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BUILDING A SAFE AND RESILIENT CANADA



Labour Trafficking in Canada: Indicators, Stakeholders, and Investigative Methods

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Labour Trafficking in Canada: Indicators, Stakeholders, and Investigative Methods

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prepared for

Law Enforcement and Policing Branch Public Safety Canada

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Executive Summary

Human trafficking is a complex phenomenon, touching on issues of migration, employment, prostitution and crime control. The purpose of this research project is to provide information on labour trafficking in Canada that will assist law enforcement and other criminal justice bodies in identifying and investigating these cases. In addition to an analysis and summary of relevant international and domestic laws and policies, the report synthesizes the existing body of literature, and analyzes published cases of labour trafficking in Canada. The literature review suggests that the topic of labour trafficking has not received significant attention as its own subject matter and merits critical analysis in the legal, jurisprudential and policy context.

A case review found little evidence linking labour trafficking in Canada to established organized crime. Further, analysis found no forced labour situations reported as potential cases of trafficking of Canadians or permanent residents outside of the sex trade or criminal activity, such as drug trafficking. The analysis of labour trafficking was focused upon 'legal' occupations, which resulted in published cases that involved potential labour trafficking cases that were mainly related to migrant workers in Canada.

A key finding of the report is that cases exist in stories reported by the media, as well as academics, not-for profit and legal literatures, which may meet the legal definition of labour trafficking, but have not been conceptualized or classified as human trafficking for the purposes of labour exploitation. This report identifies a number of exploitative labour practices that can become part of the spectrum of human trafficking activities. An analysis of cases identifies a combination of deceptive recruitment practices and aggravating exploitative work arrangements which result in situations that explicitly or implicitly prevent migrants from leaving employment situations in a manner that conforms to legal definitions of human trafficking. In particular, case analysis reveals activities by recruiters and employers that place individuals in exploitative situations that they are unable to leave. Some of these fears arise from physical threats or abuse, but also from debt bondage or threats of criminalization. For instance, examples are documented where exploitation, whether through inadequate working conditions, insufficient housing, confiscation of identity documents, or physical abuse, exist as factors contributing to a migrants' unwillingness or inability to escape exploitative work situations. The existence of high debt or extreme poverty in a home country can leave migrants vulnerable to exploitative working conditions. Threats, including overt reference to legal actions such as deportation, when used in the context of these exploitative conditions, may constitute trafficking in persons. These factors of coercion or deception and exploitation, when considered jointly, suggest a spectrum of activities that can be considered labour trafficking; which have been, hitherto, given little consideration as a form of human trafficking.

The report notes a series of indicators which may aid stakeholders in the detection, investigation, prosecution and amelioration of trafficking generally, and specifically in a labour context. Noting a general dearth of human trafficking cases, and of labour trafficking specifically, the report finds that physical harm, as is often the case in sex trafficking, is a notable, albeit rare, indicator of labour trafficking.

Most frequently, cases of labour trafficking come to the attention of authorities when there is a connection to employment standards, occupational health and safety, and labour rights violations

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that are identified by NGOs. It is not common that police services or government authorities identify cases of labour trafficking directly through their dealings with migrant workers.

A gender analysis of the cases indicates that the involvement of youth and females is more common in domestic care or isolated work situations where there is evidence of labour trafficking. Such cases share characteristics with cases of sex trafficking, and appear more likely to also include elements of sexual exploitation.

The study also notes victims' lack of awareness of their rights and resources (including an individual's inability to understand they are a victim of human trafficking) and a marked reticence amongst victims to report exploitative work arrangements, as a key characteristic in labour trafficking cases as well as an obstacle to anti-trafficking activities.

Employer violations of basic obligations, such as building codes, may not only portend greater offences occurring in the work place, such as egregious exploitation and coercive environments, but may also provide an intervention point for authorities. Federal, provincial/territorial, and municipal stakeholders could therefore benefit from greater information- and intelligence-sharing amongst regulatory and policing agencies to ensure relevant sharing and escalation of employer contraventions across jurisdictions.

With potential indicators of labour trafficking identified, there is a suggestion to move toward a definition of forced labour that considers coercion not only through physical force but through several interlocking and overlapping barriers which prevent potentially trafficked individuals from leaving an exploitative workplace. A challenge for researchers and authorities is to define where the regulatory infractions of employment standards end and the criminal offence of human trafficking begin, and to revise trafficking models and anti-trafficking practices accordingly. This work could benefit from further research into existing reported cases of human trafficking and more generally into cases documenting exploitative labour practices experienced by migrant workers, Canadian citizens, and permanent residents alike.

Included with the report are annexes of Canadian cases of labour trafficking of a non-sexual nature. Each incident is coded for: location; means by which the incident came to the attention of authorities; any identified law enforcement response or investigative methods; characteristics of victims; activities potentially classified as coercive or deceptive; activities potentially classified as exploitation; any prosecutorial or judicial determinations regarding the status of victims (trafficked or not trafficked); and, any non-governmental or governmental organizations involved either in identification or service provision.

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Introduction

Human Trafficking (HT) is a complicated phenomenon, touching on issues of migration, employment, prostitution and crime control. Given the variety of activities that fall within the scope of HT, including youth sexual exploitation, forced prostitution, child labour and labour exploitation from literally dozens of different employment sectors, research on the issue has also varied significantly, depending on its focus. Numbers produced in relation to the extent of trafficking in Canada have ranged so drastically that is has been difficult to determine even the nature of HT in Canada, and much of what has been produced focuses on trafficking for the purposes of sexual exploitation. In the midst of some of these research problems, law enforcement bodies have still had to operate, create policies and training curricula, and investigate suspected crimes of trafficking as they have arisen. Thus far the focus of investigations has been almost exclusively on crimes involving sexual exploitation and almost all charges have involved Canadian victims.

Reports often note that although anyone may fall prey to HT, "women represent the majority of victims" and "sexual exploitation is, to date, the most common manifestation of this crime." And, while this may be the case with respect to charges and prosecutions, it could also belie a particular focus on the part of Non-Governmental Organizations (NGOs), media and law enforcement on crimes involving sexual exploitation. As indicated by the Royal Canadian

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¹ See for example Jacqueline Oxman Martinez, Jill Hanley and Leslie Cheung, (2004) *Another Look at the Live-in-Caregivers Program*, Department of Justice Canada Accessed February 5, 2013 from http://s3.amazonaws.com/migrants_heroku_production/datas/198/Oxman-

Martinez_Hanley_Cheung_2004_original.pdf?1312424790; Natalya Timoshinka and Lynn McDonald, (2011) *Sex Trafficking of Women to Canada: A Qualitative Metasynthesis of Empirical Research*, CERIS – Ontario Metropolis Centre, Accessed March 13, 2013 from http://www.ceris.metropolis.net/wp-content/uploads/pdf/research_policy/RFP/TimoshkinaMcDonald2009.pdf; Benjamin Perrin, *Invisible Chains* (Toronto: Penguin Group, 2010)

² See Elzbieta Gozdziak & Elizabeth Collett, "Research on Human Trafficking in North America: A Review of Literature" in Data and Research on Human Trafficking: A Global Survey, ed. F. Laczko and E. Gozdziak, 99-128. (Geneva: International Organization for Migration, 2005) accessed February 5, 2013 from

http://www.humantrafficking.neu.edu/news_reports/government_reports/documents/IOMGLOBALTRAFFICK.pdf:
In some accounts all undocumented migrants assisted in crossing, for example, the US border, are counted as having been trafficked. Other reports reserve the term trafficking. exclusively to victims of sexual slavery. In some instances, all transnational or migrant sex workers are defined as trafficking victims regardless of consent and conditions of labour, while other reports emphasize abusive conditions of employment or deceptive recruitment policies used in the sex trade. As a result, available data is confusing and unreliable. (p.108)

³ See infra note 98

⁴ Public Safety Canada, *Human Trafficking*, accessed March 13, 2013 from http://www.publicsafety.gc.ca/prg/le/http-eng.aspx.

⁵ Government of Canada, *National Action Plan to Combat Human Trafficking* (2012), accessed March 13, 2013 from http://www.publicsafety.gc.ca/prg/le/_fl/cmbt-trffkng-eng.pdf.

Mounted Police (RCMP) in Canada's first trafficking *Threat Assessment*⁶ in 2010, a problem with investigating HT offences is that the "widespread understanding of human trafficking is often clouded by stereotype, bias, and sensational media reports." Investigating cases involving prostitution and sex trafficking is somewhat clearer than those involving trafficking for forced labour. In cases involving sexual exploitation there is often criminal activity associated with the act of prostitution, and particularly where minors are involved the issue of exploitation is clear, given their inability to consent. In contrast, the investigation of labour trafficking involves extremely complex analyses, involving immigration policies, temporary foreign worker (TFW) programs, employment standards deviations and criminal charges under both the *Criminal Code* and the *Immigration and Refugee Protection Act (IRPA)*.

However, despite these difficulties, recently cases of labour trafficking have started to make their way into the media ¹¹ and the number of reports of labour exploitation continues to rise. ¹² Thus law enforcement bodies are now faced with addressing this complex criminal issue and all of the ancillary legal issues that surround it. The purpose of this research project is to provide information on labour trafficking in Canada that will assist law enforcement and other criminal justice bodies in identifying and investigating these cases. To this end, the research undertaken in this study endeavours to answer the following general questions:

- i. What are the indicators of labour trafficking in Canada?
- ii. How have suspected cases of labour trafficking come to the attention of law enforcement or other authorities in Canada?
- iii. In what ways do investigations of forced labour trafficking overlap or differ from investigations relating to trafficking for the purposes of sexual exploitation?
- iv. Who are the main governmental and non-governmental stakeholders involved in addressing labour trafficking and what roles do they/can they play?

Data speaking to these questions was taken from a review of governmental documents, legislation, case law, academic studies, media reports and non-governmental organization literature. Given the fluidity of the term "trafficking" and the difference in the legislative provisions that define the term, no one definition of HT was taken as paramount in this study. Cases exhibiting characteristics of exploitative labour practices, coercive employment tactics and

 10 Immigration and Refugee Protection Act, S.C. 2001, c. 27, s.118 (IRPA)

accessed on November 6, 2012 from http://www.state.gov/documents/organization/192594.pdf. (TiP Report)

⁶ Royal Canadian Mounted Police (RCMP). (2010) *Human Trafficking in Canada: A Threat Assessment* (2010) Her Majesty the Queen in Right of Canada as represented by the Royal Canadian Mounted Police, available for order from http://www.rcmp-grc.gc.ca/pubs/ht-tp/htta-tpem-eng.htm.

RCMP, Threat Assessment, p.9

⁸ Criminal Code of Canada, RSC 1985, c. C-46, (Criminal Code) s. 279.011.

⁹ Section 279.01-279.04.

¹¹ See for example CBC news, *Hamilton human trafficking kingpin sentenced to 9 years* (April 3, 2012), accessed March 13, 2013 form http://www.cbc.ca/news/canada/story/2012/04/03/hamilton-human-trafficking.html.

¹² United States Department of State (2012), "2012 Trafficking in Persons Report; Country Narratives A-C"

cross-border labour recruitment were included and analysed, regardless of whether they had been labelled "trafficking" or not. However, those specifically addressed as trafficking either by law enforcement or judicial pronouncement were separated for reference purposes. The full research methodology can be found in Annex C.

Legislation and Policy

In order to understand the tools needed to investigate and identify cases of trafficking for forced labour, it is necessary to understand the legal and policy framework within which those investigations can operate. While a thorough analysis of laws relating to trafficking in Canada is well beyond the scope of this project, the following laws, policies and programs arguably have the most direct effect on the ways in which trafficked persons may enter and work in Canada. These laws provide context to identifying vulnerabilities within Canada's current systems and potential means for law enforcement to address those vulnerabilities.

International Obligations

The most definitive international document relating to trafficking in persons is the *Protocol to Prevent Suppress and Punish Trafficking in Persons*, an adjunct document to the *United Nations Convention Against Transnational Organized Crime (Protocol)*. ¹³ For purposes of this protocol, trafficking became defined as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (article 3(a))

As a signatory to the *Protocol*, Canada is obligated to adopt legislation necessary to establish criminal offences (art. 5) and to endeavour to provide for the physical safety of victims (art. 6). Age, gender and special needs are to be taken into account when programming around trafficking (art. 6), and the State is required to protect victims from revictimization (art. 8).

The International Covenant on Civil and Political Rights prohibits States from engaging in or allowing forced or compulsory labour. ¹⁴ This protection is to be extended to all persons

¹³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. No. 49, U.N. Doc. A/45/49 (Vol. I) (2001) 60

¹⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, art. 8

physically in Canada and thus applies to foreign nationals as well as permanent residents and citizens (art. 2). The International Labour Organization (*ILO*) *Convention No. 29* defines forced labour as "all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily." *ILO Convention 182* also requires that Canada "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour" including slavery, trafficking, use of children for prostitution or illicit activities, and work which is likely to endanger a child's health or well-being. ¹⁶

While Parliament and provincial legislatures are responsible for addressing the requirement to adopt legislation, agencies tasked with enforcement of those laws are also required to carry out their functions in accordance with those international commitments. Such an approach protects victims and aids in investigations, as well as positively affecting the reporting done on Canada's compliance with these various instruments. ¹⁷

Canadian Laws and Policies

Several Canadian laws, policies and administrative mechanisms are relevant to situations in which people may be trafficked for the purpose of forced labour. Most prominently, the *Criminal Code* and the *Immigration and Refugee Protection Act* address trafficking as explicit offences. However, employment standards, occupational health and safety and fair commerce legislation also apply, and may be useful with respect to investigating incidents of trafficking.

The wording of the *Criminal Code* offence is similar to, but not identical to, that in the *Protocol*:

279.01(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 ...

Unlike in the *Protocol*, the "act" component in the *Criminal Code* can be established by proving that a person "exercises control, direction or influence over the movements of a person." Thus perpetrators of the crime are not actually required to move or transport victims; they simply exert control *over* their movements. ¹⁸ The *Criminal Code* also more narrowly defines the term

¹⁷ See for example TiP Report, an annual report on countries' compliance with its anti-trafficking obligations.

¹⁵ Convention Concerning Forced and Compulsory Labour, 39 UNTS 55, ILO No 29, entered into force May 1 1932, at article 2(1). Canada is a party to this Convention.

¹⁶ International Labour Organization (ILO), *Worst Forms of Child Labour Convention*, *C182*, 17 June 1999, C182, arts 1 and 3, accessed March 13, 2013 from:

http://www.unhcr.org/refworld/docid/3ddb6e0c4.html.

¹⁸ Matthew Taylor, Department of Justice Canada at March 5, 2012 conference, *Trafficking of Aboriginal Women, Wahkotowin: A Knowledge Exchange Forum on Trafficking in persons and Sexual Exploitation of Aboriginal Peoples*, Ottawa, Canada: "control' refers to invasive behaviour which leaves little choice to the person controlled

"exploitation" by requiring that the victim's belief that her safety was jeopardized be reasonable. Recent changes to the wording of the offence also further define exploitation in the context of trafficking offences:

279.04(1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they

- (a) 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.

In 2009 an additional offence was created specifically addressing the trafficking of children under 18 years of age, ¹⁹ creating a nearly identical offence but mandating a minimum sentence of at least five years. When investigating cases with victims under the age of eighteen, what constitutes "exercising control" in this case should be determined bearing in mind the age of the person including their vulnerabilities as children, in accordance with the *Protocol*.

The 2003 *Immigration and Refugee Protection Act* section 118 defines the offence of "trafficking in persons" using the following wording:

- 118(1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.
- (2) For the purpose of subsection (1), "organize," with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.

When investigating cases involving cross-border trafficking, either the *Criminal Code* or the *IRPA* sections may be relevant. Law enforcement may decide which offence most closely maps on to the situation they are investigating. For purposes of the *IRPA* offence, two elements must also be present in order for the act to be categorized as trafficking: a) the act: to "organize," including recruitment, transportation, receipt or harbouring of persons; and b) the means: abduction, fraud, deception or use or threat of force or coercion. In contrast to the Protocol and the *Criminal Code*, a perpetrator is not required to have committed these acts for the purpose of

and therefore includes acts of direction and influence," and includes "[e]xercise of direction over the movements of a person exists when rules or behaviours are imposed."

¹⁹ Criminal Code s.279.011

exploitation. The existence of such a purpose is deemed only to be an aggravating factor in sentencing. 20

As noted in the RCMP's *Threat Assessment*, individuals' consent to engage in a particular kind of work is not determinative of whether or not they were trafficked under either the criminal or immigration offences. ²¹ Under the *Criminal Code*, consent is irrelevant if the person was exploited. Under IRPA consent is irrelevant if a person was organized to come to Canada by means of deception, abduction, fraud, force or coercion. The issue of consent may be practically relevant in determining whether or not someone was threatened, coerced or deceived under both IRPA and the Criminal Code. However, it must also be noted that initial consent may be irrelevant where the conditions of the agreement suddenly change and the person becomes exploited. In the case of labour trafficking this may be a particularly relevant because individuals may agree to undertake work, but could be deceived as to the conditions of that work, and may end up subsequently exploited. Criminal justice officials in these cases may be able to take into account the various points at which consent was given, rescinded or considered negated, and the ways in which deception and coercion play a role in the determination of "exploitation" under the Canadian offences. The International Labour Organization (ILO) also notes the difficulty in addressing trafficking for forced labour given that people most often "willingly" enter into an employment contract. However, if an individual is placed in a work situation without their consent, including if that consent was achieved through deception, and they cannot leave the situation without fear of some form of hardship caused by the migration, the situation could amount to trafficking, "including severe debt bondage as a form of modern slavery."²²

In addition to provisions specifically devoted to trafficking, a number of other types of laws exist in Canada that may prove relevant to situations of trafficking for forced labour and could be used to assist in the investigation process. Firstly, employment standards legislation in each province contains requirements that ensure minimum wages, limits on working hours, days off and vacation. Employers are also required to maintain a minimum standard of safety on the jobsite under provincial occupational health and safety legislation, including appropriate regulation on exposure to substances and equipment use, provision of protective gear, slip and fall protections and other general safety protections. Where these minimum standards are significantly compromised by an employer, a case may potentially be investigated as trafficking

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²⁰ IRPA s.121.

²¹ RCMP, Threat assessment, p. 43

²² Roger Plant, International labour Organization, *Report of the 3rd and 5th Alliance against Trafficking in Persons Conferences on Human Trafficking for Labour Exploitation/Forced and Bonded Labour*, Vienna, November 7-8, 2005 and November 16-17, Published by the OSCE/ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2008.

²³ Each province and territory has its own employment standards legislation. See for example *Employment Standards Act*, 2000. S.O. 2000, Ch 41 sec 17(1) limiting hours of work, sec 23(1), minimum wage, and sec 33(1) entitlement to vacation.

²⁴ Occupational Health and Safety Code 2009, AB Reg 87/2009 (AB OHSC), s.16

²⁵ See for example AB OHSC Parts 6, 19 and 23.

²⁶ See for example AB OHSC Part 18.

²⁷ See for example AB OHSC Part 9.

²⁸ See for example AB OHSC Part 2

for forced labour, and inspectors from provincial Employment Standards or Occupational Health and Safety departments can play a role. In these cases workers must also have a reasonable fear for their safety should they choose to leave the employment (under the *Criminal Code* offence) or have been brought into the country with promises of working conditions significantly better than what exists (under the *IRPA* offence). Where significant concerns are suspected regarding building conditions, whether on the jobsite or in homes provided for employees, municipal inspectors enforcing building codes and fire codes can play a role, if appropriate complaints are received. ²⁹

Immigration policies may also affect the ways in which individuals are trafficked. While trafficking is often associated with people migrating illegally, and individuals without appropriate authorization to be in Canada may be subject to pressures arising from their "illegal" status, there are also a number of ways in which an individual migrating to Canada through legal means could also potentially be trafficked, should their situations be exploitative once in Canada. Particularly relevant are the vulnerabilities that may arise out of migrants' participation in "lower skilled" occupations and the programs that allow for such work in Canada. 30 Individuals authorized to work under the "Live in Caregiver Program" (LCP) provide in-home child or elderly caregiving services. They are the only temporary foreign workers in low skill occupations eligible for permanent residency, contingent upon successful completion of 24 months of caregiving within a four year period. 31 They are required to live in the homes of their employer and they are required to stay with the employer of record unless provided with authorization to change. Individuals hired through the "Seasonal Agricultural Workers Program" (SAWP) are recruited through bilateral agreements with workers' home countries for the purposes of providing seasonal work in the agriculture industry. 32 They are not required to live on the employer's premises, but employers are required to provide reasonable, inspected housing free of charge (except in British Columbia). The maximum duration of any contract is eight months, and employers may request particular workers from their governments for future work. Employers are entitled to terminate contracts early where the work for which the individual was hired is completed, upon standard notice or pay in lieu of notice. For all other individuals hired

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²⁹ See for example Ontario Regulation 213/07, *Fire Code* and Ontario Regulation 350/06, *Building Code*. Inspections under these codes may be triggered in various ways depending on the provincial legislation. Thus law enforcement seeking intelligence on potential trafficking sites through use of municipal inspectors would need to engage the complaint mechanisms outlined in the provincial code of the appropriate jurisdiction.

³⁰ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity* (2012) Metcalfe Foundation, accessed March 13, 2012 from http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf, at p.20:

Canada's immigration system designates managerial, professional and skilled work in NOC categories 0, A and B as "skilled work." Foreign nationals who are primary applicants with these skills can be eligible for multiple pathways to permanent residence. By contrast, work in NOC categories C and D which require lower levels of formal training are designated "lower skilled" and, with limited exceptions, foreign nationals who are primary applicants with these skills are only eligible for temporary labour migration.

³¹See HRSDC, *Live-in Caregiver Program*, accessed March 13, 2013 from http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/caregiver/description.shtml

³² See HRSDC, *Seasonal Agricultural Worker Program*, accessed March 13, 2013 from http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp/description.shtml

through Canada's immigration "Stream for lower-skilled occupations," ³³ employers can hire individuals upon receipt of a positive or neutral labour market opinion from Human Resources and Skills Development Canada (HRSDC) whereupon a worker may apply for a work permit to work for that employer. Individuals working in this stream may be hired for a maximum of 24 months, with the possibility of renewing their permit up to a maximum of four years. Employers must also re-apply for LMOs when they expire.

In an attempt to reduce exploitation, HRSDC provides templates for drawing up employment contracts suitable for hiring workers under these various programs. These contracts almost all include clauses prohibiting employers from recouping money employers paid to a third party in relation to securing the position, ³⁴ a commitment from the employer to pay transportation costs, ³⁵ and a commitment to provide health insurance to employees until such insurance is available through provincial health insurance programs. ³⁶ The *Immigration and Refugee Protection Regulations* ³⁷ then prohibit employers from hiring foreign workers where they have failed to previously provide employment, wages and working conditions to foreign nationals as set out in their employment agreements. ³⁸ However, there are no specific mechanisms for migrant workers to enforce these clauses through IRPA or through HRSDC after their arrival.

In some cases provincial fair commerce legislation may be used to address these issues and provide intelligence with respect to potential sites of trafficking. Manitoba's 2008 *Worker Recruitment and Protection Act*³⁹ prohibits recruiters from charging fees to migrant workers and prohibits employers from recovering recruiting costs after hire. I Under this legislation employers are also required to register annually with the Director of Employment Standards in the province before recruiting any foreign worker, providing information about business practices, recruiters, the duties of any position, screening processes and dates of employment. The employer is also required to submit detailed information on all migrant workers once they begin work in Manitoba. In Ontario the *Employment Protection for Foreign Nationals Act* provides prohibitions on charging workers for recruitment or from recovering recruitment costs and protects individuals from having documents or other property retained by employers. However, the Act only applies to individuals in or seeking employment through the Live-in

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³³See HRSDC, *Temporary Foreign Worker Program – Stream for Lower-skilled Occupations*, accessed March 13 from http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lowskill.shtml

³⁴ Faraday, *Made in Canada*, p.32

³⁵ Farday, *Made in Canada*, p.32. This provision is not applicable to those arriving under the SAWP, in which workers may repay a certain portion of travel costs, see *Made in Canada*, p.39.

