>112</sup> *R v Crichlow*, 2003 QCCM 55434 (available on CanLII), 2.

<sup>113</sup> *R v B*, 2004 ONCA 36124 at para 10 (available on CanLII).

*R v Tynes*,<sup>114</sup> the Alberta Court of Appeal decision in *R v Wallace*,<sup>115</sup> and the British Columbia Court of Appeal decision in *R v Hayes*,<sup>116</sup> where the relationships between pimp and prostitute are also romantic in nature.

The targeting of sex workers and pimps during anti-trafficking campaigns has historical precedence in the beginning of human trafficking campaigns in the late nineteenth and early twentieth century. Although the anti-trafficking laws implemented at the time were allegedly for the protection of sex workers from profiteers and traffickers, they were instead used against prostitutes as well as their husbands and boyfriends, who were targeted for pimping.<sup>117</sup> Of course, many romantic or marital relationships are exploitative or abusive, but trafficking legislation, or for that matter, procurement laws, are hardly the appropriate tools for dealing with relationships of long standing that are unhealthy or abusive in some respects but may well meet women's needs in other respects. Further, targeting the subset of abused heterosexual women who happen to be sex workers through the coercive application of legislation that targets sex work rather than male abuse is counter-productive, particularly if one is concerned with improving the situation not only of professional sex workers but also of all girls and women who occasionally participate, willingly or not, in sex work.

### Organized Crime

According to Criminal Intelligence Services Canada,<sup>118</sup> human trafficking is being carried out by criminal networks specializing in the recruitment, transportation, and coercion of women into the sex trade in Canada. The 2010 RCMP report has also identified the involvement of Eastern European and Asian criminal groups in transnational trafficking of women into Canada for the purpose of sexual exploitation. On the domestic front, criminal organizations such as North Preston's Finest (NPF), operating out of Nova Scotia, as well as the Canadian gangs the Bloods and Cripps have been identified as being involved in the trafficking of guns, drugs, and women.<sup>119</sup> Although the police have suspected the involvement of organized crime in a few human trafficking cases, these suspicions have remained unsubstantiated. Despite police suspicions and suggestive statements regarding the connection between human trafficking and organized crime groups, charges and convictions under trafficking laws in Canada do not support these claims. In fact, as demonstrated above, the existing human trafficking cases (both charged and convicted) involve individuals operating independently to carry out sexual exploitation of their victims. This is further demonstrated by the fact that as of January 2011, there has not been a single transnational trafficking conviction under the *Criminal Code* or *IRPA*.<sup>120</sup>

<sup>114</sup> *R v Tynes*, 2010 QCCQ 11298 (available on CanLII).

<sup>115</sup> *R v Wallace*, 2009 ABCA 300 (available on CanLII).

<sup>116</sup> *R v Hayes*, 1998 BCCA 5627 (available on CanLII).

<sup>117</sup> Doezema, "Who gets to choose?"

<sup>118</sup> Criminal Intelligence Services Canada (CISC), "Organized Crime and Domestic Trafficking in Persons in Canada: Strategic Intelligence Brief," 2008. [http://www.cisc.gc.ca/products\\_services/domestic\\_trafficking\\_persons/document/sib\\_web\\_en.pdf](http://www.cisc.gc.ca/products_services/domestic_trafficking_persons/document/sib_web_en.pdf).

<sup>119</sup> Perrin, *Invisible Chains*.

<sup>120</sup> RCMP, "Human Trafficking in Canada."

The RCMP has admitted that current knowledge on organized crime and transnational sex trafficking into Canada is largely based on anecdotal evidence.<sup>121</sup> Linking organized crime with social issues increases their urgency and danger, which may explain this unsubstantiated emphasis in the case of human trafficking.

### Guilty Pleas

All five of Canada's human trafficking convictions have resulted from guilty pleas rather than judicial decisions. This means that the sentencing decisions are not entered into legal databases accessible by lawyers, judges, and academics.<sup>122</sup> Canada lacks a central database that contains records of trafficking charges and convictions across the country.<sup>123</sup> Since most trafficking prosecutions are carried out on a provincial level, it is "virtually impossible for individual jurisdictions to learn from successful and unsuccessful prosecutions."<sup>124</sup> Canada's decentralized system also reduces the likelihood of problems being identified with the existing trafficking convictions.<sup>125</sup> As a result of these restrictions, my analysis of convicted cases is based on limited information accessible to the public through media and official reports. However, guilty pleas to an offence of such gravity are noteworthy and require further inquiry.

### Sentences

The maximum term of imprisonment for violation of human trafficking provisions within the *Criminal Code of Canada* is fourteen years.<sup>126</sup> The penalty increases to the possibility of life imprisonment with the involvement of kidnapping, committing aggravated assault or aggravated sexual assault, or causing the death of the victim.<sup>127</sup> In contrast, the average sentence in Canada for human trafficking convictions is, to date, three years.