³⁶ See Faraday, *Made in Canada*, pp.31-32

³⁷ Immigration and Refugee Protection Regulations, SOR/2002-227 (Regulations)

³⁸ Regulations s.200(1)(b)(I)

³⁹ Worker Recruitment and Protection Act, C.C.S.M. c. W197. (WRPA)

⁴⁰ WRPA, art. 15(1)

⁴¹ WRPA, art. 16(1)

⁴² WRPA, art. 11(3)

⁴³ Worker Recruitment and Protection Regulation, Man Reg 21/2009, art. 14(1).

⁴⁴ Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009, SO 2009, c 32. (EPFN)

⁴⁵ EPFN arts. 7 and 8.

⁴⁶ EPFN art. 9(1)

Caregiver Program. British Columbia, through its *Employment Standards Regulation*⁴⁷ requires employment agencies to keep records of all workers who are "directed" to an employer by the agency, ⁴⁸ and requires employers of "domestic" workers to register with the Director of Employment Standards in the province. ⁴⁹ And the Alberta *Fair Trade Act* prohibits employment agencies from collecting fees from workers seeking employment. ⁵⁰ However, not all provinces have these legislative mechanisms and each province's prohibitions are different.

Once CIC determines that a person is "trafficked," the individual may be eligible to apply for a Temporary Residency Permit. This is of particular value where migrants are facing irregularities with respect to their immigration status in Canada – for example, they are tied to a particular employer in order to maintain legal status or are completely without legal status. This permit allows for the regularization of a person's status, the ability to receive health care, work permits and potentially a route to permanent residency. ⁵²

Review of Literature

Vulnerabilities and Characteristics of Labour Trafficking

Searches conducted of available literature on labour trafficking suggest that the topic has not received significant attention as its own subject matter. With the exception of media coverage of a small number of specific incidents, information on characteristics, law enforcement responses or vulnerabilities to labour trafficking was generally found in documents addressing broader issues, either on all forms of trafficking or problems within exploitation of foreign workers generally.

A number of loci of vulnerabilities emerged through the literature review, and a number of areas of difficulty with respect to locating and addressing trafficking within the context of labour migration. Studies revealed particular activities carried on by recruiters and employers that placed individuals in situations where they are unable to leave. Some of these fears arose from physical fear, some from debt bondage and others from threats of criminalization. Studies also indicated the existence of exploitation, whether through inadequate working conditions, insufficient housing, or physical abuse, and discussed the reasons why migrants may be unable to access available remedies for ameliorating these conditions. These vulnerabilities were not

⁴⁷ Employment Standards Act, R.S.B.C. 1996, c. 113 and Employment Standards Regulation, B.C. Reg. 396/95.

⁴⁸ Employment Standards Regulation, B.C, s.3(1)

⁴⁹ Employment Standards Regulation, B.C, s.13.

⁵⁰ Fair Trade Act, R.S.A. 2000, c. F-2, Employment Agency Business Licensing Regulation, Alta. Reg. 189/1999 12(1)

⁵¹ IRPA, s.24

⁵² Citizenship and Immigration Canada, *IP-1 Temporary Residency Permits*, *s.16*, accessed March 13, 2013 from http://www.cic.gc.ca/english/resources/manuals/ip/ip01-eng.pdf

always specifically identified as "trafficking" but were included as data where they fit within one of the elements of the trafficking definitions.

This section is thus divided into three parts, roughly mirroring the elements in the Canadian criminal and immigration offences. Firstly, activities conducted by labour brokers or other "recruiters" are identified where there are elements of coercion or deception. Secondly, situations created by recruiters or employers that potentially constitute "exploitation" of migrants are highlighted. Finally, those elements that prevent migrants from accessing legal mechanisms to redress the harms they have suffered are discussed. It is important to note, however, that these categories are extremely fluid. Activities undertaken by recruiters or employers that constitute coercion may also constitute exploitation, and those elements preventing migrants from accessing remedial mechanisms may also be played upon by recruiters and employers to create a situation of coercion. Thus while the activities have been separated for ease of reference, each may be used to prove a number of different elements of either offence and thus may be useful for investigators in several different ways.

Coercion/Deception

Several studies have identified practices in recruiting migrant workers that could potentially be viewed as coercive or deceptive. For the purposes of *IRPA*, organizing someone's entry into Canada through deceptive or coercive means is sufficient for a finding of trafficking under s.118. For the purposes of identifying a situation as "trafficking" under the *Criminal Code*, no specific coercion or deception needs to be proven, as it is not an element of the offence. However, showing the coercive or deceptive nature of the recruitment will go to proving that migrant workers are unable to leave a situation without fearing for his their safety, thus providing support for a finding of "exploitation" under that statute.

There is little evidence in the literature that labour trafficking in Canada has been linked with established organized crime groups.⁵³ While the individuals or families that participate in the acts of recruitment and/or exploitation may fit the definition of "criminal organization" within the *Criminal Code*, ⁵⁴ the structure of the various individuals and groups that participate in the

⁵⁴ The Court in *R.v.Domotor* states at paragraph 6 that

[T]he Domotor and Kolompar criminal organization consisted of an extended Hungarian family involved in a variety of criminal endeavours in Hungary and then in Canada. Activities by this criminal organization involved human trafficking, welfare frauds, and not with respect to these three directly but thefts from the mail and fraudulent dealings with cheques stolen by that method.

See Criminal Code s. 467.1(1):

"criminal organization" means a group, however organized, that

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

⁵³ RCMP, *Threat Assessment*, p.32.

activities were noted not to be stable, hierarchical entities engaged in criminal activity over long periods. Thus for law enforcement purposes, the models used to investigate serious organized crime syndicates may not provide the most useful operations in cases of forced labour. ⁵⁵

While it appears to vary slightly by work sector, the literature primarily describes recruiters, labour brokers or employment agencies as engaging in the initial recruitment and deception of migrant workers. In some cases Canadian employers who hire such agencies are completely unaware of their recruiting practices, and continue to pay fees while the agent is also collecting from potential workers. 56 While HRSDC contracts forbid the charging of recruitment fees, as do several provincial statutes outlined above, the literature suggests that the practice is not diminishing. Recruitment agencies are charging "exorbitant" fees to provide jobs in Canada, ⁵⁷ with workers reporting paying from \$1,000 to \$10,000.⁵⁸ Workers without sufficient funds have reported selling belongings or taking out loans in order to finance the recruitment.⁵⁹ And while excessive fees may not in and of themselves constitute coercive or deceptive practices, several reports Canada-wide indicate that individuals, after having paid such exorbitant fees, arrive in Canada to find that the arrangements they had originally made were "bogus." In some cases there was actually no job available, 61 the job was not what was stated on their permit, 62 or the length of time they had been told they would work was in fact significantly shorter. 63 The practice of charging exorbitant fees for non-existent jobs appeared several times in the literature, with particular reference to caregivers and those recruited individually through the low-skill stream of Canada's TFW program. 64 The consequence of this failed arrangement is that individuals must still pay off incurred debts or recoup monies paid from selling their assets required for subsistence in their home countries. They are thus forced into working illegally in

This definition does not apply to a group of individuals formed by chance for the immediate commission of a single offence

⁵⁵ Christine Bruckert and Collette Parent, *Organized Crime and Human Trafficking in Canada: Tracing Perceptions and Discourses*, (2005) RCMP, accessed March 13, 2013 from http://cpc.phippsinc.com/cpclib/pdf/58773e.pdf ⁵⁶ RCMP, *Threat Assessment*, p.32

⁵⁷ Faraday, *Made in Canada*, p. 62

⁵⁸ Pura Velasco, submission to the Standing Committee on the Legislative Assembly, Legislative Assembly of Ontario, *Official Report of Debates*, 39th Parliament, 1st Session M-234 (2 December 2009). (Ontario Standing Committee)

⁵⁹ Chris Ramsaroop, Ontario Standing Committee, M-236

⁶⁰ RCMP, Threat Assessment, p.32

⁶¹ See Alberta Federation of Labour, *Entrenching Exploitation*, (2009) accessed March 13, 2013 from: http://www.afl.org/index.php/Reports/entrenching-exploitation-second-rept-of-afl-temporary-foreign-worker-advocate.html, p.24; see also Faraday, *Made in Canada*, p.62 and United Food & Commercial Workers Union, *The Status of Migrant Farm Workers in Canada 2010-2011*. Accessed February 5, 2013 from http://www.ufcw.ca/templates/ufcwcanada/images/awa/publications/UFCW-Status_of_MF_Workers_2010-2011 EN.pdf (UFCW) p.16.

⁶² See Alberta Federal of Labour, *Entrenching Exploitation*, p.24; see also Faraday, *Made in Canada*, p.62 and UFCW, *The Status of Migrant Farm Workers in Canada*, p.16

⁶³ Faraday, *Made in Canada*, p. 62

⁶⁴ Chris Ramsaroop, Ontario Standing Committee, M-236

Canada. ⁶⁵ Unfortunately prosecution of recruiters is difficult, particularly where they are incorporated overseas and fees are paid prior to workers arriving in Canada. ⁶⁶ There is also evidence that, once in Canada, individuals have been charged "thousands of dollars" to recruiters, lawyers and other agents to renew permits and labour market opinions, being told that if they don't comply they will be fired. ⁶⁷

The threat of deportation has also been shown to play a significant role in the coercion of migrant workers. Undocumented persons are constantly under threat of deportation, whether explicitly threatened by employers or not. However, the existence of high debts or extreme poverty at home may also cause workers brought to Canada "legally" to fear removal. Should this threat be used towards keeping an individual working under exploitative conditions, a case could be made that the situation constitutes trafficking in persons. Studies report several cases in which employers inform workers that they would be required to leave Canada should they be terminated, or that they will be jailed by the "immigration police." They also report cases where workers were threatened with deportation or imprisonment if they complained about their working environment, pay or other conditions. ⁶⁹ These threats serve to keep workers under the control of the employer, regardless of working conditions. Most workers coming to Canada are seeking permanent residency. Studies report that recruiters and employers have deceived workers into believing that they would be eligible for such status through these work programs. 70 which is patently untrue for all low-skill work programs except the Live-in-Caregiver program. Reports also indicate that the ability to "name" employees that employers wish to rehire the following season in the SAWP program has also been used to deter workers from complaining about working conditions.⁷¹

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⁶⁵ See Alberta Federation of Labour, *Entrenching Exploitation*, p.24; see also RCMP, *Threat Assessment*, p.32: "The recruits were left jobless, defrauded for the service fees paid to these recruiters and bound to a work visa that was issued to a nonexistent job."

⁶⁶ Alberta Federation of Labour, *Entrenching Exploitation*, p.13.

⁶⁷ Alberta Federation of Labour, *The AFL Roundtable on Temporary Foreign Workers*, (2010) accessed March 13, 2013 from http://www.afl.org/index.php/View-document/267-2010-Dec-16-Report-on-Temporary-Foreign-Workers-in-Alberta.html, p.3

⁶⁸ Alberta Federation of Labour, *Entrenching Exploitation*, p.17

⁶⁹ Alberta Federation of Labour, *Temporary Foreign Workers: Alberta's Disposable Workforce*, (2007) accessed Feb 5, 2013 from http://www.afl.org/index.php/View-document/19-Temporary-Foreign-Workers-Alberta-s-Disposable-Workforce.html

Alberta Federation of Labour, *Entrenching Exploitation*, p.22

⁷¹ See Faraday, *Made in Canada*, p.40:

A unique aspect of the SAWP is that the employer has the power to request by name the employees they wish to rehire in a subsequent season. Where an employee has worked on a particular farm, the employer can "name" them to return the following year. Whether or not a worker is named lies within the sole discretion of the employer.93 While this allows named workers to receive priority in immigration processing, the naming power also gives the employer considerable power in the employment relationship as the worker's future employment is contingent on maintaining good relations with the employer.

Exploitation

While the trafficking offence under *IRPA* does not specify "exploitation" as an element, should exploitation be present it can serve as an aggravating circumstance. Furthermore, the presence of exploitative working conditions may speak to the deceptive nature of the worker's recruitment. When investigating potential trafficking offences under the *Criminal Code*, the presence of exploitative working conditions will be relevant where individuals are unable to leave the work due to fear for some aspect of their safety, or to that of someone known to them.

Several studies report that employers have withheld documents, including work permits, Social Insurance Number cards, and health care cards. This prevents workers from being able to leave a business owner's employ, or access services that may be necessary to them. There are also numerous reports telling of conditions of work that may constitute exploitation, including workers not being paid at all, or paid significantly less than what had been agreed upon in their contracts, and being compelled to undertake work not forming part of the contract, including farm work, caring for additional children, or cleaning employers' homes or vehicles. Others reported that they were not paid for significant overtime work, they were required to work extremely long hours with few breaks, were not provided with lavatory facilities at work, some were not provided with sufficient food, and some stated that they were exposed to undue health and safety risks.

Housing was also seen as a key issue in which employers and recruiters were able to exploit foreign workers. Employers hiring individuals under the LCP, SAWP and the agricultural stream of the low-skill stream for temporary workers are required to provide housing on the employer's property or off-site. Studies have noted several ways in which housing provided has been well below standard, including reports of workers being housed in a laundry rooms, offices, or being required to sleep in employers' children's rooms. Others spoke of being housed six or eight people to a two-bedroom unfurnished apartment and being charged \$400 in rent each per month, with the rent going directly to the employer, who also owned the property. In many cases rent was deducted directly from workers' paycheques, leaving no room for negotiation.

⁷² *IRPA* s.121.

⁷³ Alberta Federation of Labour, *Entrenching Exploitation*, p.7; Farday, *Made in Canada*, p.63.

⁷⁴ Report of the Standing Committee on Citizenship and Immigration, House of Commons, Canada, *Temporary Foreign Workers and Non-Status Workers*, 40th Parliament, 2nd Session (May, 2009), p.11. (Standing Committee) ⁷⁵ Standing Committee, pp.37-38

⁷⁶ Denise Spitzer and Sara Torres, (2008) *Gender-Based Barriers to Settlement and Integration for Live-in-Caregivers: A Review of the Literature*, CERIS Working Paper No. 71. Accessed on February 5, 2013 from http://ceris.metropolis.net/Virtual%20Library/WKPP%20List/WKPP2008/CWP71.pdf p.14.

⁷⁷ Spitzer, *Live-in-Caregivers*, p.14

⁷⁸ Alberta Federation of Labour, *Disposable Workforce*, p.9

⁷⁹ Standing Committee, pp.37-38

⁸⁰ Spitzer, Live-in-Caregivers, p.15

⁸¹ Standing Committee, p. 27

⁸² Alberta Federation of Labour, Entrenching Exploitation, p.13

⁸³ Alberta Federation of Labour, Entrenching Exploitation, p.13

There are reports of workers being forbidden from leaving the premises after a particular time, and reports of constant surveillance through house monitors. Additionally, the very presence of workers on an employer's property creates particular sites of vulnerability to exploitation. Live-in Caregivers are exceptionally vulnerable to being asked to work at any time of day, far in excess of the eight hours per day specified in the LCP LMO. Being on employers' properties also allows for live-in caregivers and other workers to be subject to control over their personal lives in their off-work hours.

Accessing Rights

When investigating trafficking offences, evidence gathered regarding the abovementioned types of exploitation could be relevant, depending on the gravity of the acts and coercive or deceptive tactics used to bring or keep an individual in that exploitative circumstance. An additional consideration may also be a worker's ability to obtain redress through legal means. Technically, foreign workers are eligible for the same protections to which citizens and permanent residents of Canada are entitled. However, practically, undocumented workers are unlikely to bring their cases to the attention of authorities out of fear of deportation. Furthermore, with respect to workers employed through legal TFW programs, the Alberta Federation of Labour notes from its research that TFWs are generally not aware of their protections, nor are there any programs to ensure they are made aware, particularly in their native language. Studies indicate that TFWs often only receive information from employer sources, spending much of their time in employerowned housing amongst their own communities.⁸⁷ Where they are aware of their rights they may be too afraid to assert them, given the possibility of being fired and losing their accommodations. There is a rapid repatriation process for SAWP workers in accordance with the program's operating guidelines and as a result, if a worker is terminated, they may be removed from the country within 24 to 48 hours of termination, leaving no room for seeking redress through employment standards offices. 88 Employers were reported to have terminated and removed TFWs from Canada long before complaints could be thoroughly investigated.⁸⁹ Several workers reported being intimidated into not making workers compensation claims in the face of injuries, upon threat of deportation. 90 These fears of deportation, lack of resources, and lack of information pose significant barriers to accessing appropriate mechanisms to remedy exploitative workplace conditions. Furthermore, those who live on employer's property have additional barriers in physically accessing administrative offices, and may be threatened with losing their housing along with their employment should they be terminated for making a complaint. 91

⁸⁴ Vancouver Sun, *Unfree: BC Farm labour deserves a better break*, accessed March 13, 2013 from http://www.canada.com/vancouversun/news/editorial/story.html?id=2a542bee-cc8d-494a-984c-0cc4ef10c9a5&p=2 Faraday. *Made in Canada*, p.89

⁸⁶ Faraday, Made in Canada, p.89

⁸⁷ Alberta Federation of Labour, *Entrenching Exploitation*, p.13

⁸⁸ Faraday, Made in Canada, p.93

⁸⁹ Alberta Federation of Labour, *Entrenching Exploitation*, p.13. See also Faraday, *Made in Canada*, pp. 78 and 86

⁹⁰ Alberta Federation of Labour, *Entrenching Exploitation*, p.13. See also Faraday, *Made in Canada* pp. 78 and 86

⁹¹ Faraday, Made in Canada pp. 93-94

Given that mechanisms under these laws are generally triggered through self-referral, violations of the minimum standards contained within those laws only generally come to the attention of authorities through individuals in positions to risk termination. In Alberta, in response to some of these issues, the province created an "audit team" through its Employment Standards branch to audit employers with LMOs for compliance, 92 but there was a reported disconnect between HRSDC issuing LMOs and the names of the employers being forwarded to provincial authorities. ⁹³ As noted by the Alberta Federation of Labour: "If government does not know where TFWs are, there is no way to protect them." ⁹⁴ Additionally, an office was created to assist TFWs in Alberta, the TFW Advisory Office, where employees could seek assistance in making claims or receive other assistance with employment issues. However, reports indicate that staffing levels have also precluded this office from being effective, and there is little in the way of practical assistance for workers. 95 In particular, neither Employment Standards audit teams nor the TFWAO is able to provide individuals seeking to leave exploitative employers with up-to-date information on employers who currently possess LMOs. Given that TFWs are only eligible to work for employers with LMOs, this information was deemed to be vital for workers to find legal means to escape exploitation. ⁹⁶ The inability of authorities to provide this legal means to regularize workers' status and to ensure continued employment was highlighted as a key barrier to workers making complaints about exploitative circumstances. 97 This lack of information thus hinders the possibility of gathering intelligence on exploitative worksites, some of which may be considered sites of trafficking.

Incidents

Until recently, there had been few reported convictions of trafficking for the purposes of forced labour. However, in 2012 Ferenc Domotor and his extended family placed labour trafficking in the spotlight through his exploitation of 19 Hungarian nationals. (See Case #1, Annex A). This case had clear hallmarks of trafficking, including physical abuse, confiscation of documents and almost no pay. To date this is one of the very few cases of labour trafficking with a reported conviction. However, other cases emerged from the review of media and literature that possessed potential elements that may lend themselves to a trafficking analysis. Attached as

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⁹² Alberta Federation of Labour, *Entrenching Exploitation*, p.19

⁹³ Alberta Federation of Labour, Entrenching Exploitation, p.13

⁹⁴ Alberta Federation of Labour, Entrenching Exploitation, p.13

⁹⁵ Alberta Federation of Labour, The AFL Roundtable on Temporary Foreign Workers, p.4

⁹⁶ Alberta Federation of Labour, *Entrenching Exploitation*, p.13

⁹⁷ Alberta Federation of Labour, *The AFL Roundtable on Temporary Foreign Workers*, p.2

⁹⁸ According to *Trafficking in Persons* Report p.111, as of February 2012 there were at least 57 ongoing trafficking prosecutions, with 94 accused offenders and 158 victims, all but four of which involved domestic sex trafficking. The Domotor case (Case #1 in Annex A) accounts for one of the four remaining investigations and an August 2011 charge against a woman accused of keeping a victim in a situation of domestic servitude accounts for one other. It is unclear whether or not the other two refer to international sex trafficking or labour trafficking. In 2011, fifty three Temporary Residency Permits were also issued to 48 victims of foreign trafficking whose immigration status was in question, and in 2010 55 were issued to 47 victims.

Annex A are all cases located through the search of literature that involved non-sexual labour, performed by migrants, with potential aspects of either coercion, deception or exploitation as identified above. Also included are cases generated through a search of criminal and immigration-related case law in Canada in which labour trafficking was alleged to have occurred.

The cases were coded for a variety of characteristics, included in a chart at the end of Annex A. These included:

- location:
- means by which the incident came to the attention of authorities;
- any identified law enforcement response or investigative methods;
- characteristics of victim;
- activities potentially classified as coercive or deceptive;
- activities potentially classified as exploitation; ⁹⁹
- any prosecutorial or judicial determinations regarding the status of victims (trafficked or not trafficked);
- any non-governmental or governmental organizations involved either in identification or service provision.

Given that some incidents were reported as groups of individuals who had come forward or had been identified, even generating basic descriptive statistics was not possible in these cases with respect to indicators or characteristics. Groups of persons were referred to, and some characteristics ascribed to particular subsets of those groups without specification as to which subsets and how many. However, various characteristics can be gleaned from these cases that speak to the particular elements of trafficking under the *Criminal Code* and *IRPA* sections and these have been included in the "Findings" section, along with cross-analysis of the various data groupings.

Findings

A number of specific research questions were posed with regard to this study, including:

- What are the specific indicators of labour trafficking in Canada?
- How do Canadian cases of labour trafficking that have proceeded to charge differ from cases that have not proceeded to charge?
- How have suspected Canadian cases of labour trafficking come to the attention of law enforcement?

⁹⁹ The categories of coercion/deception and exploitation significantly overlapped, with various forms of exploitation, such as excessive deductions from pay for debts, playing a role in keeping individuals in their current position (coercion) while also making the conditions of work exploitative.

- Are the investigative methods used to gather evidence in a case of human trafficking for sexual exploitation and forced labour the same?
- Are the needs of victims for sexual exploitation and forced labour similar and are the services in place to support them?

The data provides answers to some of these questions but further research will be needed to fully address some of the most pressing issues.

Indicators

What are the specific indicators of labour trafficking in Canada?

While the use of "indicators" may prove useful in the investigation of various criminal offences, and numerous checklists of indicators have been generated with respect to sex trafficking, 100 the investigative techniques necessary to identify trafficking for forced labour may not be so much related to the identification of new characteristics, but rather in recognizing previously observed situations *as* trafficking. The *Criminal Code* offence and the offence under *IRPA* are significantly different, one focusing on exploitation and fear, the other on cross-border movement and deception. Thus there is no "true" trafficked victim who may be recognized through particular indicators, as what constitutes a situation of trafficking differs even under national laws. Instead it is a case of determining, based on various characteristics pertaining to the elements of the offence, whether or not any one situation warrants the levying of a trafficking charge under either offence.

To answer this question, an examination was conducted of the data generated through the literature and case reports about the kinds of coercion/deception and exploitation seen in Canada in the context of cross-border work. The elements of "movement," "organizing entry," "transporting" or, in the case of employers, "harbouring," seem to be consistently met in reported labour exploitation cases. With this element met, the question for law enforcement and prosecution becomes whether or not the specific activities conducted by recruiters or employers constitute coercion, deception and/or exploitation and whether or not the combination of these factors justify a charge of trafficking.

Similarly to the literature review, what emerges from the cases are acts of deception and coercion perpetrated by recruiters and employers around the charging of fees, the falsification of job

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¹⁰⁰ Y. Dandurand et al, (2005) *Human Trafficking: Reference Guide for Canadian Law Enforcement*. Global Programme on Trafficking in Persons, United Nations Office on Drugs and Crime (Abbotsford: University College of the Fraser Valley Press); United Nations Office on Drugs and Crime, *Human Trafficking Indicators*, accessed March 13, 2013 from http://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf; United Nations Office on Drugs and Crime, Toolkit to Combat Trafficking in persons, (2009) accessed March 13, 2013 from http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf; United States, Department of Homeland Security, *Human Trafficking Indicators*, accessed March 13, 2013 from http://www.dhs.gov/xlibrary/assets/ht_ice_human_trafficking_indicators_pamphlet.pdf

prospects and working conditions, and the promise of permanent immigration status. Migrants are put in situations in which they believe they have no choice but to participate, based on several coercive tactics. Debts are incurred requiring the sale of assets or resort to loan sharks in their home countries and lies are told to migrants regarding how and when particular debts will be repaid, leaving them with high loans and no means of repayment. This failure to pay can lead to threats being made against them or their families, making the fear of removal to their home countries even more tangible. False information is also given regarding migrants' potential workplaces, including the promise of jobs that do not exist once the worker arrives in Canada, or iobs that are significantly different than what they expected. This change in circumstance leaves workers with little funds to cover the outstanding debts, or forces them into working at jobs not consistent with their work permits. This puts them in further precarious positions as it leaves them with compromised immigration statuses, subject to removal from Canada. As described above, they are also unlikely to assert employment or occupational health and safety rights should they fall out of status, leaving them open to continued exploitation. In addition, there were several reports of employers or recruiters actually using migrants' precarious immigration situations to enforce their continued participation in poor working environments, substandard housing or excessive fee payment. The threat of deportation was also used in order to collect further fees for work permit renewals, which in some cases did not in fact take place.

As noted above, removal (or threat of removal) from Canada on its own may not constitute coercion. However, given the existence of severe poverty resulting from debt loads incurred for migrating, should a worker have been coerced or deceived into those conditions, elements of trafficking under the IRPA offence may be present. A key finding from this data was that no forced labour situations were reported as potential cases of trafficking of Canadian citizens or permanent residents outside of the sex trade or criminal activity such as drug trafficking. This finding is consistent with the other data, given the factors identified above as coercing workers into remaining in exploitative workplaces. The threat of deportation and/or criminalization appear to be key elements allowing for exploitation to continue in these cases and without these factors individuals may be more easily able to leave exploitative workplaces. However, neither the IRPA nor the Criminal Code offence requires that the work performed be of an illegal nature. Illegality has simply been a feature of domestic trafficking cases thus far, given the threat of criminalization as a tool of exploitation. Further research may be required to determine whether cases have been reported of Canadian citizens or permanent residents that may fall within the purview of the Criminal Code performing work in "legitimate" businesses. For example, cases in which individuals are subjected to exploitative working conditions by spouses, partners or family members and they are coerced into performing such work through a relationship of domestic violence could potentially be designated as trafficking within the Criminal Code definition. There may be other situations in which individuals feel they are unable to leave particular employment after being recruited for work, due to threats or violent employeremployee relationships, and as such may also be classified as trafficking under the Criminal Code. These domestic cases, should they arise, would likely require separate analysis from international labour trafficking, given the absence of particular coercive factors and the potential presence of others. Similarly to domestic sex trafficking, the relationships created and abused would form part of the "fear" element with respect to the exploitative conduct under this provision rather than fear of deportation, as has been noted in most of the international cases identified.

The forms of exploitation identified from the cases also closely mirrored what was found in the literature. Passports and other documents were confiscated, with some workers having to engage the assistance of police to retrieve them. Other workers were required to hand over bank documents or deposit cheques and withdraw most of the money in cash for their employers. Workers reported having their movements controlled, being forbidden from leaving the home or work premises, and some were faced with being extremely isolated with no means of transport to communicate with others outside their workplaces or working community. Many workers reported substandard housing conditions, including sleeping on mattresses on the floor, in garages, in workshops, being housed three or four persons to a room and still being charged exorbitant rent, and being housed in extremely unsanitary conditions. Numerous reports came from workers and advocates on excessive working hours, up to 18 hours per day and limited or no pay at all for their work. Several also reported being required to undertake additional tasks not related to their work visa, or being forced to work at other jobs entirely, out of lack of other option. In one case workers were physically threatened and required to make false refugee and welfare claims, with the money going to the employer. In one extremely sad case a worker was not permitted to shower or seek medical attention after a chemical spill, and he eventually died from those injuries.

One key question that has been raised in the context of "indicators" is whether or not specific types of coercion or exploitation are more common to particular sectors of work and to the different genders. Unfortunately, not enough information was available as to the work sectors of the migrants in all of the cases identified in order to thoroughly assess this issue. However, cases involving domestic workers and farm workers under the SAWP program are more regularly identified as being trafficked or potentially trafficked. Given the recent case in which 19 Hungarian men were deemed to be trafficked for the purposes of construction and labour, the high incidence rate for domestic workers and farm workers may not indicate their overrepresentation in exploitative work. Rather, the NGOs focused specifically on domestic workers and SAWP workers were able to provide information on these sectors. In cases reported by the Alberta Temporary Foreign Worker Advocate there are a larger dispersion of work sectors amongst those reported as exploited, since the Advocate dealt with complaints from workers in all sectors. Similar conduct showed up in coercive tactics and exploitation in all sectors, taking slightly different forms given the particular parameters of the immigration program through which individuals were working. The practice of recruiting individuals for jobs that do not exist seemed to span all sectors, as did housing issues. Given that employers are required to provide housing for all individuals working under the auspices of "low-skill" immigration programs, housing issues plagued these sectors.

While women were overrepresented by a large majority in the domestic work and caregiving field, they were also recruited for agricultural work and thus face the same issues as male SAWP workers to some degree. Sexual assault was reported a small number of times against women, and these reports came from individuals working in domestic and caregiving situations, whether through the LCP or illegally as visitors. The isolation factor present for live-in caregivers is somewhat different from those facing SAWP workers and may lend itself to allowing for more personal attacks such as sexual assault and rape to exist. SAWP workers are generally housed in groups, and thus although other security issues arise from isolating groups of persons away from

the general community, 101 the one-on-one accessibility to live-in caregivers in employers' houses may create a situation in which sexual assault can thrive. And while it has been noted that women tend to be trafficked into different sectors than men, for example domestic work and the service industry as compared to men who are trafficked for purposes of working in construction or industrial work, ¹⁰² through the data available in Canada there emerges a slightly different picture. Women are recruited more often into domestic and caregiving work, but also into agricultural work through the SAWP program. There were also instances of women involved in food processing and other manufacturing plants. It was only men who were reportedly recruited into construction and labour trades. With respect to conducting gender-sensitive investigations, the situations to which an individual worker may have to return in their home countries may be a factor in determining whether there is "fear" as an element under the Criminal Code offence. Economic prospects for women in home countries may be significantly different, leaving little option for providing income for the migrant, her family or dependants. There may also be issues around finding appropriate and safe housing for single women particularly, and families may react differently to women who have been abroad, particularly if they have faced any form of sexual abuse. These considerations may form part of a determination of coercion or fear in light of the trafficking offences.

The differences in types of coercion and exploitation appear to hinge on the ways in which different immigration programs are conducted, namely whether individuals are recruited in groups or individually, whether they work in groups through a program or individually through more isolated work, and whether they live in group accommodation, in an employer's house or individually through employer-provided accommodation. The recruitment of workers into the different sectors ties loosely to gender, and thus the coercive or exploitative elements also tie loosely to gender based on the work in those sectors. However, aside from sexual assault which was reported only against women in the caregiving sector, fraudulent recruitment practices, exploitative working conditions and hours, substandard accommodations and preying upon fears of deportation seemed to pervade all sectors of employment identified in the cases.

Charges and Prosecutions

¹⁰¹ Note that the Southern Poverty Law Centre indicated high rates of sexual assault and rape amongst immigrant and undocumented female farmworkers in the United States in a 2010 study, *Injustice on Our Plates*, accessed March 13, 2013 from http://www.splcenter.org/get-informed/publications/injustice-on-our-plates. Widespread sexual abuse such as this has not been documented in Canada. However, this may be a topic for further research. ¹⁰² In the Organization for Security and Cooperation in Europe, (2005 & 2006) *Report of the 3rd and 5th Alliance against Trafficking in Persons Conferences on Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Identification – Prevention – Prosecution; Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Prosecution of Offenders, <i>Justice for Victims*. Accessed February 5, 2013 from http://www.osce.org/cthb/31923?download=true_Richard Danziger, Head of the Counter Trafficking Service Area of the International Organization of Migration notes:

[&]quot;To some degree, the sector into which people were trafficked was linked to the victim's sex. Women were primarily trafficked for domestic work and waitressing, while men were trafficked for construction, agriculture and industrial work. Many persons were trafficked for dual purposes including combinations of labour and sexual exploitation, labour and begging/delinquency, or sexual exploitation and begging/delinquency." (p.24)

How do Canadian cases of labour trafficking that have proceeded to charge differ from cases that have not proceeded to charge?

These factors of coercion and exploitation, when put together in various combinations, may or may not constitute HT depending upon the particularities of the case. In each case it is incumbent on law enforcement and prosecution to apply the specific facts to the law, either under the Criminal Code or IRPA. The cases that were taken to charge and determined to be trafficking either by law enforcement or by judiciary tended to involve physical harm of some kind (see Case #1), a high level of organization (Case #1), extremely young victims (Case #4), or victims were women caregivers placed in extremely isolated conditions, excessive working hours and compromised immigration statuses (Cases #6, #7 and #8). Given the lack of judicial pronouncements on the issue of labour trafficking, the focus on women and children in precarious migration situations mirrors the focus on these groups in the context of sex trafficking. Very little information was provided in any case on law enforcement investigative procedures or decision-making processes with respect to arrest and charge. In one case a law enforcement officer designated an individual as trafficked but prosecutors did not go forward with the case (Case #6). No information was provided on the reasoning behind the prosecutor's decision and very little was provided on the cases that law enforcement deemed not to have elements necessary for criminal charge (Cases #42-45).

Further research may be required on these issues. Given the paucity of publicly available information on law enforcement and prosecutorial engagement with labour trafficking cases, it is also difficult to determine law enforcement's response or investigative techniques in particular cases as this information is not currently available.

Detection

How have suspected Canadian cases of labour trafficking come to the attention of law enforcement?

Again, there is somewhat of a dearth of information in the cases and in the literature regarding the methods by which law enforcement comes in contact with persons who were potentially trafficked. In some cases situations were so egregious that workers themselves escaped and called the police (Case #1 and Case #24), particularly where physical harm was involved. However, given fears of deportation this remedy was not common. In some cases employers called law enforcement to investigate fraudulent recruitment practices by employment agencies (Case #41) or to accuse workers of misconduct (Cases #25 and 37).

Primarily the reported cases came through documents produced by NGOs dealing with migrant issues. These organizations provided reports and submissions to parliament and legislatures. Cases were recorded by NGOs dealing with migrant workers' issues relating to employment standards (Alberta Federation of Labour), health (The Industrial Accident Victims Group of Ontario) and labour (UFCW, Agricultural Workers Alliance, Workers' Action Centre). A small number were also located through the victims' seeking refugee status at the Immigration and Refugee Board of Canada (Cases #4 and #5). However, it was unclear in many of these cases

whether or not law enforcement – in the form of police bodies or CBSA – had been involved at all. Further research on this issue would be valuable.

Investigative Methods

How are the investigative methods used to gather evidence in a case of human trafficking for sexual exploitation and forced labour the same?

As indicated above, trafficked workers were said not to report incidents of exploitation because of threats of deportation and criminalization, and fear of losing even exploitative work given the large debts that require repayment. In Canada, the vast majority of cases of sex trafficking have involved Canadian citizens or permanent residents ¹⁰³ and thus the barriers affecting those individuals are different. While both groups share fears regarding authorities, persons who are trafficked for purposes of sexual exploitation may fear criminalization through prostitution-related charges but issues of deportation are not present. Comparing investigative techniques between domestic and international trafficking may thus not be particularly fruitful given the vast differences in types of exploitation and the circumstances of victims.

With respect to international sex trafficking there are few reported cases within Canada. However, some work has been done compiling information on the barriers these individuals may face in coming forward to authorities. Canada's National Plan of Action states that victims of trafficking (unspecified as to labour or sex) may not come forward out of fear for their own lives, not understanding they are victims of human trafficking, having been taught to distrust outsiders, especially law enforcement and other government authorities, fear of deportation, limited language skills, misinformation about their rights in Canada, fear for their families or loved ones, and fear of their traffickers. 104 In the context of labour trafficking, addressing these issues requires a particular focus. There have been few cases where individuals in exploitative labour situations have feared for their lives, but in a small number of cases (see Case #1 for example) there have been threats against workers and their families. In some reports, labour brokers have threatened workers and families to ensure payment and to prevent workers from contacting authorities. 105 Issues of physical safety come into play in the inability to sustain a living should a worker be forced to return home. Physical safety has also arisen in the context of extremely unsanitary and poor housing conditions and limited access to food. Although the individuals reported in the cases indicated that they fear their traffickers, the fear is usually related to deportation or threats of criminalization. In some cases, particularly in caregiver situations where there is one-on-one contact between employer and employee in an isolated setting, there may also be physical fear. In these situations though there has not been any reported fear that an individual's family or loved ones would be affected by the trafficker's actions.

104 Canada, National Action Plan, p.5

¹⁰³ TiP Report, supra note 98

¹⁰⁵ Alberta Federation of Labour, Entrenching Exploitation, p.13

Individuals subjected to labour exploitation may distrust government officials not out of fear instilled by traffickers but rather from the knowledge that they possess illegal status in the country and would in fact be subject to deportation. Investigations into labour trafficking would need to account for these differences and investigators should not assume that because physical fear is lacking that mechanisms of coercion, deception and exploitation are not present. Additionally, the barrier of "not knowing one is a victim of trafficking" may be particularly pertinent with respect to labour trafficking, in that the concept has not been regularly applied to situations outside of the sex trade even by people involved in anti-trafficking work. Furthermore, what a "victim of trafficking" is will differ considerably given the statute that is applied to them. Individuals may understand that they have been exploited and coerced, and law enforcement or other criminal justice officials will be required to make a determination of trafficking.

With respect to detecting and gathering information on labour trafficking, similarities exist in some respects between international sex trafficking and trafficking for purposes of labour. The primary similarity is in the means of detection. Reports indicate that internationally trafficked persons fear coming forward to authorities for the reasons described above. A New York City service provider for trafficking victims compiled referral information on cases they received and they indicated that NGOs provided them with the majority of information on labour trafficking victims, nearly four times that from the government department with the highest number of referrals. 106 This number was similar for international sex trafficking victims. However, where intelligence gathering differs is that law enforcement officers are often unable to unilaterally enter premises where persons trafficked for labour may be. Given the legitimacy and legality of the business enterprises under which many labour trafficking victims work, "raids" of premises cannot be conducted without reasonable suspicion of some form of criminal activity. The NYC NGO advocates for training of groups who are likely to come in contact with victims, including health care providers, faith-based communities, community organizations and immigration attorneys. 107 Through cooperation with these agencies and provincial departments described in the literature review, it may be possible to increase the detection of labour trafficking offences in Canada.

Regarding investigations into suspected trafficking operations, the Canadian *Human Trafficking Law Enforcement Guide* indicates that investigators can gather information through scrutiny of a trafficker's commercial undertakings – for example, advertising, renting of premises, transportation, communications, and financial transactions. ¹⁰⁸ It also indicates that prosecution can be greatly assisted by the cooperation of members of criminal organizations involved in the activities and other "inside intelligence." ¹⁰⁹ While generally relevant to all forms of trafficking,

¹⁰⁶ Nicole Barrett, International Centre for Criminal Law Reform, *An Exploration of Promising Practices in Response to Human Trafficking in Canada*, accessed March 13, 2013 from http://www.icclr.law.ubc.ca/files/2010/An%20Exploration%20of%20Promising%20Practices%20in%20Response%20to%20Human%20Trafficking%20in%20Canada.pdf, p.12

¹⁰⁷ Barrett, *Promising Practices*, p.13

¹⁰⁸ Human Trafficking Law Enforcement Guide, p.21

¹⁰⁹ Human Trafficking Law Enforcement Guide, p.31.

again a particular focus is required when investigating cases of labour trafficking. The advertising, renting of premises, transportation and communications in regard to the recruiting of workers may be entirely legal, and in fact sanctioned through government immigration programs. The key evidence to be obtained in many cases will be the compliance with the advertisement and contract. This information may be garnered through victim interviews, but also through interviews with other workers in the enterprise who are Canadian nationals, and not subject to the same fears (constituting the "inside intelligence" in these cases), and potentially from inspectors or members of the public who have contact with the enterprise. Given the lack of evidence that labour trafficking is committed by "organized criminal enterprises" seeking evidence through standard procedures investigating crime rings may not be the most fruitful avenue. Where individuals are brought in through "illegal" means, some of the evidence sources above may be relevant. Evidence of fraudulent documents, businesses or communications may provide proof of trafficking. However, while there have been some reports, there is little to indicate that business operations are recruiting workers using fraudulent documents. The instances of illegal entry for the purposes of work have been primarily reported within the domestic and caregiving industry, with workers being brought into Canada individually by families requiring domestic help. These differences also need to be taken into account when conducting labour trafficking investigations.

There is significant literature on means of reactive, proactive and disruptive law enforcement with respect to trafficking offences. A full survey of this literature was beyond the scope of this project but could prove fruitful for further research.

Victim Needs

Are the needs of victims for sexual exploitation and forced labour similar and are the services in place to support them?

With so few cases identified of international sex trafficking victims, there is insufficient information from Canadian sources regarding the needs of such individuals. However, international toolkits and studies indicate several different needs relating to victims, including reintegration assistance, education and job training, shelter and accommodation, mental and physical health assistance and trauma counseling. A Canadian study notes promising practices as involving counseling addressing the psychological effects of prostitution and victimization, and vocational training. ¹¹¹

There was little information regarding the needs of persons trafficked for the purposes of forced labour beyond immediate job placement and immigration status regularization. While

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¹¹⁰ International Organization for Migration, *IOM Handbook on Direct Assistance for Victims of Trafficking*, accessed March 13, 2013 from

 $http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT\%20 handbook.pdf\\$

Barrett, *Promising Practices*, p.40

individuals faced with sexual abuse and/or rape could require counseling and other programs geared towards overcoming trauma, people trafficked for the purposes of forced labour were focused on attaining employment and status in Canada. Cooperative programs between HRSDC, provincial employment standards and law enforcement could assist these workers in securing new, non-exploitative jobs that would also regularize their immigration status. Temporary immigration permits may be necessary while seeking work, in addition to transitional housing for individuals leaving employment where accommodation is employer-provided. Individuals may also require assistance securing medical, workers' compensation, employment insurance or other employment benefits during this period. Currently there are no centres equipped to provide this kind of service to exploited workers.

Stakeholders

There are several groups of governmental and non-governmental organizations involved in and affected by work on labour trafficking. And each of these different groups can play unique roles in gathering information, investigating and preventing this form of exploitation. The individual organizations and departments are listed in Annex B. The following is a summary of the types of organizations and the roles that each might play.

Governmental departments at the federal level are involved in legislative and policy-making functions, as well as coordination and training roles. The RCMP is currently in the process of establishing a Dedicated Integrated Enforcement Team to coordinate the investigation of trafficking offences, including labour trafficking. The Department of Justice is involved in prosecutorial guidance as well as training and coordination functions relating to criminal justice personnel. CIC is involved at a policy-making level in temporary foreign work programming, where some of the vulnerabilities to exploitation and trafficking lie. The Human Trafficking Taskforce and Federal/Provincial coordination through Public Safety Canada are meant to bring various government mandates together to form integrated and effective solutions to labour exploitation and trafficking. In this respect particular attention can be paid to those who regularly encounter migrant workers – for example CBSA officers and CIC officers issuing work permits – and the ways in which they identify trafficked persons. Efforts in this respect can be geared towards complying with international and national efforts to protect exploited persons and using the current trafficking offences effectively.

At the provincial level are a number of coordination bodies dedicated to addressing trafficking in persons, such as the BC Office to Combat Trafficking in Persons and the Alberta Coalition against Trafficking, tackling both sex trafficking and trafficking for forced labour. However, there are additional governmental departments that, while not currently addressing "trafficking" can play a large role in intelligence and investigation of trafficking offences. Building and Fire Code inspectors are in prime positions to gain access to workplaces suspected of breaching basic health and safety rights of migrants, and Employment Standards officers and Occupational Health and Safety inspectors can proactively inspect workplaces for breaches and hazards. This information, if coordinated and shared with law enforcement, may prove invaluable for the determination of egregious exploitation and coercive environments. Federal and provincial cooperation between these bodies may also increase services to migrant workers in regularizing

status through appropriate job placements. This would decrease workers' fears of deportation and could lead to increased reporting.

There are several non-governmental organizations focused on trafficking as well, some of whom address labour trafficking as part of their mandate. Many of these are listed in Annex B. However, there are also several organizations and academic bodies dedicated particularly to meeting with, providing services for and gathering information on migrant workers in various sectors. The people involved in these organizations could be a rich source of information for trafficking investigations. It is important to note though, that given the mandates of these organizations, law enforcement interaction with them would need to be based on a premise of protecting workers and seeking information on exploitative employers, rather than "illegal" workers. Cooperation between migrant-serving organizations and law enforcement would need to be based on a mutual goal of ending the activities of exploitation without further harming migrant workers.

Conclusion

Moving forward

A key issue with the identification of trafficking for forced labour appears to be the difficulty in determining what constitutes an exploitative situation. It is this judgment that appears to be causing hesitation and confusion amongst advocates and law enforcement alike. This question of "where do employment standards end and issues of criminal investigation and human trafficking begin" poses a particular problem where the businesses and worksites are most often legal, and the workers have some form of legal status. In its *Threat Assessment* the RCMP notes that:

Not all persons who work under exploitative conditions are victims of human trafficking. ... Some workers accept inferior work conditions because they perceive no alternative... This is particularly true of illegal migrant workers who cannot accept legitimate jobs. ... While such persons may be vulnerable to exploitation or abuse, they are not necessarily forced to work unless they are coerced or controlled. 113

The issue of whether someone was "forced" may require a slightly different interpretation in the context of forced labour, with investigators focusing on coercion not through physical force but rather through several interlocking and overlapping barriers to leaving an exploitative workplace. The House of Commons Standing Committee on Citizenship and Immigration notes that offences could be made out even where physical harm does not exist, based on deception, or if

RCMP, Threat Assessment, 42

¹¹² Quote from law enforcement official in Laura Quarterman et al., *Human Trafficking in Calgary: Informing a Localized Response*, (2012) accessed March 13, 2013 from http://www.actalberta.org/uploads/070712_SP8J95PMb5nXDTQ_181714.pdf

they are unable to pay back debts incurred to come to Canada at the hands of a loan shark. In general, similarly to the shift that took place reconceiving some forms of prostitution as sex trafficking, activities previously framed as employment or business issues may need to be reconceptualised as labour trafficking when linked with coercive or deceptive behaviour.