Anti-trafficking advocates criticize the sentences imposed in human trafficking cases, arguing that they are far too lenient. Yet based on the characteristics of the cases labeled as human trafficking in Canada, the sentences in fact appear to be in line with the severity of the crime. A three-year average sentence for a human trafficking offence appears to be low, since people associate human trafficking with criminal organizations, cross-border transportation, and large-scale exploitation of people. However, as demonstrated, the facts underlying Canada's human trafficking convictions are characteristically similar to procurement offences, not cross-border organized crime. Despite the fact that the maximum penalty for a procurement offence under section 212 (1) of the *Criminal Code* is ten years imprisonment (slightly lower than the fourteen-year maximum penalty for human

---

<sup>121</sup> Ibid.

<sup>122</sup> Perrin, *Invisible Chains*.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid., 120.

<sup>125</sup> Ibid.

<sup>126</sup> *Criminal Code of Canada*, RS 1985, c C-46, ss 279.01 (1b).

<sup>127</sup> *Criminal Code of Canada*, RS 1985, c C-46, ss 279.01 (1a).

trafficking), the sentences imposed in procurement offences are highly comparable to those imposed in trafficking cases.

Procurement convictions attract sentences ranging from eighteen months to five years imprisonment, as seen in the Supreme Court of Newfoundland decision in *R v Martinez*<sup>128</sup>, where the judge sentenced the accused to two years less a day for procurement of the first victim, and one year for the procurement of the second victim. The Supreme Court of Nova Scotia, in *R v VJS* (1994), sentenced the accused to three years and six months imprisonment for violation for section 212 (1) of the *Criminal Code*. In *R v Crichlow* (2003), the Municipal Court of Montreal sentenced the accused to eighteen months imprisonment, while the Supreme Court of Ontario in *R v B* sentenced the accused to five years for violating section 212 (1) of the *Code*.<sup>129</sup> Similar sentences were also imposed in *R v Wallace* (2009) and the Provincial Court of Quebec decision in *R v Tynes* (2010). This demonstrates a perceptible similarity between procurement and human trafficking offences in Canada, whereby offences labeled as human trafficking are treated with equal severity to procurement offences, resulting in similar sentencing patterns.

## Conclusion

The detailed discussion of Canada's human trafficking cases in this article demonstrates the various challenges associated with Canada's human trafficking legislation. The cases demonstrate an unmistakable parallel between the human trafficking provision, section 279.01 of the *Criminal Code*, and section 212 (1) of the *Code*, which deals with procurement for the purpose of sexual exploitation. The characteristic similarities between human trafficking and procurement cases include the occurrence of the offence within a small geographic area. While human trafficking is defined by the inclusion of a transportation factor, this is not a defining characteristic in procurement offences. In several convicted cases of trafficking, there was clear indication of some romantic involvement between the accused and the alleged victim. Romantic involvement between sex workers and others with different roles (including those classified by law as pimps or procurers) is not uncommon. Trafficking is defined by the absence of the victim's consent, and it is not appropriate to target situations in which the victims and the offenders have personal relationships of long standing, whether or not these have some component of abuse. Perhaps most importantly, in all five convicted cases, the perpetrators acted independently and not as a part of a criminal organization. While international legislation defines human trafficking as an organized criminal activity, this is not the case in Canadian legislation. Thus, in Canada, an independent individual exploiting another individual can be charged with human trafficking. This has resulted in cases previously dealt with under the procurement provision being treated as human trafficking. Such re-labeling of offences can have serious implications for those involved, as it also undermines the severity of human trafficking by equating it with very small-scale "pimping," and misdirects police attention,

<sup>128</sup> *R v Martinez*, 1994 N.L.S.C.T.D. 4480 (available on CanLII).

<sup>129</sup> *R v B*, 2004 ONCA 36124 (available on CanLII).

preventing them from uncovering situations of true human trafficking. Furthermore, all five convictions of human trafficking have been obtained through guilty pleas and not judicial decisions. Such guilty pleas are curious given the severity of the crime and the difficulty in establishing guilt through evidence in court. The sentences imposed in the convicted cases are comparable to those of procurement cases, which should not be surprising due to the characteristic similarities of the cases.

The current application of human trafficking laws against small-scale operators who know the “victims” well should come as no surprise, since it has a well-established historical precedent in the nineteenth century white slavery campaign. The international anti-trafficking mandate, as well as pressure from the United States, has resulted in a need to demonstrate Canada’s efforts in combating human trafficking. The application of Canada’s human trafficking laws to procurement cases may have worked to demonstrate Canada’s efforts in the fight against human trafficking in the international arena, but the cases discussed here show that the same individuals could easily have been prosecuted under more traditional legislation such as “procurement.” However, given the fairly recent implementation of sections 279.01 to 279.04 in Canada’s *Criminal Code*, I suggest that further research is needed on the Canadian criminal justice approach to human trafficking. It is important to understand the ways in which human trafficking cases are dealt with in the justice system and how decisions are made. But we also need to understand the political and legal context of the new trafficking offences, as well as the social debates. Further research into cases and the potential challenges faced by the police and the justice system when dealing with human trafficking offences may also assist with policy revisions that may make Canada’s approach to combating trafficking more effective.

Katrin Roots  
PhD Candidate, Socio-Legal Studies  
York University  
email: kroots@yorku.ca