It may also be incumbent on law enforcement to focus more on the use of the *IRPA* offence, which requires only recruitment and deception as key elements. One law enforcement officer notes in a research study from Calgary that the criminal offence is "unbelievably onerous" to prove, in that one needs to show "fear" and that victims were "entirely unwilling" or that there was "no real consent component." The *IRPA* offence requires no such evidence. However, it has been noted that "particularly in investigations involving temporary foreign workers, ... the focus on the application of the CC may have led to the oversight of the IRPA offence" and that this offence may have been more appropriate for the cases at hand.

With respect to the investigation of labour trafficking, the findings noted above indicate that removing identified barriers to coming forward from victim/witnesses may prove the most fruitful in securing witness cooperation. Many checklists and screening tools have been developed in reference to identifying human trafficking 117 and one may be developed based on the types of coercion, deception and exploitation identified in the cases above. The checklist could serve as a means for questioning and determining whether or not certain situations could constitute "trafficking in persons" under either of the Canadian offences. However, cautions should be associated with the use of such a list, given the possibility that it could be viewed as exhaustive or used primarily to exclude individuals on the basis that their experiences do not "fit" in the categories outlined. The checklist could serve to highlight types of exploitation or coercion that may prove to be elements sufficient for a charge to be laid, particularly should there be several violations or particularly egregious cases. With respect to intelligence gathering, as indicated above, law enforcement programming designed to increase cooperation with sources of information outside of law enforcement could prove extremely useful. Cooperation between law enforcement and NGOs has been highlighted particularly in the case of domestic sex trafficking, and could be useful with respect to identifying labour trafficking where groups come in frequent contact with different types of migrant workers. In addition, cooperation with provincial and

¹¹⁴ Standing Committee, p.36

Ouarterman, Human Trafficking in Calgary, p. 21

¹¹⁶ RCMP, *Threat Assessment*, p.42. See also quote from law enforcement official in, Quarterman, *Human Trafficking in Calgary*, p. 21

[[]The Criminal Code definition] is so unbelievably onerous, unfortunately, so onerous that we can't lay charges to actually create the case law that defines the Criminal Code...it's horrific. It's one of the first real catch-twenty-twos we've seen in the Criminal Code. You know, assault is easily defined and you can lay those charges, case law defines it, very quickly. This [human trafficking] one, 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 to prosecute on that standard. So thank goodness IRPA [the Immigration and Refugee Protection Act] is there, because we're using that as almost a manipulation to cover off the human trafficking that we're seeing, and we're laying those charges.

¹¹⁷ Supra, note 100

municipal employment standards offices and inspectors could increase detection and locate potential witnesses.

There are significant efforts being made and a coordinated response is being taken by the Federal Government on the issue of trafficking and the recent *National Action Plan* does in fact address some of the key findings above. The Human Trafficking Taskforce lead by Public Safety may be able to address further federal/provincial cooperation, thereby heightening the possibility of shared information on possible labour trafficking sites. HRSDC is committed to enhancing information and awareness regarding the TFW Programs, including developing knowledge within various provincial departments, and to identifying high-risk employers. It is coordinated well, these activities could greatly assist in law enforcement operations around trafficking. Further training of law enforcement officials is also a basis for action in the plan, which could involve increasing the understanding of front-line officers on the application of trafficking laws to labour exploitation. And the RCMP is tasked with developing guidebooks for investigators, in which various legal and investigative issues can be addressed.

The Canadian Government's commitment to these activities displays a new-found interest in addressing labour exploitation and labour trafficking. Given the recent focus from the government and in the media on exploitative working conditions and the TFW program, this new vigour may bring about further reports and investigations into labour trafficking. Based on this impetus and the findings identified above, law enforcement may now be in a position to more fully address the issue through protecting those exploited through these acts and securing convictions against those placing people in these abusive circumstances.

Future Research

As noted throughout this document, there appears to be a lack of information specific to law enforcement's responses and investigative techniques that have been used to detect labour exploitation. A number of research areas could be explored in order to shed some light these issues:

- 1. Cases identified in Annex A could be further explored through requesting case files from law enforcement, CIC, the Immigration and Refugee Board of Canada and employment standards branches, through interviews with law enforcement officers and through discussions with NGO workers directly involved in the cases. This process could provide information on:
 - sector-specific conduct;
 - gender-specific conduct;
 - if and how law enforcement became involved;

¹¹⁸ Canada, National Action Plan, p.16

¹¹⁹ Canada, National Action Plan, p.18

¹²⁰ Canada, National Action Plan, p.18

- law enforcement techniques;
- decisions to identify trafficked persons vs. non-trafficked; and
- knowledge with respect to the various criminal offences.
- 2. Further interviews could be conducted with individuals subjected to exploitative labour practices with respect to their immediate needs, and the means by which Canada has provided them with services necessary to remedy their situations. These interviews could include gender components seeking to identify the different barriers men and women would face being returned to their home countries, as well as the differences within particular regions and countries.
- 3. Further literature reviews could be conducted on reactive, proactive and disruptive law enforcement techniques with respect to trafficking investigations, and these could be analysed in conjunction with the information available on cases in Canada.

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Annex A: Cases and Case Chart

Means of coming to attention of authorities (ID)

Case Chart: Reported Incidents of Labour Trafficking and Labour Exploitation

Coding

11200110	of conting to attention of attition ties (12)
EL	Employer informed law enforcement
IC	Interception of migrant at border point
LEN	Law Enforcement discovered due to other investigation
NGO	NGO referred to law enforcement
PUB	Complaint from Public to law enforcement
REF	Claimant made refugee claim
TAO	Temporary Foreign Worker Advocate
UL	Unspecified complainant to law enforcement
WL	Worker contacts law enforcement
WP	Worker contacts member of public

Work Sector

AG Agricultural work
CON Construction
DOM Domestic Work
FP Food Processing
HEA Health Care Sector

LC Live-in caregiver 121 MAN Manufacturing

SER Service/Hospitality industry

Characteristics of victims

F Female M Male

NV No work permit

WS Compromised immigration status

Characteristics of deception/coercion (DEC/COER)

DEB Debts owed to recruiters

DEP Threat by employer/recruiter of deportation

FAD Lies told to workers regarding debt repayment

FAL Lies about conditions of work

FAI Lies about immigration prospects

¹²¹ LC coded individuals may be working in Canada legally (ex., Live-In Caregiver Program) or illegally (e.g., as migrants overstaying a visa) as a live-in caregiver.

FAW Lies about existence of job FAM Familial pressures

LAN Limited Language Skills

RET Fear of re-trafficking

Characteristics of exploitation (EXPL)

BAN Confiscation/control over bank account/money

CON Confiscation of documents

CM control over movement

DEE Excessive deductions from pay

EC Required to work on activities outside scope of work permit

HOU Substandard housing

IS Isolation

NP Limited or no pay

PH Physical Abuse

SER Forced to make false applications for immigration or

services

SX Sexual Abuse

TER Unjustly dismissed

TH Threats

UI Untreated workplace injury

WH Excessive Working Hours

Other organizations involved (ORGS)

Justicia 4 Migrant Workers

Kairos Spirituality

TAO Temporary Foreign Worker Advocate

Chart

	LOC	ID	SECTO R	INV	Characteristics	DEC/COER	EXPL	JUD/PROS	ORGS
1.	ON	WL WP	CON	-	Hungary M "young"	LAN FAL DEB FAD TH WS	NP SER BAN CON HOU CM WH EC IS	trafficked	-
2	ВС	IC	-	Interception, Detention, Investigation	China Youth M	DEB	-	Not trafficked	-
3	BC	IC	-	Interception, Detention, Investigation	China Youth M	DEB	-	Not trafficked	-
4	BC	REF	-	-	China Youth M	FAM	-	trafficked	-
5	VC	REF	DOM	CBSA officer conducted interviews – no other information available	Mexico F	EC LAN WS	NP	Not trafficked	Hispanic Centre, Vancouver
6	QU	WL	LC	Interviews – claim from suspects'	Ethiopia F	DEP EC WS	IS WH CM	Charges dropped	-

				lawyer insufficient investigation					
7	BC	LEN	DOM	Investigation and arrest	Philippines F 38	NV DEP WS	"Domestic Servitude"	Charged with human smuggling	-
8	BC	NGO	DOM	Investigation and arrest	Africa F	FAL WS NV	NP CON WH	trafficking	Women's Shelter
9	AB	PUB	DOM	-	TFW	FAI	PL	-	-
10	AB	TAO	-	-	TFW	FAW WS	TER	-	TAO
11	AB	TAO	-	-	TFW	FAL FAW FAI WS	TER	-	TAO
12	AB	TAO	-	-	TFW	FAD DEB	DEE	-	TAO
13	AB	-			TFW	FAL WS FAW	-		
14	AB	TAO	-	-	Central Am. TFW M	FAD FAL DEB	TER DEE		TAO
15	AB	TAO	CON	-	India TFW M	FAL FAD WS	TER		Plumber/ Pipefitter Union local 488
16	AB	TAO	-	-	M TFW	FAD	HOU DEE	-	TAO TAO
17	AB	TAO	-	-	Fiji	DEB	DEE		

					TFW	FAL			
18	BC	-	LC	-	Philippines F	-	HOU WH CON TH SX	-	
19	BC	-	SAWP	-	Mexico M	-	TER UI	-	Justicia
20	BC	-	CON	-	TFW M	DEB	DEE		
21	AB/B C	-	MAN	-	TFW Recruited in Dubai	FAL WS FAW	EC NP DEE		
22	QU	Hospital	LC	-	LC F	-	EC "mistreated " Transferred between ER's Abandoned in ER		
23	ON	-	SAWP	-	SAWP M Mexico	-	UI (resulting in death) ER did not permit EE to shower after chemical		Justicia

							spill		
24	ON	WL	CON	-	TFW	FAL	NP		Philippine
					M	WS	HOU		Consulate
						FAW	EC		
25	ON	EL	SAWP	Designated as illegal	SAWP F	DEP	UI TH	Barred from Canada 2	Unspecified NGO
								years.	
26	ON	WL	AG	-	Mexico	FAL	TER	-	-
					TFW		Evicted		
					M		No return		
							ticket		
27	ON	-	LC	-	LC	FAW	EC	-	-
					M	DEB			
					Libya				
28	ON	-	SER	-	TFW	FAL	HOU	-	Workers
					M	FAD	WH		Action
					India		NP		Centre
							CON		
29	-	-	FP	-	TFW	DEB	CON	-	Workers
									Action
									Centre
30	ON	WL	SER	Assisted in	TFW	DEB	CON		Workers
				retrieving	M				Action
				passport					Centre
31	-	-	HEA	-	TFW	DEB	-	-	Workers
						FAL			Action
						WS			Centre
32	-	-	AG	Detained	F	DEB	EC	Deported	Justicia
				worker	TFW	FAD	CON		
						FAL	NP		
							UI (treated		
							but charged		

							for it)		
33	-	-	FP	-	TFW	DEB	HOU	-	Justicia
					F	DEP	CON		
							EC		
							DEE		
34	QU	-	LC	-	LC F	FAL	CON	-	-
					F	WS	WH		
							EC		
							SX		
							IS		
							NP		
							TER		
35	-	-	DOM	-	Ghana	WS	NP	-	Kairos
					F	DEP	PH		
					VISITOR VISA		WH		
							IS		
							CM		
36	-	-	LC	-	LC	FAL	IS	-	Member of
					Uganda		CON		Public
					F		WH		
							HOU		Shelter
							NP		Provider
							Employer		
							Falsified		
							records		
37	-	EL	Gaming	Assisted	TFW	FAI	IS		
				worker in	Tanzania	FAD	HOU		
				finding	M	DEP	NP		
				shelter			CM		
							CON		
							TH		
38	-	-	SAWP	-	SAWP	-	WH	-	UFCW

				F		CM		
39	AB/S K MB	UL	Various	- TFW	-	HOU CON	-	-
40	-	UL	-	Transferred to service Canada	FAI FAL DEB	DEE HOU	-	Service Canada Employment standards
41	-	EL	-	Parties TFW resolved dispute	DEP DEB	DEE	Criminal Charges Unfounded	-
42	-	UL	various	Files were outside org crime or HT - referred out		DEE EC	-	-
43	-	-	-	Files were outside org crime or HT - referred out to Service Canada or province	-	NP WH		Service Canada/ Alberta TAO
44	-	-	LC	Did not meet - elements of HT	FAW FAI WS	EC	-	"church groups"
45	-	UL	CON	Did not meet delements of HT Mexic		DEE TH	-	-
46	-	UL	DOM	- Visito	ors WS DEP	CM IS		

							TH		
							WH		
47	-	-	DOM	Determined	Illegal entry	FAL	NP	-	-
				trafficking					

Case Descriptions: Reported Incidents of Labour Trafficking and Labour Exploitation

Judicial Pronouncements

1) Ferenc Domotor

From R. v. Domotor: 122

- 12 ... the enterprise was described as involving the recruiting of victims in Hungary by persons associated with these accused. The airfare to Canada was paid for on behalf of the victims. Once here the victims were required to live in the basements of the co-conspirators. Here they worked for little or no pay in businesses run by the conspirators or by others with whom the conspirators had business arrangements. The victims spoke no English. They were coached and taken to make false refugee claims here in Canada. They were taken to bank to open bank accounts, following which their bank documentation was then taken from them so that the victims could not access the contents of their bank accounts, but by virtue of having the documentation the conspirators could.
- These victims were also taken to the appropriate offices to make claims for social services benefits. Those benefits would be deposited in the banks to which the conspirators had the means of access and the money would be taken. The offences involved not only persons here in Canada belonging to the organization but also people still in Hungary who assisted by recruiting young persons to come to Canada on the strength of a web of lies about what awaited them here, for which those recruiters would then be paid fees, and when things started to unravel here in Canada and the threat of prosecution and conviction grew nearer, some of these same recruiters were then utilized to threaten the families of victims in Hungary with the obvious desired aim of persuading the victims to renege on what they had told the police and to no longer stand as prosecution witnesses.
- 14 The first victims arrived on April 11, 2008. They all four of them in the first batch arriving in that date or two others in May of 2000, and, sorry, one more in February of 2009, all lived in the basement of Mr. Domotor Sr.'s home. Eventually they complained on April 2, 2009, to police about their treatment. They ended up moving back to the Domotor house on the strength of additional promises of better treatment. Eventually one returned to Hungary. One remains a complainant in these current charges, and on the strength of the evidence as accepted to be correct before me the other two, although initially brought here as victims, appear to have been turned and are now part of the organization. Those two individuals, again on the admitted facts

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¹²² R. v. Domotor, [2012] O.J. No. 3630

before me, then engaged in a significant cheque fraud scheme in April and May of 2009, costing an estimated loss to local businesses of some 50,000-plus dollars.

- 15 In total, 19 victims were brought into Canada by this criminal organization and housed in the basements of the homes of various members of the conspiracy.
- Mr. Miko, M-I-K-0, is an important witness in this matter. He lived in Mr. Domotor Jr's home in the basement. He worked for Mr. Domotor Jr's company, and Mr. Domotor Jr's bank account was the means used to pay for Mr. Miko's airline ticket to Canada. His family was bribed and threatened in an attempt to have him withdraw his complaint against this criminal organization. He had originally been recruited by Gyongyi Kolompar's sister in Hungary. After the charges under the Immigration and Refugee Protection Act were laid here in Canada, the same sister, Veronica Kolompar, then visited Mr. Miko's father in Hungary and offered a bribe to him if his son would withdraw his testimony against the Domotors. That was then followed then by a threat by the same lady to Mr. Miko's family in Hungary in December of 2010, indicating that if he did not withdraw his testimony then "it's not going to end well."
- 18 Eventually the family of Mr. Miko became so afraid and were getting so little help from authorities in Hungary that they were eventually brought to Canada by an NGO agency who paid for the airline tickets to get them here. They are now here having made refugee claims.
- 19 In the exhibit one, the synopsis for guilty plea accepted as being correct, and in a portion read to the court on March the 9th and accepted as being correct, it is alleged that Mr. Domotor Sr. is believed to be the head of the organized group involving this human trafficking activity in this case. It is again accepted they established construction business in this area with the intention of luring Hungarian nationals to Canada to provide free labour for his business. It is again alleged he spoke directly with his victims while they were still in Hungary, promising them a much better life if they came to Canada and convincing them to file false refugee claims upon arrival here, and spoke to them in terms of having them apply for and then collect welfare payments from the city of Hamilton.
- 20 He housed his victims in his basement and controlled their movements it is agreed by either uttering threats directly or indirectly. His victims were fed with leftovers. They were forced to work for his companies and to do work in and about his house, all for which they were not paid. The two victims, Mr. Miko and Mr. Bogdan, one had to sneak out in the middle of the night to make contact with Hamilton police to seek help, and then a few days later the other, Mr. Miko, was escorted out of the residence by RCMP.
- Mr. Bogdan, one of the victims that I have mentioned, was promised by Mr. Domotor Sr. on the phone, before he left, that if he came here he would have a stucco job where he would earn \$1,000 a month, a driver's licence, a car and all his travel expenses would be paid for. He was counseled by Mr. Domotor Sr. to say once he arrived in Canada that he was a tourist. His plane ticket was purchased by an email address exchange which is traced back to Mr. Domotor. When he arrived here Mr. Bogdan was met at the airport by Mr. Domotor, Sr. and Gyongyi Kolompar, his wife. They took his passport, they took him to their home. There he was initially

left to sleep on a mattress in the garage, and in that same garage a table was supplied so that he could eat his meals there.

- He was told that he would receive the equivalent of \$1,300 Canadian sorry; that the recruiter in Hungary would receive the equivalent of \$1,300 Canadian for having recruited him, that Mr. Bogdan would have to pay back the cost of the airline ticket which is contrary to what he was told when he came over, that he would not be paid for his work until he paid off his debt. I should point out at this point that a number of documents were found during police investigations at the homes of the conspirators which seemed to prove that no matter how many hours of work they put in the amount they were said to have owed either did not go down or went down marginally and in a way totally out of proportion to the value of the work they provided.
- Once here Mr. Bogdan was told he could not leave the house because he came here to work and not for a vacation. It is agreed that he was made to complete the renovations on Mr. Domotor's unfinished basement, working 13 to 14 hours a day for three months, and to complete stucco work at his co-conspirator's home and that Mr. Bogdan was not paid for any of this work. Similarly he provided work at other enterprises at the direction of Mr. Domotor and was not paid.
- On days that he was working he would be fed once a day, it is agreed. Breakfast and lunch were not prepared for him or provided to him, nor was he allowed to go up and make a meal for himself. Rather, Gyongyi Kolompar would bring an evening meal down after he had finished work to him in the basement. He was taken to the immigration office to register a refugee claim by the two Domotor men, and he was told by Mr. Domotor Sr. what to say when he arrived there. Mr. Bogdan agrees he lied to the immigration people out of his fear for the Domotor family and concern that he would be beaten. While there, Mr. Bogdan was given an identification document by immigration officials but that, too, was taken away by Mr. Domotor, Sr.
- He was taken to a medical center where he was seen by a Dr. Sajo, S-A-J-O, who it is alleged by the Crown and accepted by the defence didn't even examine him but rather the reason for his attendance obviously so the doctor could provide a signed note indicating that Mr. Bogdan was unable medically to attend for English as a second language classes, presumably a requirement for the assistance he was allegedly being provide, although in fact it was going to the conspirators.
- In the summer of 2008 while at a job site it is agreed or accepted that Mr. Domotor, Sr. punched Mr. Bogdan in the face numerous times, leaving a tear in his mouth and blood on his ear, and it is accepted that Mr. Bogdan was told by Mr. Domotor, Sr. that that happened because he was stressed.
- 27 In September of 2009 he was taken to a lumber yard and worked 11 to 12 hours and given cheques for his work, but Mr. Domotor took Mr. Bogdan to Western Union and directed him to cash the cheques and then Mr. Domotor took the money. In December of 2009 while working in

Barrie it is admitted Mr. Domotor struck Mr. Bogdan with his left hand several times with a level.

- Mr. Miko was approached by Veronica Kolompar in Hungary and given an offer to come to Canada to work in tiling and stucco with the promises of \$890 to \$1,300 a month income here, that he would be provided a job, that he would be living in the Domotor home. He was assisted in his efforts to get into Canada by virtue of an invitation letter signed by Gyongyi Kolompar indicating that he was her nephew. Once here he was told to say that he was a visitor and not to say that he was seeking employment. Once here he was met by Mr. Domotor and Gyongyi Kolompar who took his passport. They drove him to their home. He lived in the basement with five other Hungarian workers, given a blanket and a pillow and a mattress on the basement floor on which to sleep. He had meals as were brought to him in the basement. He and the other occupants were not allowed to leave the house without permission. He was once allowed to contact his family but had to do it on a speaker phone, and the doors and windows of the house were alarmed so that he could not leave.
- He, too, was taken to the immigration office to make a refugee claim. He was told what to say and the documentation was filled out for him. They then took the immigration documentation that had been provided to him at that office. He fared better than many of the others in that the facts as put to me indicate he was paid \$100 every other week for working from 8:00 a.m. to 5:00 p.m. daily. His father was approached by Ms. Domotor's sister in Hungary who promised to send money to his father if Mr. Miko would withdraw his statements to the police here.
- 30 Gyongyi Kolompar has a network, it is admitted, with her family in Hungary whereby Hungarian young males are recruited to come to Canada to work in the stucco company businesses of her family. They are not paid for their work. They are directed to apply for social assistance as I have already indicated, the money of which is then withheld from them by means of control gained over newly created bank accounts opened at the instance of the conspirators. It is agreed that Mrs. Kolompar drove these victims to various appointments and counseled them on the various lies they were to provide to immigration individuals.
- 31 She had direct information in furtherance of the conspiracy that provide to Mr. Bogdan, one of the victims. She provided him with an invitation letter, which apparently is a document of some assistance when one is trying to enter Canada. That letter described Bogdan as her friend and a visitor. It is agreed that Gyongyi Kolompar told Mr. Bogdan that her sister would receive the equivalent of \$1,300 Canadian for recruiting him, that he would have to pay back the cost of the airline ticket, that he wouldn't be paid for his work until he had paid off his debt which seems to have been an impossible thing to achieve the way the records were kept. It is agreed he was not allowed to leave the house, he was told, because he was here to provide work and not for a vacation, and he was told he would not be allowed to call home and speak to his family because it was too expensive. He was fed once a day while in Mr. Domotor's employ. Mrs. Kolompar would take the meal down to him in the basement after he had finished work. It was one meal a day.

- 32 Similarly, she counseled Mr. Miko, the other victim to whom I referred, to mislead immigration officials. She provided him with an invitation letter describing him as her nephew who was traveling here as a tourist. She took possession of his immigration documentation sorry, his passport, when he arrived here, and then took him to the immigration office, telling him to lie by saying he came to Canada because he could not get employment in Hungary, and that he was Roma and being beaten and persecuted by the Hungarian Guard. It is accepted in exhibit one that she dictated a false narrative to Mr. Miko to give to the immigration officials.
- And in respect of Mr. Domotor Jr., it is agreed that he had some of the victims living in his basement where he exercised control over the victims, transported them to and from work sites and other appointments, that he controlled the use of victims' identification, bank cards and other documentation. It is evident from the facts placed before me that it was largely he, or maybe solely he, that arranged for most of the flights for victims from Hungary to Canada. The cost of those flights then became not only the means to get the victims here but also the justification for purportedly not being required to pay them for all the work they provided to the businesses owned by the conspirators, for which they charged normal profits but at a higher rate of profitability, because in effect they were not paying for the labour costs necessary to make their business work.

From http://www.theglobeandmail.com/news/national/judge-hands-down-canadas-toughest-penalty-for-human-trafficking/article4097571/

One day in the spring of 2010, Mr. Csuti, 58, was building a deck on Gyula Domotor's new home in the Hamilton suburb of Ancaster. After Mr. Domotor's son scolded him for taking a break, the family punished Mr. Csuti by making him clean the child's shoes and not feeding him until after 11 p.m., Constable Jankovic testified. He fled the next day.

Mr. Bognar, meanwhile, escaped that summer by beating his own arm with a tool so he would not have to go to work one day. When the family left the house, he escaped and called police.

Even after victims escaped, court heard, the family tracked them down at shelters and safe houses, and tried to convince them to return. In a victim impact statement, Mr. Bognar wrote that he ran into a gang member on the street and the young man threatened to slash his throat if he testified.

"These people, in the eyes of Mr. Domotor and his co-conspirators, were nothing more than chattel to be used to further their own gain," said Mr. Justice Stephen Glithero.

He accepted a joint submission between the prosecution and defence, giving Mr. Domotor credit for both his early guilty plea and the year and a half he has spent in jail awaiting trial. He will serve another two years and six months, but could be paroled earlier.

Ten people have pleaded guilty to a variety of charges in the case; others are awaiting trial.

From: http://www.theglobeandmail.com/news/national/human-traffickers-treated-men-on-ontario-construction-site-like-slaves/article550340/

In mid-2008, Janos Farkas was offered a construction job in Canada, working for a man named Attila Kolompar, an acquaintance from his home village in western Hungary. The work, he was told, would provide enough money to send back \$100 every month to his son. He accepted.

But the reality of his new life was harsh, a court heard. Made to live with two other men in a cramped basement room of Mr. Kolompar's house in a quiet residential area in Hamilton, he worked 14-hour days plastering stucco in a Burlington subdivision. In the evenings, he and his co-workers scrubbed floors, cleaned toilets and washed dishes for his boss. They subsisted off scraps from the table. When he became weak and had trouble working, he said Mr. Kolompar hit him several times

. . .

Meanwhile, he said, Mr. Kolompar's family and friends would throw big parties, get drunk and skip work.

On one such occasion in the summer of 2009, when the family was distracted, Mr. Danyi and Mr. Farkas found their documents and hid them in a drill case. The next day, they walked off their job site on Leslie Street in Toronto and escaped to the home of another contractor.

The RCMP began investigating the organization later that year. Ultimately, 13 people were charged. Four of them have been convicted of various offences; others are awaiting trial. Two of them are still at large: one, the alleged ringleader, is believed to be in Hungary; another was last spotted in Peel Region near Toronto.

- a) Location
 - Ontario Hamilton
- b) How did the case(s) come to the attention of authorities
 - Workers contacted law enforcement
 - Workers contacted member of public other contractor
- c) law enforcement response and investigative methods
 - responded to incident complaints investigative methods n/a
- d) characteristics of victims
 - Hungarian
 - Male
 - Construction workers
 - young
- e) characteristics of deception/coercion
 - spoke no English, were not allowed to take English classes
 - lies about conditions of work
 - debts incurred to recruiters, workers not told about debts until arrival in Canada
 - threats made to family members regarding workers' police complaints "it's not going to end well"
 - bribes offered to family members to encourage withdrawals of complaints
 - debts not reduced after working

- threats to workers and family
- f) characteristics of exploitation
 - working for little or no pay
 - forced to make false refugee claims
 - made to make claims for social services, for which they received no money
 - bank account documents confiscated forced to deposit cheques and not withdraw money
 - western union used to cash cheques employer kept money
 - lived in severely substandard housing garages, cramped basements
 - controlled movements by direct and indirect threat could not leave home
 - workers fed with leftovers, some provided with one meal per day
 - excessive working hours, 13 to 14 hours per day for up to three months
 - working on employer's home as well as construction sites
 - passports confiscated
 - physical abuse
 - some not allowed to contact families, others allowed only via speakerphone
 - doors and windows of basement apartments alarmed workers not allowed to leave house without permission
- g) prosecutorial and judicial determinations on the status of victims
 - trafficked
- h) Other organizations involved
 - n/a

2) Re P.G.L. [2001] C.R.D.D. No. 150

[Minor from China. Family sent child to North America through payment to "Snakeheads." Claimant argued he was vulnerable to being preyed upon by snakeheads should he be returned to China. Claimant had arrived by boat off coast of Vancouver with several other migrants in 1999.]

Was the claimant trafficked?

- The claimant testified not only that he consented to travel to North America for the purpose of working and remitting money to his family, but also that he would try to come again if deported, even if his parents were against it. Counsel argues that the claimant, being under 18, is not capable of making the decision to "be trafficked." He cannot consent, therefore, to the method of departure (i.e. the debt payoff requirement on arrival), which appears to have been the only available method for the claimant's family.
- I would note that the "means" described in subparagraph (a) [of the definition in the Protocol] do not appear to exist in this case. As per subparagraph (c), however, the means are irrelevant where the victim is a child. As per subparagraph (d), the claimant is a child. To determine whether the Protocol should inform the decision in this case, then, I must decide whether the claimant was transferred to North America for the purpose of "exploitation" (forced labour or services, slavery or practices similar to slavery, servitude).

- My understanding of the documentary evidence before me is that victims of snakehead smuggling contracts are not promised to a particular employer and do not become the "property" of that employer. They are obliged to pay back a staggering debt, and due to circumstances (usually working illegally and with no English skills) are forced into low-wage jobs. In my view they are not, however, kept in "slavery" or similar practices. Chinese migrants, such as the claimant's have tended to gravitate toward "little Fujian" in New York City, but appear to be free to go where they are able to find work. I have seen nothing to suggest that, if they had family members or friends elsewhere who could provide them with employment for example, they would be prevented from going there. The "snakeheads" benefit through the repayment of the usurious debt; not through low-wage (or no-wage, in the case of slavery), labour.
- 29 Dr. xxxxxx, a professor of criminal justice at xxxxx University and respected expert on illegal smuggling of Chinese, notes the confinement of a number of the boat arrivals in "safe houses" immediately upon their arrival in New York City, and their abuse there. The arrivals are confined until they can pay their passage, usually a matter of days. Those who chronically cannot pay may end up in massage parlours or other forced labour to the snakeheads' debt collectors. The minority of migrants who are not able to pay their passage fee, then, would appear to be criminally exploited. They may be victims of trafficking. The others, however, I find are not.
- 30 There is no clear evidence as to the down payment paid by the claimant's parents in China, or the outstanding debt to the snakeheads for passage to Canada, or what would be payable if the claimant were deported to China. The claimant was not tricked into going, as he went willingly (whether or not legally able to make the decision). There is no evidence the claimant's parents were coerced or deceived into sending him, or somehow forced to offer him up to the snakeheads. There is insufficient evidence to conclude the claimant was a victim of trafficking. I find that he was a victim of smuggling.
 - a) Location
 - Vancouver
 - b) How did the case(s) come to the attention of authorities
 - Interception of migrant boat landed off shores of British Columbia
 - c) law enforcement response and investigative methods
 - Interception, detention, extended interview
 - d) characteristics of victims
 - Chinese (Fujian)
 - youth
 - e) characteristics of deception/coercion
 - debt incurred for travel
 - f) characteristics of exploitation
 - n/a
 - g) prosecutorial and judicial determinations on the status of victims
 - not trafficked
 - h) Other organizations involved
 - n/a

3) A.F.W. (Re), [2001] C.R.D.D. No. 215

[Minor from China. Family sent child to North America through payment to "Snakeheads." Claimant argued he was vulnerable to being preyed upon by snakeheads should he be returned to China. Claimant had arrived by boat off coast of Vancouver with several other migrants in 1999.]

- The claimant alleges he had no choice but to board the boat for the USA when his father so decided, due to the culture of filial piety. This is inconsistent with the assertive young man apparent from the claimant's other testimony, that he quit his job in China without consulting his father, who was very angry. In any event, the claimant was inconsistent regarding his consent to departure. In his testimony at the first hearing, the claimant said it was his own idea to come to North America. In the second hearing, he stated it was his father's idea. He testified that he did not mention his father in the earlier testimony, as he did not want to get him into trouble. The port of entry notes however, record the claimant's statements that his father paid for his travel and told him about the trip only two hours prior to departure.
- 33 There is no clear evidence as to the down payment paid by the claimant's parents in China, or the outstanding debt to the snakeheads for passage to Canada, or what would be payable if the claimant were deported to China. The claimant was not tricked into going, as he went willingly (whether or not legally able to make the decision). There is no evidence the claimant's parents were coerced or deceived into sending him, or somehow forced to offer him up to the snakeheads. There is insufficient evidence to conclude the claimant was a victim of trafficking. We find that he was a victim of smuggling.
 - a) Location
 - Vancouver
 - b) How did the case(s) come to the attention of authorities
 - Interception of migrant boat landed off shores of British Columbia
 - c) law enforcement response and investigative methods
 - Interception, detention, extended interview
 - d) characteristics of victims
 - Chinese (Fujian)
 - youth
 - e) characteristics of deception/coercion
 - debt incurred for travel
 - f) characteristics of exploitation
 - n/a
 - g) prosecutorial and judicial determinations on the status of victims
 - not trafficked
 - h) Other organizations involved
 - n/a

4) Re T.H.K. [2001] C.R.D.D. No. 30

- 8 In our view, the claimant has the history and demeanour of a severely-abused child, abuse much beyond the range of the typical claimant's experience. He testified that his father subjected him to physical, emotional, and psychological degradation over a long period of time when he was young. The father's actions appear to have been designed to create an unquestioning, obedient son. But the claimant has emerged from the experience having only the weakest conception of his own individuality and interests. Only under the protection of Ministry caregivers has he attained the strength of will to resist his parents' ongoing wish that he reconnect with the snakeheads and continue on to America, as they originally planned.
- 30 The claimant testified that the idea of coming to Canada was not his own, but his parents' solution to his having reached employable age and their desire to augment their income. He stated that he was in Canada for economic reasons -- to find a good job. However, when the panel probed that statement, the reason he wanted a good job was so that he could remit money to his parents.
- 31 Involuntary trafficking is also a violation of the security of the person. It is specifically banned by Article 9 of the UN Declaration of the Rights of the Child, which says: "[The child] shall not be the subject of traffic, in any form." Most claimants are not trafficked in the sense that they are chronologically and emotionally of an age to have participated in the choice to come to Canada and have in point of fact chosen to come here. But this claimant was an involuntary and passive figure in events, a consequence of his father's brutal treatment.
- 32 Now, far from his parents, and with the social worker's daily assistance, he has arrived at a point where he has distinguished a very few of his own interests. With the social worker's assistance, he does not want to rejoin with the snakeheads, possibly to be drawn into dangerous and illegal activities, should his parents decide not to pay for his passage.
- 33 The claimant's social worker has corroborated the snakeheads' attempts to reconnect with him. She says that she also resisted their efforts to move him back into their smuggling operation.
- 34 The panel finds that both the child abuse and involuntary human smuggling constitute persecution. Future Persecution
- 35 The claimant believes that, if he is returned to China, he will be re-trafficked. He credibly argued that he does not believe he can hold out against his parents' combined efforts to send him to the U.S.A. again. His mother told him by phone that her whole life depended on him. Our interpretation of that statement is that his mother regards him as the source of the family's future income. Given that the snakeheads have tried to reach him at his Ministry house and that the parents wish him to rejoin the snakeheads, we believe that Canada's protection is all that stands between him and falling into the hands of the traffickers, on return to China.
 - a) Location
 - British Columbia

- b) How did the case(s) come to the attention of authorities
 - Claimant made refugee claim
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - male
 - Chinese
 - youth
- e) characteristics of deception/coercion
 - abuse as young child, forced by parents to engage with Snakehead group
 - fear of re-trafficking
- f) characteristics of exploitation
 - n/a
- g) prosecutorial and judicial determinations on the status of victims
 - trafficked
- h) Other organizations involved
 - n/a

5) D.U.Z. (Re) [2006] R.P.D.D. No. 15

- 3 In her PIF, the claimant alleges that she was drawn into a fraudulent scheme whereby applicants for a course in makeup artistry were lured to Vancouver from Mexico, only to be used as domestic help by the owners of the concerned school. She maintains that she was kept in service for two-and-a-half months after which she escaped and reported her captors to Canadian Immigration authorities. She fears retribution from the Mexican travel agent if she returns to Mexico.
- 6 Counsel argued that the fraud appears to be practiced upon women, which the panel believes may be a correct estimation. As such, counsel suggested, the Gender Guidelines apply. The panel has acceded to counsel and considered the claim in light of those guidelines, but finds that considering the guidelines does not impact the panel's finding.
- Counsel also argued that what had occurred was an instance of human trafficking by organized crime. While the fraudulent arrangement was "organized" and perhaps four or five people (if the school secretary and driver are counted in) were involved, the panel finds the arrangement to have been local in nature and small-scale in extent. The fraud does not appear to have involved a "ring," "family" "triad," "mafia" or any other trans-national criminal or human-trafficking syndicate. The claimant testified that she was not physically or sexually abused. What she described, in the panel's view, was an arrangement to import free Mexican domestic help, which at least some of the participants, as witnessed by the testimony of CBSA Enforcement Officer Jack Avery, willingly agreed to. The claimant states that the xxxxx xxxxx fraudulently characterized it as "home-stay."
- 8 The panel notes that the claimant did not agree to the arrangement. But it also notes that the claimant was not locked in the home and that for many hours of the day the two xxxxx xxxxx were at work, leaving the claimant free to leave if she so desired. The panel notes that the

claimant did leave the home on numerous occasions and visited medical staff and community workers without telling anyone of her alleged plight. She did not, she testified, because she felt fear and shame. Asked for more details, she could not supply them.

- 9 The claimant states in her PIF that after two weeks in Vancouver, having determined to "go and look for help," she made her way to the Hispanic Community Centre. But having found a sympathetic source of help, including people she regarded as old friends, she merely "told the people at the Hispanic Community Centre that "I wanted to study English so they asked for all the information and I went back to xxxxx xxxxx house." xxxxx "did not like the idea but she ... agreed to let me study English." The panel asked the claimant several times why she returned and why she did not ask for help, but the claimant answered evasively. The panel finds that this failure to tell the Hispanic Community Centre that she needed assistance and her return to the xxxxx residence contradict the claimant's expressions of fear.
- 10 The panel also notes that the claimant spoke to her children by long-distance telephone without alerting them to what was transpiring. When asked why she did not do so, the claimant variously said that she did not want to worry the children, that she did not want to involve them, and that they were too young. The panel notes that her eldest son is forty years old. The panel asked the claimant how she could expect anyone to help her if she did not tell anyone, to which question the claimant responded by remaining silent.
- 11 The xxxxx did not force the claimant to surrender her travel documents. At one point, xxxxx said that she would pay for medical insurance for the claimant if the claimant surrendered her documents. But the claimant refused and nothing more was said or done about the matter.
- 12 Soon after this incident, xxxxx xxxxx informed the claimant that she did not need her anymore and that she was bringing a Canadian woman in to take her place.

..

- 15 In her PIF version, xxxxx xxxxx is depicted warning her not to go to Immigration or she "would be the [loser]." Given that Mr. xxxxx has had ample opportunity to be violent with her, including at the time of departure, and was not, the panel does not find this threat to point to any danger to her person or security. A year has passed without her having heard that anyone in Vancouver has made inquiries about her. The panel finds that the matter is, to all intents and purposes, closed from the standpoint of the xxxxx.
- 16 The claimant said that xxxxx, the Mexican travel agent who had set up the fraud, had her daughter's phone number and had actually phoned her daughter more than a year ago because the claimant had failed to make a second payment of \$400. ... A year has passed since this conversation and xxxxx has made no attempt to phone the claimant's daughter to see if the claimant has returned to Mexico.
- Meanwhile, Enforcement Officer Avery has testified that the scheme was essentially work without pay, that Canadian Immigration may investigate the xxxxx xxxxx school in the future, but that the scheme will not be reported to the Mexican authorities.

- 19 Officer Avery reported visiting the xxxxx residence and being met by two Mexican women. When he questioned them about their status in Canada, they phoned the xxxxx and warned them of the presence of the officers in the home. Far from wanting to be freed, the two women, according to Officer Avery, appeared well-coached and cooperated with the xxxxx.
- 20 The panel finds that the claimant's situation in Vancouver does not constitute "trafficking in persons."

The claimant was free to come and go from the xxxxx residence. No one in the residence attempted to exert control over her. While Mr. xxxxx is said to have shouted at her over her work, she related no attempt by the xxxxx to use the threat of force to make her remain at the house. In fact, she testified to the opposite; namely, that the xxxxx xxxxx would let her go because they were not satisfied with her work. While the xxxxx xxxxx made an effort to take possession of the claimant's travel documents, the claimant refused and the matter was dropped.

- a) Location
 - Vancouver
- b) How did the case(s) come to the attention of authorities
 - Refugee Claim made by claimant
- c) law enforcement response and investigative methods
 - investigation through CBSA officer interviews, no other information available
- d) characteristics of victims
 - female
 - Mexican
- e) characteristics of deception/coercion
 - told would be working in cosmetology
 - required to work as domestic help
 - lack of language skills
- f) characteristics of exploitation
 - worked entirely without pay
- g) prosecutorial and judicial determinations on the status of victims
 - not trafficked
- h) Other organizations involved
 - Hispanic Centre, Vancouver

Media Reported Cases

 $\underline{http://www.canada.com/montrealgazette/news/story.html?id=7551a78e-cf3d-4bd7-8872-b1bd9f9a9a96\&k=52157}$

6) The RCMP held them up to the media in May as the first to be charged in Canada with human trafficking. Nichan Manoukian and Manoudshag Saryboyadjian were keeping their Ethiopian domestic worker as a slave, forcing her to work non-stop, denying her access to her identity papers and preventing her from leaving the home or using the telephone, the RCMP announced. But today, crown prosecutor Isabelle Briand dropped the charges of

trafficking in persons, receiving material benefits from it and withholding travel or identity documents, based "on new facts" she received. ... Senait Tafesse Manaye, 29, worked for the couple for eight years, first in Lebanon and then in Canada where they moved in 2004 with their four children. They brought Manaye along with them, even though they say they didn't need her anymore, because she had become part of the family. The couple's lawyer, Frank Pappas, said "even Inspector Clouseau" could have done a better investigation than the RCMP, who didn't interview the couple's neighbours, or the clerk at the depanneur where the domestic bought phone cards to call overseas. "Had the RCMP investigated properly from the outset, they would have realized that her assertion ... that she was a prisoner was completely false," Pappas said. ... RCMP spokesman Corporal Luc Bessette said the force presented its evidence to the Crown and it was up to them to proceed or not. He wouldn't comment on the demand for a public apology. But Pappas said the whole thing was a scam in order for Manaye to avoid deportation. "And she wouldn't have been deported to Côte d'Azur," he said. "She'd be sent back to Ethiopia." He said that within a week of the allegations being made, the woman had received her refugee status. The drama began almost a year ago when Laval police got an anonymous tip on Jan. 17, 2006, that the housekeeper was practically enslaved. The tip was given to the RCMP on Jan. 25 and a search warrant was issued for the Laval home. Manaye was removed immediately and placed in a shelter. Manoukian and his wife were devastated, and today said they believe Manaye must have been forced by someone else to make up her story. ... They said they have no idea where she is now, and their requests to the RCMP to speak to her were denied. At their May 18 news conference, the RCMP said Manaye was in Canada illegally after her temporary resident visa expired and the couple used the threat of deportation if she talked to anyone about her situation.

- a) Location
 - Montreal
- b) How did the case(s) come to the attention of authorities
 - Victim made complaint to police
- c) law enforcement response and investigative methods
 - Interviews, other investigation methods n/a claim from suspects' lawyer that insufficient interviews were conducted.
- d) characteristics of victims
 - Ethiopian
 - Live-in Caregiver
 - female
- e) characteristics of deception/coercion
 - alleged: threats of deportation after expiry of temporary visa
 - no live-in-caregiver program visa application
- f) characteristics of exploitation
 - alleged: excessive working hours, isolation, inability to communicate with outside public
- g) prosecutorial and judicial determinations on the status of victims
 - charges dropped insufficient evidence of trafficking or other IRPA offences
- h) Other organizations involved
 - n/a

http://www.cbc.ca/news/canada/british-columbia/story/2011/06/08/bc-vancouver-human-smuggling.html

7) A Vancouver couple is facing human smuggling charges for allegedly bringing a Filipino servant from Hong Kong to Canada illegally and forcing her to work in domestic servitude for several years, say police. Last month, the two Vancouver residents were each charged with organizing illegal entry into Canada, and organizing entry into Canada by illegal means, under the Immigration and Refugee Protection Act. The Filipino woman was discovered by police after officers were called to the couple's home on the 3100 block of Grant Street for an unrelated matter, according to Vancouver police Const. Jana McGuinness. Once inside the officers discovered the 38-year-old woman, who had been living illegally in the country since 2008 on an expired visitor visa and working in what police called "domestic servitude." The woman "had allegedly been forced to work seven days per week, at all hours of the day and night, caring for the family," said McGuinness.

"Her passport had allegedly been confiscated after she entered Canada, and she was afraid to go to the authorities for fear of deportation," said McGuinness, who noted such human smuggling charges are rare. "This is one of the first that Vancouver police have dealt with. It's the first time I believe we've laid charges similar to this at least in a very long time." The couple are scheduled to appear in court on June 22. The Filipino woman continues to reside in Canada, said police.

- a) Location
 - Vancouver
- b) How did the case(s) come to the attention of authorities
 - Law enforcement called to location on unrelated matter
- c) law enforcement response and investigative methods
 - investigation and arrest
- d) characteristics of victims
 - female
 - Filipino recruited through Hong Kong
 - 38
 - Visitor visa working illegally
- e) characteristics of deception/coercion
 - illegal status
 - fear of deportation
- f) characteristics of exploitation
 - "domestic servitude"
- g) prosecutorial and judicial determinations on the status of victims
 - human smuggling
- h) Other organizations involved
 - n/a

http://www.vancouverobserver.com/politics/news/2011/05/16/enslaved-west-vancouver-resident-african-woman-flees-shelter

- 8) RCMP have charged a West Vancouver woman with human trafficking, alleging she lured a young African woman to Canada and then forced her to work up to 18 hours a day as a domestic servant. Fifty-five-year-old Mumtaz Ladha has been charged with one count of human smuggling under the Immigration and Refugee Protection Act. Police say the 21-year-old victim was promised a job in a hair salon, but upon her arrival in 2008 had her passport taken away, and had to work seven days a week without pay before she finally fled to a women's shelter. When the victim arrived in Canada, she was forced to work in Ladha's West Vancouver home for 18 hours a day, seven days a week. The victim received no pay, and the suspect has possession of her passport, RCMP said in a news release. In June 2009, after one year of living in a state of fear and working excessive hours with little to no freedom, the victim was able to get to a woman's shelter. Police said several different agencies are helping the young woman get the help she needs to recover.
 - a) Location
 - Vancouver
 - b) How did the case(s) come to the attention of authorities
 - Fled to women's shelter
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - African
 - female
 - e) characteristics of deception/coercion
 - promise of work in hair Salon
 - f) characteristics of exploitation
 - no pay
 - confiscated passport
 - excessive hours 18 hours per day, 7 days per week
 - g) prosecutorial and judicial determinations on the status of victims
 - trafficking
 - h) Other organizations involved
 - Women's shelter

From Literature Review – Data on Incidents

9) CIC and CBSA have referred cases of labour exploitation in the Calgary and Edmonton areas to the RCMP. Most of these cases came to light through complaints from members of the public, Canadian employers or the workers themselves. Disputes stemmed from agencies

charging temporary foreign workers fees for placement services and advising temporary foreign workers with misleading employment terms and immigration prospects. 123

- a) Location
 - Calgary/Edmonton
- b) How did the case(s) come to the attention of authorities
 - Complaints from public, employers or workers to CIC/CBSA
 - CIC/CBSA referred to law enforcement
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - foreign workers
- e) characteristics of deception/coercion
 - agencies misleading workers with employment terms and immigration prospects
- f) characteristics of exploitation
 - agencies charging fees for placement
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- 10) Twenty-four clients reported no job existing or jobs disappearing upon or shortly after their arrival. Two clients had been fired after suffering workplace injuries. 124
 - a) Location
 - Alberta
 - b) How did the case(s) come to the attention of authorities
 - Worker reported to TFW Advocate
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - foreign workers
 - e) characteristics of deception/coercion
 - no job or disappearing job shortly on arrival
 - f) characteristics of exploitation
 - two cases workers fired after suffering injuries
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a
 - h) Other organizations involved

¹²³ RCMP, Threat Assessment, p.35

Alberta Federation of Labour, *Temporary Foreign Workers: Alberta's Disposable Workforce*, (2007) accessed Feb 5, 2013 from http://www.afl.org/index.php/View-document/19-Temporary-Foreign-Workers-Alberta-s-Disposable-Workforce.html, p.10.

TFWA

- 11) In cases involving brokers, 11 clients arrived in Canada only to find that jobs did not exist for them. An additional six clients faced layoffs very shortly after arriving in Canada. The majority of the clients brought in by brokers report the broker convinced them to come to Canada by promising permanent immigration. Some were told this was a step toward achieving their permanent status, which is contrary to the rules of the TFW program. ¹²⁵
 - a) Location
 - Alberta
 - b) How did the case(s) come to the attention of authorities
 - Worker reported to TFW Advocate
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - foreign workers
 - e) characteristics of deception/coercion
 - no job upon arrival
 - layoffs shortly after arrival
 - promises of permanent immigration
 - f) characteristics of exploitation
 - n/a
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a
 - h) Other organizations involved
 - TFWA
- 12) Of the 123 cases handled by the [Temporary Foreign Worker] Advocate, 89 were brought to Canada by labour "brokers." Most of these clients paid the broker a fee ranging anywhere from approximately \$3,000 to approximately \$10,000 this is in addition to any fee paid by the employer to the broker. ... One broker had payroll deductions for his fees stopped by order of Service Alberta and is now suing at least one TFW for those fees, calling them "settlement services." In this case, the broker charged \$6,000 to the TFW who is earning \$11.74 an hour. In many cases in the past, the TFW continued to be the "employee" of the broker, even once in Canada, allowing the broker to continue to reap a portion of their wages. 126
 - a) Location
 - Alberta

¹²⁵ Alberta Federation of Labour, *Disposable Workforce*, p.11

¹²⁶Alberta Federation of Labour, *Disposable Workforce*, p.11

- b) How did the case(s) come to the attention of authorities
 - Worker reported to TFW Advocate
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - foreign workers
- e) characteristics of deception/coercion
 - payroll deductions excessive in comparison to earnings.
- f) characteristics of exploitation
 - fees charged for recruitment between \$3,000 and \$10,000
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - TFWA
- 13) "For example, we are working with someone where the recruiter placed person in a job for \$8,000 that they didn't have an LMO for. The TFW got deported, and that's great for the recruiter. They can just go get another one and make another \$8,000." 127
 - a) Location
 - Alberta
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - Foreign Worker
 - e) characteristics of deception/coercion
 - recruited for a job where no LMO existed
 - f) characteristics of exploitation
 - no job deported after payment of fees
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a
 - h) Other organizations involved
 - n/a

14) Two men came from Central America to work in construction in Alberta. They paid 4,000 each for recruitment fees. The money was deducted at the rate of \$500 per pay cheque. They had been promised a rate of pay of \$22 but were effectively paid about \$16 per hour. After

¹²⁷ Quote from participant in Alberta Federation of Labour, *The AFL Roundtable on Temporary Foreign Workers*, (2010) accessed March 13, 2013 from http://www.afl.org/index.php/View-document/267-2010-Dec-16-Report-on-Temporary-Foreign-Workers-in-Alberta.html, p.15

finding out that the contractor was paying their employer on the basis of \$24 per hour, the men complained. They were fired. 128

- a) Location
 - Alberta
- b) How did the case(s) come to the attention of authorities
 - Worker reported to TFW Advocate
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - Central American
 - Foreign workers
 - Male
- e) characteristics of deception/coercion
 - paid \$4000 recruitment fees
 - complained to employer about deductions, fire
- f) characteristics of exploitation
 - •
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - TFWA
- 15) Fourteen men were brought from India to work for a large non-union contractor. These men were welders and pipefitters with substantial middle east oil experience. Typically work in the Middle East means that all accommodation and transportation is paid for and the workers were told that the job in Canada would also provide airfare and accommodation. Literally on the way to the airport, they were told that they would have to reimburse the company for the airfare and then found out when they arrived in Canada that they had to pay for their accommodation. Shortly after their arrival in Canada 10 of the workers were terminated, allegedly for not being up to Canadian standards. This slur on their ability was devastating for these men. ... With the assistance of the Plumbers and Pipefitters Union Local 488 the Advocate was able to place the ten men with a unionized construction company. 129
 - a) Location
 - Alberta
 - b) How did the case(s) come to the attention of authorities
 - Reported to TFW Advocate
 - c) law enforcement response and investigative methods
 - n/a

¹²⁸ Alberta Federation of Labour, *Disposable Workforce*, p.8

¹²⁹ Alberta Federation of Labour, *Disposable Workforce*, p.9

- d) characteristics of victims
 - Indian
 - Foreign workers
 - Welders/pipefitters significant experience
 - Male
- e) characteristics of deception/coercion
 - told that the job in Canada would also provide airfare and accommodation
 - on the way to the airport, they were told that they would have to reimburse the company for the airfare and then found out when they arrived in Canada that they had to pay for their accommodation
 - Shortly after their arrival in Canada 10 of the workers were terminated
- f) characteristics of exploitation
 - n/a
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Plumbers and Pipefitters Union Local 488
 - TFWA
- 16) In one case, a TFW was given eviction notice after refusing to pay the broker his placement fees. One group of clients arrived to find the employer placed them in a house to be shared with 4 to 6 other men. They were charged \$29 per day each. And then they had to pay their landlord another \$10 per day to transport them to the worksite which just happened to be on the other side of the city. This is \$5,220 a month in rent, plus another \$1,200 for transportation for six workers in one house. They complained about the amount of rent and having to spend two hours a day just getting to and from work. The employer did nothing. In another case eight TFWs were placed in one 3 bedroom house and each person was deducted \$250 biweekly (\$4,000 per month); in another, 14 TFWs were placed in one house paying rent of \$320 per month (\$4,480).
 - a) Location
 - Alberta
 - b) How did the case(s) come to the attention of authorities
 - Worker reported to TFW Advocate
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - male
 - e) characteristics of deception/coercion
 - n/a
 - f) characteristics of exploitation

¹³⁰ Alberta Federation of Labour, *Disposable Workforce*, p.11

- eviction notice after refusing to pay placement fees (housing)
- housing shared with 4 to 6 other men, other case eight workers in 3 bedroom house, other case 14 workers one house (housing)
- charged \$29 per day accommodation (housing)
- charged \$10 per day to transport to worksite (fees)
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - TFWA
- 17) A labour broker recruited many chefs from Fiji to work in places such as Smitty's Restaurants. The broker presented contracts of employment promising immigration, pay raises, etc. and when the workers arrived, their pay of \$11.74 per hour was deducted for recruitment fees of \$6,000. The workers thought they were coming to work as chefs and had not realized they would be "line cooks." (Even then, many of them found themselves washing dishes and sweeping floors for much of their shifts.) When the government of Alberta issued an Order stating the pay deductions were contrary to the Fair Trading Act, the broker started hounding many of the workers to sign contracts to pay the \$6,000 for "settlement services." At least one of the TFWs has now been sued by the broker for this fee. ¹³¹
 - a) Location
 - Alberta
 - b) How did the case(s) come to the attention of authorities
 - Worker Reported to TFW Advocate
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - Fiji
 - Foreign workers
 - e) characteristics of deception/coercion
 - recruitment fees \$6000
 - told going to be working as chefs
 - f) characteristics of exploitation
 - job significantly different line cooks, washing dishes, sweeping floors
 - recruitment fees deducted from pay
 - once fees deemed illegal, broker hounded workers to sign new contract indicating fees were for "settlement"
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a

h) Other organizations involved

¹³¹ Alberta Federation of Labour, *Disposable Workforce*, p. 11

TFWA

- 18) In 2005, two Filpina women arrived at a home in this affluent neighbourhood as part of the federal Live-In Caregiver Program, ... The women's employer forced them to work excessive hours, took away their immigration papers, and severely mistreated them. In addition, they lacked a proper place to sleep, feared for their safety, and were constantly harassed by their employer, and are believed to have been sexually abused by him. ... With no options in Canada, the two women returned to the Philippines. 132
 - a) Location
 - Vancouver
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - female
 - live in caregiver
 - Philippine
 - e) characteristics of deception/coercion
 - n/a
 - f) characteristics of exploitation
 - excessive hours
 - lacked proper place to sleep
 - took away immigration papers)
 - feared for safety
 - harassed
 - sexual abuse unsubstantiated
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a
 - h) Other organizations involved
 - n/a

19) In December 2005 ... Javier, a [seasonal agricultural] worker ...had his second full stroke, which was provoked by a workplace accident, something that may have been prevented or minimized had he had access to a CAT scan after his first stroke only days earlier. But because he was a temporary worker, B.C. still had not given him MSP provincial health coverage, so he did not get the appropriate medical attention he needed. His employer... was prepared to send him back as he was, after the first stroke, partially paralyzed at that moment. Only because we stayed with him was he able to get medical attention. However, he is now

¹³² Benjamin Perrin, *Invisible Chains* (Toronto: Penguin Group, 2010), p.172

back in Mexico, permanently disabled for life, without the proper medical attention or financial support. 133

- a) Location
 - BC
- b) How did the case(s) come to the attention of authorities
 - n/a
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - SAWP worker
 - Mexican
 - male
- e) characteristics of deception/coercion
 - employer prepared to repatriate without medical attention
- f) characteristics of exploitation
 - no medical attention after workplace injury
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Justicia for Migrant Workers
- 20) Participants confirmed that other construction workers associated with residential building in anticipation of the Olympic games reported deductions for "labour broker" fees, which were simply categorized as "miscellaneous" settlement fees on their contracts. These fees were up to \$5,000 in some cases, with deductions of \$300 per paycheque. ¹³⁴
 - a) Location
 - BC
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - construction trades
 - foreign workers

¹³³ Erika Fuchs, Justicia for Migrant Workers - British Columbia, *Committee Evidence*, Meeting No. 18, March 31, 2008, 15:55, reported in Standing Committee on the Legislative Assembly, Legislative Assembly of Ontario, *Official Report of Debates*, 39th Parliament, 1st Session M-234 (2 December 2009), p.41. (Ontario Standing Committee)

¹³⁴ Key informant data, gathered in reference to internal policy paper *Trafficking and the 2010 Olympics:* prepared for Senator Mobina Jaffer, June 2009. (Jaffer Report)

- e) characteristics of deception/coercion
 - recruitment fees up to \$5,000 as "settlement fees" or "miscellaneous"
- f) characteristics of exploitation
 - deductions of \$300 per paycheque
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- One participant spoke of individuals who had previously been working in Dubai who were recruited to come to Canada to work in a fabricating company. \$10,000 was charged in Dubai and then they were to continue paying another \$10,000 through monthly installments. When they arrived they were told there was no job, but were offered jobs at half the pay, which would leave them with very little money after the debt was paid. Other participants spoke of cases were contracts were signed on the plane to Canada and there were discrepancies between the English and the Spanish translations with respect to fees. Deductions were made at \$500 per paycheque. These workers had work permits to work in BC but were moved to Calgary where they did not have work permits to work. They were not paid according to their expectations or in accordance with the Labour Market Opinions issued. ¹³⁵
 - a) Location
 - Alberta/BC
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - foreign workers
 - recruited in Dubai
 - e) characteristics of deception/coercion
 - upon arrival, no job. New job offered at half pay
 - moved to BC where no work permits exist
 - f) characteristics of exploitation
 - deductions of \$500 per paycheque very little money left after deductions
 - not paid according to LMO
 - g) prosecutorial and judicial determinations on the status of victims
 - n/2
 - h) Other organizations involved
 - n/a

- 22) A case in Quebec in which a live-in caregiver was mistreated and passed back and forth among multiple families until she eventually was abandoned in an emergency room after having suffered a stroke. 136
 - a) Location
 - Quebec
 - b) How did the case(s) come to the attention of authorities
 - Hospital
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - foreign worker
 - live in caregiver
 - female
 - e) characteristics of deception/coercion
 - n/a
 - f) characteristics of exploitation
 - "mistreated"
 - "passed back and forth among multiple families
 - Abandoned in emergency room
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a
 - h) Other organizations involved
 - n/a

23) Alicia is a widow whose husband had chemicals spill on him at work in an Ontario greenhouse. The employer would not even allow him to take a shower after the spill; much less take him for needed medical follow-up. Based on this chemical spill, he had complications from which he later died. Alicia received no compensation from either the Mexican or Canadian government for this.

¹³⁶ Perrin, *Invisible Chains*, p.173.

¹³⁷ Erika Fuchs, Justicia for Migrant Workers - British Columbia, *Committee Evidence*, Meeting No. 18, March 31, 2008, 15:55, in Standing Committee p.41.

- a) Location
 - Ontario
- b) How did the case(s) come to the attention of authorities
 - n/a
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - SAWP worker
 - Mexican
 - male
- e) characteristics of deception/coercion
 - n/a
- f) characteristics of exploitation
 - no medical attention allowed by employer after workplace accident. Death caused by accident
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Justicia for Migrant Workers

24) The "Elmvale 11":

Oakville labour supply company ComFact anticipated a federal contract to supply labour to build two ocean-going icebreakers. ComFact owner Robert McAllister said he decided to "bank" a workforce and, after obtaining LMOs for more than a hundred workers, sent the paperwork to the Philippines. Two local recruiting companies in Manila, Cete Millenium, and Sanlee, ran advertisements for jobs with McAllister's company. Canilang and the other workers signed up. They underwent medical exams, upgraded their professional skills and took English lessons – at their own expense. When they got word they had been approved, the men quit their jobs. Some sold everything they owned and borrowed at loan-shark rates to make the \$12,000 payments to the recruiter for an LMO and to buy plane tickets. They said goodbye to their families and flew to Toronto on June 29, 2007. What they didn't know was that the Canadian government had scrapped the icebreaker contract and that ComFact had no jobs for them. McAllister said his LMOs, which circulated like hard currency in Manila, were improperly used to get the Elmvale 11 into Canada. ...

When Canilang and the other workers arrived at Pearson International Airport, they were ... met by Susan Teng, a woman who said she worked for ComFact but in reality was part of Cete Millenium, the recruiting company in Manila. ... Teng jammed the men into two taxis and ferried them to a house in Scarborough near the Pacific Mall. Eight arrived that day; three came a few days later. Settling them into two sparse rooms in the basement, Teng demanded they turn over their passports and work permits. She removed all telephones and warned them not to try to phone relatives. "We slept four people to a bed," Canilang recalled. "It was awful."

A week later, Teng told them ComFact had backed out of the deal. She said a new company had work, but they would have to relocate. In an interview, ComFact boss McAllister said this was

untrue. He said he had no idea these workers came to Canada using the LMOs he had obtained. He later flew to Manila and told local recruiters to stop using the ComFact LMOs.

The workers were picked up at the house by Susan Teng and another man, Imtazur Rahman. Rahman said he was a lawyer and was there to help them. A Star investigation ... found labour recruiter Rahman is a twice-bankrupt businessman whose law degree is bogus. The drive north to Elmvale took two hours. Teng and Rahman handed over their human cargo to labour boss Bob De Rosa at an abandoned green and white farmhouse on a country road outside of Elmvale.

"This is your new home boys," De Rosa said. Ronald Galang couldn't believe his eyes. "Outside, the grass was five feet tall. Inside there was mud on the floor everywhere. We had to spend a week cleaning it up." Four used mattresses on the floor in two rooms in the attic, four more in the living room. The sheets and towels were dirty. There was no food in the fridge.

De Rosa put the men to work at various tasks. They would be paid eventually, he told them. The De Rosa family has many business interests, including real estate, construction, and some production facilities. They also raise buffalo for food. ...

For the Filipino men working last summer for Bob De Rosa, a typical day started at 5:15 a.m. The Star interviewed the Filipino workers and read affidavits they prepared at the request of their embassy, which called in the RCMP. "They were living in deplorable conditions," said Frank Luna, the labour attaché who took part in the rescue and prepared a report for the Filipino government. Welder Ronald Galang worked a 17-day stretch, splitting his time between an Orillia mechanical company and Aurora Beverage, owned by the De Rosas. Worker Narciso Nicdao's affidavit states his time sheets from last summer show he did a 24-hour shift "cleaning beer cage" at Aurora Beverage. Some of the Elmvale 11 worked at Moonstone Mechanical (not a De Rosa company). While workers say they were not paid, Moonstone's Ken Fraser told the Star he paid De Rosa for the services of two men he subcontracted to him. "All I know is that I paid off all my bills, if they didn't get paid I guess they have to go after Bob," Fraser said.

. . .

At the Elmvale home, food drop-offs were intermittent. One day, De Rosa brought pasta and tomatoes. Another day, buffalo meat. Two weeks into their harsh new life in Canada – broke, depressed and anxious to contact their families in the Philippines – they wandered across the road to a neighbour's house. The farmer, a Barrie city cop, took pity on them, took two into town, bought them soft drinks and a meal, and gave them money to buy phone cards. "They were strangers in this country, isolated, without a phone," Sgt. George Cabral said. ... They were never paid their agreed wages. After many complaints, some received a pittance, always in cash. Plumber Romero Bonete, for example, was paid only \$200 by De Rosa. Others received \$900 for six weeks of labour – far below the amount agreed upon.

On Aug. 23, six weeks after they arrived, they muscled up the courage to tell De Rosa they weren't going to work for him anymore. "Bob de Rosa was so angry with us," Galang recalled. "He said, `I am warning you for the last time,' then took off saying he was going to sign our

deportation order." Two hours later, Filipino consulate officials arrived at the farm and took the men out. ...

But at least he and the others are in Canada. They have jobs, they have contracts, and they have a future. ... In the wake of the trafficking scam, the Filipino government closed down Cete Millenium and Sanlee recruitment agencies. After months of investigations by the RCMP and the Canada Border Services Agency, no charges have been laid. ... "The way exploitation is phrased in the *Criminal Code*, they have to fear for their safety or their lives," said RCMP Const. Julie Meeks, who conducted the initial investigation. In her opinion, Meeks said "they just didn't have that fear." Edwin Canilang, for one hasn't given up on getting the money he believes is owed to him by De Rosa. "Even slaves," he says, "have some rights." 138

- a) Location
 - Ontario
- b) How did the case(s) come to the attention of authorities
 - Employee complaint
- c) law enforcement response and investigative methods
 - n/a investigative methods
 - determination insufficient evidence of trafficking under *Criminal Code*, insufficient "fear"
- d) characteristics of victims
 - foreign workers
- e) characteristics of deception/coercion
 - arranged work not available
 - other work offered at half pay
- f) characteristics of exploitation
 - different, menial work
 - housing conditions
 - not paid
- g) prosecutorial and judicial determinations on the status of victims
 - n/a

h) Other organizations involved

- Philippine consulate
- A woman brought on SAWP program had her leg crushed by a tractor. She was required to stay in the portables. Was given information she should return. An NGO group got onto the grounds and advised her she was not required to leave and could seek assistance in Canada. The NGO was threatened and driven from the grounds but was able to take the woman with them, informed Mexican consulate and police of her whereabouts and reasons

 138 http://www.thestar.com/news/investigations/2008/08/30/exploited_workers_canadas_slave_trade.html. See also Perrin, *Invisible Chains*, pp.175-176.

for her removal from the farm. Employer informed CBSA that she was AWOL, and called police. Woman returned home but did not get in contact with CBSA prior to leaving so was registered as being illegally in Canada. Barred from program for 2 years and 2 women who assisted her were not brought back to work the following year by the employer. ¹³⁹

- a) Location
 - Ontario
- b) How did the case(s) come to the attention of authorities
 - Employer informed Mexican consulate and police no longer employed and removed from farm/program
- c) law enforcement response and investigative methods
 - registered worker as illegally in Canada result in barring worker from SAWP for 2 years
- d) characteristics of victims
 - SAWP worker
 - female
- e) characteristics of deception/coercion
 - told to return home after workplace injury
- f) characteristics of exploitation
 - after advised she was not leaving, was required to stay in portables
 - NGO assisting worker was threatened
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - NGO (unspecified)

26) "Rol-Land" in Halton: The labourers were not brought to the farm through the SAWP program but were simply recruited as Temporary Foreign Workers. However, they were paid as SAWP workers, had meals and accommodation deducted and significant amounts for work clothes and transportation. They were paid \$300 each paycheque after all deductions. Upon the sudden declaration of bankruptcy of the company, the workers were evicted and left with little money, homeless and with no assistance in finding new work. Many were in debt to the recruiters who had arranged their travel such that they were unable to return without payment in hand, and the company refused to pay for return tickets for those who were able. ¹⁴⁰

¹³⁹ Key informant data– Jaffer Report.

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¹⁴⁰ Vancouver Sun: *Unfree: BC Farm labour deserves a better break*. http://www.canada.com/vancouversun/news/editorial/story.html?id=2a542bee-cc8d-494a-984c-0cc4ef10c9a5&p=2

- a) Location
 - Ontario
- b) How did the case(s) come to the attention of authorities
 - n/a
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - agricultural workers
 - Mexican
 - male
- e) characteristics of deception/coercion
 - n/a
- f) characteristics of exploitation
 - fired with no return ticket
 - evicted
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- 27) Ronell Tabafunda. "I am a Libyan caregiver. My father, who is working in the United States, paid my placement fees, amounting to US\$8,000, or \$10,000 in Canadian dollars, to a Canadian recruiter through my aunt here in Toronto, in 2004. A day after my arrival in Toronto on September 10, 2007, I was shocked to learn—when I asked the recruiter where my employer was, he told me that they moved to another location. Weeks after, the recruiter told me that my employer no longer needed me.

Since my family paid so much money to this recruiter, I continued to go to his office asking him to find me another employer. He told me that he could not find a caregiving job for me because of my gender. I was deeply disappointed and disturbed by this situation. I was helpless since I had no money to pay for another recruiter. On one of those days that I was at the recruiter's office, he introduced me to his contractor friend through the phone. The contractor offered me a job to work for his company as a drywaller. I had no experience in construction like this, but since I was desperate to survive in Toronto and to pay my debts, I accepted the job. I learned how to do drywall and other construction chores. I was paid \$10 an hour. The contractor would pay me \$1,600 monthly wages by cheque, but he also asked me to return to him \$330.48 in cash for the monthly taxes. While I was doing the construction job, I did not stop looking for a caregiving job. I also continued to bug the recruiter about his promise of a caregiving job. After several months, the recruiter had applied for a labour market opinion for a caregiving job for me, with the contractor as my employer, since he has two sons. Now my immigration status under the live-in caregiver

program is in question. I am considered to have violated the regulations of the live-in caregiver program. The recruiter lied about the caregiving job that he promised me."¹⁴¹

- a) Location
 - Ontario
- b) How did the case(s) come to the attention of authorities
 - n/a
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - Caregiver worker
 - Male
 - Libyan
- e) characteristics of deception/coercion
 - job not available on arrival
 - recruitment fee
- f) characteristics of exploitation
 - provided job not within parameters of LMO
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- 28) Hiten and Suresh, who worked under the temporary foreign worker program. They were both offered jobs in Ontario, working for a caterer under that program. The workers were told that they would have standard working conditions and that they would be provided with living quarters. Hiten and Suresh under- stood that the employer would pay each of their families in India the equivalent of C\$350 per month and that they would personally receive \$67 per month, which worked out to be \$2.60 an hour.

When Hiten and Suresh arrived in Toronto, their passports and work permits were seized and held by the employer. They joined other temporary foreign workers of the caterer, sleeping eight to a room and working over 70 hours a week. After working long days in the kitchen, the workers returned to their sleeping quarters, only to find packages of food that had to be labelled for the employer's store. The families of both these workers ended up receiving only \$700 each. 142

- a) Location
 - Ontario

¹⁴¹ Standing Committee, M-244.

¹⁴² Workers action centre. Standing Committee, M-243.

- b) How did the case(s) come to the attention of authorities
 - n/a
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - foreign workers
 - Male
 - Indian
- e) characteristics of deception/coercion
 - told workers standard working conditions and living accommodations
 - told workers employer would pay families \$350 per month and each worker \$67 per month
- f) characteristics of exploitation
 - sleeping 8 to a room
 - excessive working hours
 - families received only \$700
 - confiscated passport
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Workers Action Centre
- 29) A worker paid an agency \$10,000 to be placed in a food processing plant. More than a third of the workers at the factory were also temporary foreign workers who had paid similar fees. The employer had seized and held the workers' passports. 143
 - a) Location
 - n/a
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - foreign workers
 - food processing workers
 - e) characteristics of deception/coercion
 - \$10,000 recruitment fee
 - f) characteristics of exploitation

- employer confiscated passport
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Workers Action Centre
- 30) We worked with a worker whose employer had charged him almost \$4,000 to work under that program in his restaurant in Toronto. The worker was also charged indirect fees. The employer made him pay for the airfare. The employer also confiscated the worker's passport. The worker required police assistance to obtain his passport.
 - a) Location
 - Ontario
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - victim required police assistance to obtain passport
 - d) characteristics of victims
 - foreign worker
 - Male
 - Restaurant worker
 - e) characteristics of deception/coercion
 - \$4000 recruitment fee, transportation costs, indirect fees
 - f) characteristics of exploitation
 - confiscated passport
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a
 - h) Other organizations involved
 - Workers Action Centre
- 31) Temporary foreign workers hired to work in the health care sector paid close to \$5,000 for work but were not informed by the recruiter that their licenses would only be valid for six months. ¹⁴⁵
 - a) Location
 - n/a

¹⁴⁴ Workers action centre, Standing Committee, M-243.

¹⁴⁵ Workers action centre, Standing Committee, M-243.

- b) How did the case(s) come to the attention of authorities
 - n/a
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - foreign worker
 - Health care sector
- e) characteristics of deception/coercion
 - \$5000 recruitment fee
 - Not informed licenses only valid six months
- f) characteristics of exploitation
 - n/a
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Workers Action Centre
- 32) Saswati came to Canada to provide for her family. Her mother and father are both disabled. She is the only income earner. After hearing about potential opportunities that were available in Canada, she borrowed money from underground loan lenders. The Canadian recruiters' agent in Thailand had told her that she needed to pay \$10,000 plus 3% interest to find work in Canada. After putting a mortgage on her house and arriving here, Saswati's passport was taken by the recruiter. She was also denied wages that she was promised when she agreed to the contract back home. She also noticed that her work permit and her workplace did not match, and furthermore she was constantly being moved from work- place to workplace. One day while on the job, she received an injury at work. Her employer contacted the recruiter, who took her to the hospital. This recruiter charged her several hundred dollars for the visit. When Saswati's work permit neared completion, the recruiter offered to return her passport only after she paid him \$1,500 for a work permit extension. Nervous that she may break the law by not having proper documents, she willingly paid to continue to support her family, pay her debts and get her documentation back. Nearing the completion of the extension, Saswati yearned to be back home with family and friends. In conversations with these same friends, she knew she could legally be in Canada until the termination of her visa, and that she would need to return home for four months and could then legally return to Canada. Anxious to return home and careful not to infringe Canadian laws, she returned home, and through the same recruiters who brought her to Canada, returned to work for a second time. Rather than the \$10,000 she previously paid, this time the recruiter charged her \$5,000 plus interest. Upon return, it became evident that work was not available. She received 15 or 20 hours one week and three to five hours the following week, clearly not enough to pay either her incurred debts or any other costs she paid to come to Canada. Out of necessity, she accepted work at a neighbouring farm—while against the contract, she had no choice. Shortly afterward, immigration officials raided her work- place arresting Saswati and detained her. Despite the efforts of advocates and Saswati herself, who was willing to speak out against the injustices, officials refused to listen and Saswati was not released. Instead she

was deported and barred from Canada. 146

- a) Location
 - n/a
- b) How did the case(s) come to the attention of authorities
 - n/a
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - foreign worker
 - female
- e) characteristics of deception/coercion
 - \$10,000 loan mortgaged house
 - Additional \$5,000 charged to renew permit
 - Work permit and workplace did not match
- f) characteristics of exploitation
 - passport confiscated only returned after \$1,500 payment
 - not paid wages
 - upon renewal no full time work available required to work illegally to pay off debts
 - hundreds of dollars charged for care for workplace injury
- g) prosecutorial and judicial determinations on the status of victims
 - deported and barred from Canada
- h) Other organizations involved
 - Justicia for Migrant Workers
- 33) Lara and her friends arrived in Canada with a false promise of permanent residency. Lara paid a minimum of \$5,000 to come to Canada, including her airfare. This, of course, is contrary to the temporary foreign worker program, where the employer is supposed to pay these costs. The workers weighed the costs and benefits of speaking out: They could speak out against this injustice and face reprisals or remain silent and be assured of employment. These workers chose the latter. Lara signed a contract in her home country. Upon arrival in Canada, she signed another contract agreeing to different working conditions than she had agreed to earlier. On top of the initial payment, workers at this one facility are also deducted about \$1 an hour per worker for housing, where the workers are crammed together in small rooms, and in some locations where the workers deem their accommodations potential fire hazards. Workers accept these conditions out of fear that if they move out of the recruiter's provided housing they would also lose their work contract. 147
 - a) Location
 - n/a

¹⁴⁶ Justicia for Migrant Workers, Standing Committee, M-246.

¹⁴⁷ Justicia for Migrant Workers, Standing Committee, M-246.

- b) How did the case(s) come to the attention of authorities
- c) law enforcement response and investigative methods
- d) characteristics of victims
 - foreign workers
 - female
 - food packing industry
- e) characteristics of deception/coercion
 - \$5,000 payment plus airfare
 - Fear that moving from substandard accommodation would result in termination
- f) characteristics of exploitation
 - passport confiscated only returned after \$1,500 payment
 - required to sign different contract upon coming to Canada
 - deduction of \$1 per hour for housing
 - inadequate housing crammed together in small tooms
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Justicia for Migrant Workers
- 34) [Chantale] didn't realize that a modern form of servitude awaited her. Yet as soon as Chantale arrived, the children's parents seized her passport and forced her to work long hours in the home, performing many chores that had little or no relationship to babysitting.

By day she was isolated in the home and toiled long hours doing every domestic chore imaginable. By night the children's father sexually assaulted her time and again. A teenager from a foreign land, she had no one to turn to for help. When the children were old enough to attend school full-time, Chantale was sent to Montreal to another family, where she endured the same harsh conditions as before: lack of income and free time, and once again, sexual abuse. The difference was this time Chantale became pregnant as a result of repeated rape, and when the pregnancy was confirmed, the family threw her out. 148

- a) Location
 - Unknown, and Montreal
- b) How did the case(s) come to the attention of authorities
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - foreign worker

- female
- live in caregiver
- e) characteristics of deception/coercion
 - unaware of conditions of work
- f) characteristics of exploitation
 - passport confiscated
 - forced to work long hours
 - work not related to babysitting
 - repeated sexual assault
 - isolation
 - moved to another employer
 - insufficient pay
 - became pregnant and was terminated
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- 35) Sometime between 2002 and 2004, Aba was brought from Ghana to Canada on a visitor's visa and hired as a domestic servant for a Vancouver family. ... Aba received no regular income or medical care during her years with the family only room and board in their home. As well, she may have been physically mistreated. Sister Deborah Isaacs ... recounts ... "They'd taken her papers from her," ... "She worked [an] enormous amount of hours ... The only thing she was allowed to do was go to church service a half a day a week. For her, some of the conditions were still better than Africa." When the family decided to immigrate to the United States, they simply abandoned Aba ... "She was afraid to go back to her country," ... "and she didn't know what to do She was scared of the police." For their part, immigration officials could to nothing to help Aba obtain legal status and remain in Canada. Then Aba vanished, and no one knows what become of her.
 - a) Location
 - n/a
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - visitor
 - female
 - domestic work

85

¹⁴⁹ Perrin, *Invisible chains*, pp. 173-74

- Ghanaian
- e) characteristics of deception/coercion
 - brought on visitor visa, illegal worker
 - fear of police
- f) characteristics of exploitation
 - no pay only room and board
 - potentially physically mistreated
 - excessive hours
 - no mobility unable to leave except half day at church
- g) prosecutorial and judicial determinations on the status of victims
 - Immigration officials unable to regularize status
- h) Other organizations involved
 - Kairos

36) Lilliane's Story

I came to Canada from Uganda to work as a live-in caregiver. Back home, when you work for a family, you make no money. You make the food, feed the family, feed the children but you don't eat with the family. You are discriminated against. So when I was asked me to come and work in Canada I got so excited for the chance for something better. Unfortunately, when I came it was not what I expected. My employer treated me just like back home. I arrived in March 2008 and started work the very next day. I was very tired because of the long flight and the change in time, but my employer woke me up early in the morning and told me "You cannot be sleeping like that. You came to work." When I arrived, my employer took my work permit and passport because she said they belonged to her. I looked after two small children. I did not have my own bedroom. I shared a room with the youngest child. His crib was in my room. I had no private space. I was not allowed to have visitors in the house. The only people I was close to were the children. I loved those children. You have a strong bond with them. But it is so hard when you have no adults who you are close to.

Even though my contract said that I was only to work around 45 hours per week, I had to work from before 8 a.m. until around 11 p.m. after the children were asleep. I was told my attention must always be on the children. I did not have a day off. I had to ask permission even to go to the hairdresser to braid my hair. And when I went to the hairdresser my employer told me I was not allowed to be out of the house on my own and that she would call Immigration and Immigration would give me two weeks' notice to leave. I was treated like rubbish but my employer knew I had nowhere else to go. I came to Canada to work and I was working hard but I wasn't getting paid. I was paid \$100 in cash per month even though my contract said I was to be paid much more. When my mother got sick and I needed to send money home to help pay for her medication, I asked my employer for more money but she said no. She told me I was earning more money than I would if I was working back home. She told me that I was never to tell anyone how much they were paying me. For two years of work, I was only paid a total of \$2,100. I often thought of my mother and my sister and wished I had the money for that ticket to go back home. One day when I was at the public library, I was at the computer and started

crying. A woman who worked at the library asked me what was wrong and I told her everything. She told me, "You are too young to be under slavery." She told me what caregivers are entitled to and she gave me the number for a shelter. After my employer got angry and told me to leave her house, I called the shelter. I stayed in a homeless shelter until I could find another job. When I left my

employer's house, I hadn't been paid in three months. I came with nothing and I left with my things in garbage bags. I didn't even have enough to pay for the taxi to the shelter but the taxi driver gave me \$10 and told me to be strong. I worked full time for two years. I needed 24 months work to apply for permanent residence. But on my record of employment the employer showed that I had worked less. So this made it hard to apply for permanent residence. I found another position as a live-in caregiver for another employer until I could apply for permanent residence. 150

- a) Location
 - n/a
- b) How did the case(s) come to the attention of authorities
- c) law enforcement response and investigative methods
- d) characteristics of victims
 - foreign worker
 - Uganda
 - female
 - live in caregiver
- e) characteristics of deception/coercion
 - unaware of circumstances of work
 - isolated "nowhere to go"
- f) characteristics of exploitation
 - passport confiscated
 - excessive working hours
 - no private accommodation
 - not paid for significant periods of time
 - not paid in accordance with program guidelines
 - employer falsified records indicating length of time employee worked
- g) prosecutorial and judicial determinations on the status of victims
 - n/a

h) Other organizations involved

• Member of public

¹⁵⁰ Fay Faraday, Made in Canada: How the Law Constructs Migrant Workers' Insecurity (2012) Metcalfe Foundation, accessed March 13, 2012 from http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf, at p.17

• Shelter provider

37) Juma's Story

I came to Canada from Tanzania in 2009. In Tanzania, during the hunting season I worked as a camp manager with a company that took tourists out to hunt game. The rest of the year I worked as a taxidermist. At the hunting camp, I met a hunter who was a taxidermist in Canada. He asked me to come to Canada to work for him. I have a family and he told me that if I worked for two years I could bring my family to Canada. He prepared all the immigration papers. In the contract he sent me, I was supposed to be paid \$16.08 per hour. I arrived in Canada on a Saturday and started work the very next day on Sunday. For about the first ten months, I was the only employee. I worked seven days a week, 12 to 14 hours a day except for Sunday when I worked 7 to 8 hours. I was often asked to do work that was not related to my job, such as painting my employer's house. My employer's business was in a rural farm house. It was very isolated. The two nearest towns were about 10 km and 15 km away. I was dependent on my employer or his relatives and friends to take me into town. One of the hardest parts for me was that I was without communication with the outside world. I lived in a room in the taxidermy workshop. There was no lock on my room. My employer could come in anytime and he went through my stuff. I was working very hard but I was not paid what my contract promised. After my first month, I hadn't been paid at all. I asked for money to send home. He gave me \$550 Canadian which is what I would have been paid back home. I received no other money for the month. When I asked about my salary, my employer said that he had expenses and I could either accept what I was being paid or I could go back home. But when I came to Canada I lost my jobs back home so I couldn't go back.

After a few months my employer raised my pay to \$700 and then \$800 per month. Each month, he would give me a cheque for \$3,168 but I was not allowed to keep it. We would go to the bank together. I would deposit the cheque and then I had to withdraw most of it to give back to him "for taxes." He only let me keep \$800 a month. He told me that if I paid the taxes I could bring my family over. I never got a record of what the deductions were for. I never got a receipt that showed that he paid my taxes. My employer didn't want me to apply for a SIN card. I kept asking to apply for one but he would say no, don't do it now. When he was out of town, I got a ride into town and applied for a SIN card and an OHIP card. I had them sent to another address because if something from the government was sent to my employer's address he would open it.

About 10 months after I started working, my employer hired a Canadian worker who told me that what I was being paid wasn't right and that I should have a day off. I was then able to get Sunday off but I still worked long hours the rest of the week.

After one year in Canada, my work permit was renewed for two more years. My work permit was tied to just this employer. If I left I couldn't work. I didn't have money to stay for 5 months without working while I waited for a new work permit. I started to look for work with another employer who would apply for a work permit for me. But I had to keep working with my first employer. When my second year was almost over, I went to the bank with my employer. I

deposited my monthly cheque but refused to withdraw money to give him. I asked him where is the tax that he paid? Where is the receipt for the taxes? I told him that when I got proof that he had paid my taxes I would withdraw the money. I told him that I was not comfortable to stay with him anymore. He threatened to cancel my work permit. He threatened to have Immigration come and deport me. He called the police. When they arrived he accused me of stealing things and asked them to escort me from the property. I met the police on the road and when I explained what happened, they gave me a ride in to town and I went to the Salvation Army. Because my employer accused me of stealing, I had to leave one suitcase behind. I was told that an immigration officer would interview me and help me get my stuff back. The suitcase was full of things that can't be replaced. It had my wedding clothes, my wedding DVD, my only picture of my dead mother, an anniversary gift from my wife, birthday gifts from my cousins. It doesn't matter how much money you have. You can't buy these things. I really need my stuff back. I have tried for so many months to get my stuff back. But to this day I still don't have it. ... After I learned about my rights, it is still hard to enforce them because the legal process is too slow. If I try to enforce my rights in court or at the labour board, the legal process will not finish before my work permit expires. 151

- a) Location
 - n/a
- b) How did the case(s) come to the attention of authorities
 - Employer called law enforcement accusing employee of stealing when he was terminated
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - foreign worker
 - Tanzania
 - Gamekeeping/farming
- e) characteristics of deception/coercion
 - promises of permanent residency
 - promises of being able to bring family to Canada
 - Isolation, no means of transportation
 - Told if paid money for "taxes" could bring family over
- f) characteristics of exploitation
 - no private accommodation room in taxidermy shop
 - paid well below contract required to cash full cheque but return most to employer in cash for "taxes"
 - Not allowed to apply for Social Insurance Number or OHIP
 - When refused to give up paycheque was terminated, police called and accused of stealing
 - Employer kept worker's belongings

¹⁵¹ Faraday, Made in Canada, p.59

- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- 38) Our staff received a phone call from one of the women working on [a] farm—she spoke in a low voice, very fearful of being overheard. She said the women on the farm were constantly watched, and that they were rarely allowed to go anywhere without an employer representative. She related that their work day was typically from 6:00 am to 9:00 pm with one half-hour break during the whole period. 152
 - a) Location
 - n/a
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - n/a
 - d) characteristics of victims
 - foreign workers
 - female
 - farm worker
 - e) characteristics of deception/coercion
 - n/a
 - f) characteristics of exploitation
 - excessive hours 6am to 9pm with half-hour break
 - under constant surveillance
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a
 - h) Other organizations involved
 - UFCW

39) The RCMP's Immigration and Passport Branch (Northwest Region) received twenty-eight complaints of alleged human trafficking in Alberta, Saskatchewan and Manitoba, many linked to forced labour practices. Foreign workers reportedly are sleeping on mattresses in factory storage rooms, are using garbage cans as wash basins, and are told to hand over their bank cards to employers, supposedly for "tax purposes." ¹⁵³

¹⁵² United Food and Commercial Workers Canada, National Report on the Status of Migrant Farm Workers in Canada, 2004, quoted in Report of the Standing Committee on Citizenship and Immigration, House of Commons, Canada, *Temporary Foreign Workers and Non-Status Workers*, 40th Parliament, 2nd Session (May, 2009), p.11. ¹⁵³ Perrin, *Invisible Chains*, p.171.

- a) Location
 - Alberta, Saskatchewan, Manitoba
- b) How did the case(s) come to the attention of authorities
 - Complaints to RCMP I&P Branch
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - foreign workers
- e) characteristics of deception/coercion
 - n/a
- f) characteristics of exploitation
 - sleeping on mattresses in factory storage rooms (housing)
 - using garbage cans as wash basins (housing)
 - and are told to hand over their bank cards to employers, supposedly for "tax purposes (confiscation of documents)
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- 40) The RCMP has investigated complaints regarding labour leasing companies that lured workers with "guaranteed work visas" and high pay, and those that were found to charge workers for overseas recruitment, excessively skim workers' wages, and poorly accommodate workers. These files were usually later referred to Service Canada or the appropriate provincial agency after human trafficking charges were unfounded. 154
 - a) Location
 - n/a
 - b) How did the case(s) come to the attention of authorities
 - Complaints to RCMP
 - c) law enforcement response and investigative methods
 - transferred to Service Canada
 - d) characteristics of victims
 - foreign workers
 - e) characteristics of deception/coercion
 - promises of guaranteed work visas
 - promises of high pay
 - f) characteristics of exploitation
 - charged workers for overseas recruitment
 - excessive skimming of workers' wages

¹⁵⁴ RCMP, Threat Assessment, p.34

- poor accommodation
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Service Canada
 - Provincial Employment Standards
- 41) Some Canadian employers who have used such services were concerned to discover that a hefty "service fee" had been imposed on their foreign workers by the agency that arranged for their employment. In several of these cases, investigations concluded with the third party admitting to a "misunderstanding" and a mishandling of funds. In one such case, the agency refunded appropriate monies and the business owner had no interest in pressing charges. Generally, Canadian employers were found to have made efforts to ensure the living and working conditions of their foreign workers were adequate. Fraud and other exploitative actions, like hefty fees and threats of dismissal, by third party agencies against workers were mostly found to have taken place without the employer's knowledge. In an effort to keep workers quiet, agencies often advised foreign workers that complaining or causing problems would jeopardize their work contracts in Canada. Criminal charges were usually unfounded for these cases. ¹⁵⁵
 - a) Location
 - \mathbf{n}/a
 - b) How did the case(s) come to the attention of authorities
 - Employer complaints to RCMP
 - c) law enforcement response and investigative methods
 - Third party admitted to "misunderstanding" and mishandling of funds
 - One agency refunded appropriate monies to employees
 - d) characteristics of victims
 - foreign workers
 - e) characteristics of deception/coercion
 - agencies advised foreign workers that complaining or causing problems would jeopardize their work contracts
 - f) characteristics of exploitation
 - hefty service fees
 - g) prosecutorial and judicial determinations on the status of victims
 - criminal charges unfounded
 - h) Other organizations involved
 - n/a

42) Third party agencies were reported to law enforcement regarding questionable business practices like contract disputes and wage garnishing. It would almost appear that the

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¹⁵⁵ RCMP, Threat Assessment, p.34

workers' earnings were able to marginally cover the debt from the recruiting service and room and board, leaving the worker with very little remaining after all the deductions. Some workers cited that they were threatened with deportation or threatened for their safety by their facilitators, but these claims were not substantiated. These complaints were mostly determined to be civil issues or employment contract disputes. Files that were void of organized crime or human trafficking indications were outside of the mandate of RCMP I & P units and such files were referred to the appropriate provincial and federal government agencies for their investigation. A predominant number of reported contract disputes involved Philippine-based companies with Canadian representatives or subsidiaries which acted in the capacity of labour leasing or labour recruitment. Foreign workers originating from the Philippines complained of financial exploitation and intentional unfair business practices by labour leasing employers, which paid workers directly. In addition to paying for their own airfare, workers documented "miscalculations" that led to erratic but significant reductions from the upfront cost of the recruitment, unexplained hidden costs, and inconsistent procedures. Third party agencies have also allegedly misfiled permit applications to manipulate the application process. One complaint claimed that Filipino workers brought into Canada as live-in caregivers were actually brokered out to a hotel chain as housekeeping staff. In these cases, investigators were unable to locate elements of human trafficking under the CC, such as coercion, control, or danger to their safety. CBSA and HRSDC were usually referred to investigate other IRPA infractions and the legitimacy of the agency. 156

- a) Location
 - n/a
- b) How did the case(s) come to the attention of authorities
 - Complaints to law enforcement
- c) law enforcement response and investigative methods
 - Files that were void of organized crime or human trafficking indications were outside of the mandate of RCMP I & P units and such files were referred to the appropriate provincial and federal government agencies for their investigation
 - investigators unable to locate elements of human trafficking under the CC, such as coercion, control, or danger to their safety. Usually referred to CBSA and HRSDC to investigate IRPA infractions and legitimacy of the agency
- d) characteristics of victims
 - Predominantly from Philippines
- e) characteristics of deception/coercion
 - worker left with little remaining money after all deductions (recruitment fees, housing)
 - some workers threatened with deportation or threatened for their safety (unsubstantiated)

¹⁵⁶ RCMP, Threat Assessment, p.34

- Third party agencies allegedly misfiled permit applications to manipulate the application process.
- One complaint claimed that Philippine workers brought into Canada as live-in caregivers were actually brokered out to a hotel chain as housekeeping staff
- f) characteristics of exploitation
 - labour brokers participating in questionable practices contract disputes and wage garnishing
 - financial exploitation and intentional unfair business practices by labour leasing employers, which paid workers directly
 - workers paying for their own airfare
 - workers documented "miscalculations" that led to erratic but significant reductions from the upfront cost of the recruitment, unexplained hidden costs, and inconsistent procedures.
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- 43) Cases of employers suspected of direct mistreatment (non-third party) of legal foreign workers which were unfounded for human trafficking were referred to relevant agencies for further investigation. Workers may have been taken advantage of, usually in the form of financial exploitation and long hours, but complaints rarely met elements of human trafficking as defined in the CC and the IRPA. Such non-criminal cases were usually examined for infractions with the Canada Labour Code or Employment Standards. In one incident, a popular coffee franchise outlet was found not to be compensating their foreign workers for shift differential and was subject to charges in violation of Employment Standards. In the North West region, investigators collaborated with or recommended such files to Service Canada/Service Alberta to further look into appropriate charges. Local interest groups have also initiated awareness or assistance programs for foreign workers in need. An Edmonton group known as the Temporary Foreign Worker Advocate offers charity legal representation to foreign workers in fair employment complaints against employers who may be in violation of Employment Standards. 157
 - a) Location
 - n/a
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods

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¹⁵⁷ RCMP, Threat Assessment, p.35

- complaints determined not to have met elements of human trafficking as defined in the CC and the IRPA
- usually examined for infractions with the Canada Labour Code or Employment Standards
- In the North West region, investigators collaborated with or recommended such files to Service Canada/Service Alberta to further look into appropriate charges.
- d) characteristics of victims
 - n/a
- e) characteristics of deception/coercion
 - n/a
- f) characteristics of exploitation
 - financial exploitation and long hours. E.g. not compensating workers for shift differentials and subject to charges under employment standards legislation.
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - Service Canada/Service Alberta
 - Temporary Foreign Worker Advocate (Alberta)
- 44) Law enforcement findings indicate that falsely recruited live-in caregivers may end up "working under the table" while trying to find suitable work. Some end up returning home and those who cannot find means to return home or find other employment are 'stuck' in Canada and live on the charity of church groups and such. They become virtually trapped as a result of such schemes. While these "nanny fraud" cases may not meet elements of human trafficking, law enforcement may opt to investigate these files on grounds of fraud and misrepresentation. ¹⁵⁸
 - a) Location
 - n/a
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - did not meet elements of human trafficking
 - d) characteristics of victims
 - live-in caregivers
 - e) characteristics of deception/coercion
 - "falsely recruited"
 - End up working under the table while trying to find suitable work
 - f) characteristics of exploitation
 - n/a

g) prosecutorial and judicial determinations on the status of victims

¹⁵⁸ RCMP, Threat Assessment, p.36

- n/a
- h) Other organizations involved
 - Church groups
- 45) To date, labour exploitation complaints involving illegal foreign workers were unfounded for human trafficking elements. CBSA has been the main investigative agency for files involving illegal foreign workers. In one investigation, Mexican nationals were brought to Canada to work as leased workers in construction or cleaning companies. The workers had knowingly applied for illegal employment, and were coached by the facilitators to enter Canada as students or visitors. The workers understood they were required to repay the cost of bringing them into the country; however, when they questioned the deductions made to their pay, threats were made against their safety and that of their families. The file was referred to the RCMP as human trafficking, but police determined that there was not enough evidence to proceed with a human trafficking charge. ¹⁵⁹
 - a) Location
 - n/a
 - b) How did the case(s) come to the attention of authorities
 - complaint to RCMP
 - c) law enforcement response and investigative methods
 - police determined insufficient evidence for trafficking charge
 - d) characteristics of victims
 - Mexican nationals engaged to work in construction or cleaning
 - Aware that they had applied for illegal employment, coached by facilitators to enter Canada as students or visitors
 - e) characteristics of deception/coercion
 - consented to repay costs of transportation
 - f) characteristics of exploitation
 - when deductions questioned, threats made against their safety and that of their families
 - g) prosecutorial and judicial determinations on the status of victims
 - n/a
 - h) Other organizations involved
 - n/a

46) Three unrelated cases exhibited similar patterns of exploitation. The victims had all come from poor economic backgrounds and likely perceived employment in Canada as an opportunity for better lives. The employers recruited the women from overseas and arranged their entry into Canada using visitor visas. Upon arrival the women were forced to work long hours for very little or no pay. Their employers exercised extreme control over them, utilizing threats, isolation, and strict supervision to ensure compliance. The workers' reliance

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¹⁵⁹ RCMP, Threat Assessment, p.36

on their employers made them easy to control. So far, the exploitation of domestic workers does not suggest organized criminal involvement. Cases known to police were independent and unrelated, but suspects were found to use similar control tactics and were motivated by the same opportunistic incentive. ¹⁶⁰

- a) Location
 - n/a
- b) How did the case(s) come to the attention of authorities
 - n/a police were notified
- c) law enforcement response and investigative methods
 - n/a
- d) characteristics of victims
 - The employers recruited the women from overseas and arranged their entry into Canada using visitor visas
 - Recruited as domestic workers
 - female
- e) characteristics of deception/coercion
 - employers exercised extreme control over them, utilizing threats, isolation, and strict supervision to ensure compliance
 - illegal presence in Canada
- f) characteristics of exploitation
 - women were forced to work long hours for very little or no pay
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a
- 47) Human trafficking investigations have identified domestic workers who were illegally transported and subsequently exploited by their employers. Law enforcement found that these domestic workers were ultimately trafficked into Canada, receiving between \$0 and \$600 per month for their work. ¹⁶¹
 - a) Location
 - n/a
 - b) How did the case(s) come to the attention of authorities
 - n/a
 - c) law enforcement response and investigative methods
 - determination of trafficking
 - d) characteristics of victims
 - domestic workers

¹⁶⁰ RCMP, Threat Assessment, p.33

¹⁶¹ RCMP, *Threat Assessment*, p.32

- e) characteristics of deception/coercion
 - illegal transport/entry
- f) characteristics of exploitation
 - receipt of between 0 and \$600 per month for work
- g) prosecutorial and judicial determinations on the status of victims
 - n/a
- h) Other organizations involved
 - n/a

Annex B: List of Stakeholders¹⁶²

Federal Government Departments

Public Safety Canada

Public Safety Canada leads the newly formed Human Trafficking Taskforce, comprised of key governmental departments, that replaces the Interdepartmental Working Group on Trafficking in Persons and is responsible for overseeing the implementation of the National Action Plan commitments under the 4-Ps and for coordinating the federal anti-human trafficking response and reporting annually on progress to the public.

Royal Canadian Mounted Police

The RCMP has established a *Human Trafficking National Coordination Centre (HTNCC)* within the Immigration and Passport Branch at Headquarters in Ottawa. The Centre works in partnership with domestic and international agencies to develop an extensive network of partnerships, monitors investigations from a national perspective, facilitates the central processing of requests from international law enforcement agencies, provides analytical services and intelligence feedback to domestic law enforcement, and contributes to international data banks.

The Centre provides a focal point for law enforcement in their efforts to combat and disrupt individuals and criminal organizations involved in Human Trafficking activities. The HTNCC has five priorities:

- 1. Develop tools, protocols and guidelines to facilitate Human Trafficking investigations.
- 2. Coordinate national awareness/training and anti-trafficking initiatives.
- 3. Identify and maintain lines of communication, identify issues for integrated coordination and provide support
- 4. Develop and maintain international partnerships and coordinate international initiatives.
- 5. Coordinate intelligence and facilitate the dissemination of all sources of information/intelligence.

The RCMP in conjunction with Canada Border Services Agency will also form part of the Dedicated Integrated Enforcement Team consisting of federal, municipal and/or provincial law enforcement agencies.

¹⁶² This list is focused specifically on those organizations that have as part of their mandate to address trafficking for the purposes of forced labour, and those who potentially hold data on the issue.

Citizenship and Immigration Canada

Citizenship and Immigration Canada (CIC) can help protect victims of trafficking by securing their immigration status with a special temporary resident permit (TRP). CIC is also responsible for programming around the Temporary Foreign Worker programs, including the Seasonal Agricultural Workers Program and the Live-In Caregiver Program.

Department of Justice Canada

Department of Justice is involved in drafting laws and policies with respect to human trafficking in Canada, as well as providing training, policies and operational guidance for criminal justice personnel in investigating and prosecuting trafficking cases. It leads the federal, provincial and territorial Victims of Crime Working Group in developing guidelines and programs relating to the treatment of victims.

Human Resources and Skills Development Canada

HRSDC is responsible for the issuance of Labour Market Opinions and the maintenance of the National Occupational Classifications, both of which are relevant to the existence and investigation of human trafficking. Service Canada centres across the country may act as conduits between law enforcement, policymakers and exploited workers.

Canada Border Services Agency

CBSA receives complaints and proactively investigates cases in which foreign nationals' immigration status is in question. CBSA may be a first point of contact for identifying exploited workers and may be in the most opportune position to determine instances of trafficking in persons.

Provincial/Municipal Departments

OCTIP

In 2007 British Columbia established the Office to Combat Trafficking in Persons (OCTIP). OCTIP is responsible for the development and overall coordination of British Columbia's strategy to address human trafficking. OCTIP takes a human rights centered approach. This means that the rights and needs of trafficked persons are placed at the centre of all OCTIP work. In collaboration with other provincial ministries, federal departments, municipal governments, law enforcement agencies, and community organizations, OCTIP aims to prevent human trafficking and coordinate services for trafficked persons in British Columbia.

ACT

ACT Alberta's mission is to increase knowledge and awareness on human trafficking, advocate for effective rights based responses; build capacity of all involved stakeholders and lead and foster collaboration for joint action against human trafficking. ACT Alberta mobilizes stakeholders to identify and respond to human trafficking by (i) prevention efforts; ii) ensuring adequate protection and support for trafficked persons; iii) supporting the efficient prosecution of the criminals involved; iv) through effective and collaborative partnerships.

Employment Standards and Occupational health and Safety Inspectors

Employment Standards and Occupational Health and Safety inspectors in each province are in a position to fully enforce provincial workplace legislation, including conducting proactive investigations. Inspectors may work with law enforcement to share intelligence with respect to exploitative employment practices against migrants.

Fire, Building Code and Licensing Departments

Building and Licensing code enforcement agencies may be particularly useful with respect to investigating labour trafficking. Fire, building code and municipal business licensing inspectors may gain access and gather intelligence on a wide range of businesses and the workers associated with those enterprises.

Migrant Worker Advocates

United Food and Commercial Workers Canada

The UFCW supports a number of campaigns and programs related to migrant workers in Canada. It has played a strong role in advocating for employment and bargaining rights for agricultural workers across Canada. It was also a key complainant in a recent British Columbia human rights tribunal case regarding equal treatment of Latin American construction workers hired prior to the 2010 Olympics in Vancouver (SEELI decision) and supports research and advocacy around the promotion of migrant worker rights in Canada. Because of its ground-level knowledge of agricultural and construction sectors it is well-positioned to receive information regarding exploited workers, including those who may be deemed trafficked.

Alberta Federation of Labour

The Alberta Federation of Labour is a voluntary association of unions and employee organizations that have banded together to achieve common goals. The AFL launched the first TFW Advocacy office, receiving complaints and providing assistance to TFWs in Alberta.

The Occupational Health Clinics for Ontario Workers

The Occupational Health Clinics for Ontario Workers (OHCOW)-Hamilton is a multidisciplinary occupational health clinic funded by the Province of Ontario. OHCOW-Hamilton has been providing healthcare to migrant workers in rural Ontario since 2006.

The Industrial Accident Victims Group of Ontario

The Industrial Accident Victims Group of Ontario (IAVGO) is a Toronto-based legal aid clinic serving injured workers. IAVGO has been providing legal assistance and educational initiatives to migrant workers seeking WSIB for several years.

Agriculture Workers Alliance

In association with UFCW Canada, the Agriculture Workers Alliance (AWA) operates ten agriculture workers support centres across the country. The first centre was opened in Leamington, Ontario in 2002. Nine more have followed with additional locations in Surrey, Kelowna and Abbotsford, British Columbia; in Portage le Prairie, Manitoba; in Virgil, Simcoe and Bradford, Ontario; and in Saint-Rémi and Saint-Eustache, Quebec. These AWA centres provide a number of support and advocacy services at no-cost to domestic as well as migrant and temporary foreign agriculture workers. The staff and volunteers speak multiple languages, and assist workers with a number of issues such as repatriation intervention, worker's compensation claims, parental leave benefits, CPP, QPP, Employment Insurance, and health insurance claims to name a few. When workers return home between seasons, they can continue to access their case files online through the AWA National Database which tracks the progress of their claims. The AWA National Database is also Canada's most comprehensive record of workplace issues faced by migrant workers, based on the AWA's advocacy in cases dealing with workplace safety issues, substandard housing, toxic chemicals, oppressive working conditions and others.

Workers' Action Centre

The Workers' Action Centre is a worker-based organization committed to improving the lives and working conditions of people in low-wage and unstable employment. Members work with union and community allies to address weak laws, support workers through a Workers' Rights Info Line, and provide training sessions at community agencies and educational materials on workers' rights.

Justicia for Migrant Workers

Justicia for Migrant Workers (J4MW) is a volunteer run political non-profit collective comprised of activists from diverse walks of life (including labour activists, educators, researchers, students and youth of colour) based in Toronto, Ontario, and now in Vancouver, British Columbia, Canada. The organization is engaged in this work alongside their personal commitments and numerous social justice struggles. J4MW strives to promote the rights of migrant farmworkers (participating in the Canadian Seasonal Agricultural Workers Program and the Low Skilled Workers Program) and farmworkers without status. Promoting workers' rights entails fighting

for spaces where workers themselves can articulate their concerns without losing their work or being repatriated. Justicia starts with workers' knowledge and concerns and collectively devise strategies to make necessary changes. They see themselvesselves as allies and strive for a movement that is led and directed by workers themselves.

West Coast Domestic Workers Association

West Coast Domestic Workers' Association is a non-profit association that provides free legal advocacy and other services to live-in caregivers based in British Columbia. They operate a drop-in legal clinic five days a week. They are also actively involved in public legal education and policy reform.

Philippine Women's Centre of BC

The Philippine Women Centre conducts community-based research into the Filipino community to empower Filipino women to understand the roots of the barriers they face as migrants, immigrants, women of colour and low-income earners, and to collectively assert their struggle for their rights and welfare towards the attainment of equality, peace and development.

PINAY

PINAY, founded in 1991, is a Filipino Women's Organization that works to empower and organize Filipino women in Quebec, particularly Filipino domestic workers. Most of its members are migrant workers under the Live-In Caregiver Program (LCP).

Caregiver Action Centre

The Caregivers' Action Centre, or CAC, is an organization of current and former caregivers under the live-in caregiver program and is committed to improving the lives and working conditions of caregivers. It strives to improve policies and legislation governing temporary foreign workers. Over the years, CAC has been involved with numerous consultations with caregivers in diverse communities. They have heard from hundreds of caregivers about their concerns about violations they have faced on the job and gaps in the immigration system that make them vulnerable to different kinds of abuse.

Academic Bodies

Migrant Worker Health Project

http://www.migrantworkerhealth.ca/AboutUsGeneral.html#link2

Drawing on a decade of research, clinical and legal encounters with migrant workers, the aim of the Migrant Worker Health Project is to provide evidence-based educational initiatives that describe these barriers to healthcare and service providers, and facilitate collaborative identification of strategies to increase these workers' access to healthcare services and workers' compensation, or WSIB. This Project was funded by a research grant provided by the Workplace Safety and Insurance Board (Ontario). This web site houses a collection of information, contacts and resources to assist health practitioners in providing care to migrant farm workers. Although the primary intended audience is health care providers in Ontario, much of the information may be useful to other parties.

The International Migration Research Centre

The International Migration Research Centre (IMRC) is a research centre based at Waterloo's Wilfrid Laurier University whose mandate is to serve as a focal point for debate, research, policy analysis, and proposal development related to international migration and mobility at the global, national and regional scale.

Anti-Trafficking Advocacy Groups

Canadian Council for Refugees

The Canadian Council for Refugees is a non-profit umbrella organization committed to the rights and protection of refugees in Canada and around the world and to the settlement of refugees and immigrants in Canada. The membership is made up of organizations involved in the settlement, sponsorship and protection of refugees and immigrants. The Council serves the networking, information-exchange and advocacy needs of its membership. The Canadian Council for Refugees fulfils its mission by: Providing opportunities for networking and professional development through conferences, working groups, publications and meetings; Working in cooperation with other networks to strengthen the defence of refugee rights; Advancing policy analysis and information-exchange on refugee and related issues; Advocating for the rights of refugees and immigrants through media relations, government relations, research and public education.

In addition to direct assistance through its member organizations, the CCR conducts workshops and forums specifically around the issue of human trafficking dedicated to sharing experiences, responses and strategies between organizations in order to assist trafficked persons more effectively, analysing barriers in providing trafficked persons adequate protection, and identifying priorities in policy development to form a national NGO advocacy response.

MOSAIC family services, Vancouver

Mosaic provides emergency shelter, case management, counseling, interpretation and translation, and legal assistance to victims of human trafficking. Mosaic's multicultural staff also assists victims in navigating the complex justice system and in interactions with federal and local law enforcement. Mosaic Family Services has served over 250 victims of human trafficking since the inception of the Services for Victims of Trafficking Program in 2001. Clients are referred by law enforcement, social and medical service providers, and individuals within the community. Mosaic also operates a 24 hour trafficking hot line.

Mosaic also provides education, trainings, and multilingual informational materials to the immigrant communities at risk for trafficking as well as to law enforcement, other service providers, and community groups to increase awareness and understanding of this often invisible human rights abuse.

GAATW

GAATW-Canada was launched in September 1996 to address trafficking issues and to network with women's organisations locally and globally. Their aim is not to stop the migration of women, but to safeguard and promote the human rights of women who migrate and who are trafficked. GAATW Canada is a non-profit, activist based organisation working for social change. GAATW's research and advocacy will start from the premise that trafficking is embedded within gendered migration and labour contexts, and women's complex realities. As such, an integrated approach is a sustainable one. GAATW's very diverse membership has stressed that anti-trafficking strategies must reflect and respond to local and regional sociopolitical contexts and that a global, one-size-fits-all solution may be untenable. Thus, some of GAATW's work will respond to specific local contexts. GAATW's work will centre the voices of affected groups and aim to be relevant to the lives of trafficked persons, migrating women workers, sex workers and other marginalised groups.

CATW

The Coalition Against Trafficking in Women- Canada is a sister organization to the Coalition Against Trafficking in Women - International, which, in turn, is an international Feminist organization with offices and member organizations in all five regions of the world. The CATW works to promote the human rights of women and children, and to eradicate sexual exploitation in all its forms, especially prostitution and trafficking in women and girls. CATW believes that it is a fundamental human right to live free from sexual exploitation; that sexual exploitation undermines the right of all women and girls to human dignity, equality, sexual and bodily integrity, and autonomy; and that sexual exploitation disproportionally harms women and children, living in conditions of poverty, as well as those marginalized by race and ethnicity. CATW-Canada's office is situated in Vancouver, British Columbia. The membership consists of women's anti-violence organizations, as well as individual members. They have an ongoing involvement with law reform advocacy, public participant-centered education across Canada and research about trafficking in women and children for the purpose of prostitution and sexual

exploitation. In addition, they regularly partake in international conferences and meetings on these issues.

PACT

PACT-Ottawa has two specific programs related to support services for trafficked persons. The first is direct support and orientation for trafficked persons. The second is PACT's deep commitment to the Ottawa Coalition to End Human Trafficking, a network of service providers in the national capital region. PACT has also designed and delivered a human trafficking awareness campaign for truck drivers – an occupational group that can be key in identifying instances of trafficking in persons. They have a growing Speakers' Bureau – a cadre of trained and knowledgeable volunteers who respond to the numerous requests for public speakers. PACT's signature event each year is the End Slavery Day event, which takes place on December 2nd, the International Day for the Abolition of Slavery. PACT-Ottawa also sends representatives to share with and learn from colleagues in the fight against trafficking, across Canada and around the world.

Changing Together

Founded in 1984, Changing Together is a non-profit, charitable organization operated by immigrant women for immigrant women in Edmonton. Their mission is to help Edmonton and area immigrant women and their families overcome personal and systemic barriers that keep them from participating fully in Canadian Society. Changing Together also aims to bring awareness to key women's problems such as human trafficking, honour killings, workplace barriers, domestic violence, and the list goes on.

Alliance Against Modern Slavery

AAMS is a free-standing officially incorporated and registered non for profit charitable organization. AAMS believes that alliance-building and collaboration among a network of local and global, public and private, non-profit and governmental partners are fundamental. It also prevents organizations from reinventing the wheel, increases visibility, access to information and expertise, and allows for the sharing of best practices, and more effective and innovative programming, which centre the voices of survivors. AAMS therefore encourages dialogue between individuals affected by modern-day slavery, other NGOs and regulatory bodies by providing a channel for communication.

Annex C: Research Methods

Firstly, Canadian media sources, academic writings and grey literature were searched for descriptions of trafficking cases and investigative methods. These sources included:

- mainstream Canadian media websites;
- government websites and publications, such as Public Safety, Department of Justice, Citizenship and Immigration (including Operational Manuals), Canadian Border Services Agency, Royal Canadian Mounted Police, Peel Regional Police, Human Resources and Skills Development Canada;
- Non-Governmental Organization websites and publications;
- union websites;
- academic databases, such as Google Scholar, Scholars Portal, Index to Legal Periodicals;
- Legisinfo and Library of Parliament Debates and Publications; and
- U.S. Department of State website.

Searches were conducted using terms including "trafficking," "labour," "migrant," "migrant worker," "forced," "slavery" "servitude" and "indenture." Data specific to labour trafficking was collected and recorded. Additionally, given the investigative and identification problems previously identified in the literature regarding cases of "labour trafficking," descriptions and information were included where they related to situations possessing at least two of the three elements outlined in the Canadian trafficking offences, namely: recruitment/harbouring, coercion/deception, and exploitation. Please see legislative section for details on language. Data were grouped according to these categories and further grouped as common themes emerged. These groups were discussed in the "literature review" section under the appropriate categories. Cross-referencing was not required and thus codes were not allocated to specific groups.

Secondly, literature, media and case law was searched for cases relating to labour trafficking, or cases possessing, or being identified as possessing, two of the three elements required in Canadian trafficking offences. The following details were recorded for each case, in accordance with the research objectives for this project (see Annex A):

- location (LOC);
- how did the case(s) come to the attention of authorities (ID);
- law enforcement response and investigative methods (INV);
- characteristics of victims including gender where available;
- characteristics of deception/coercion (DEC/COER);
- characteristics of exploitation (EXPL);
- prosecutorial and judicial determinations on the status of victims (JUD/PROS); and
- other organizations involved (ORGS).

The data in each category were coded and within each category themes emerged. These new groups were allocated codes and were used to develop Annex A's table of cases. "Work sector" was also an additional category created through the analysis of the data, being raised numerous

times as a key factor in identifying forms of trafficking. Categories were then analysed for relations in accordance with type of work or gender.

Lastly, both international and domestic sources were scanned for tools and investigative mechanisms designed to aid law enforcement in addressing HT. Tools for combating sex trafficking as well as trafficking for forced labour were included, and the tools used to investigate sex trafficking were analysed against the findings developed through this research and compared with sources specific to labour trafficking. For this purpose the governmental departments from Canada cited above were searched, as well as intergovernmental websites including:

- UN Office on Drugs and Crime;
- Organization for Security and Cooperation in Europe;
- International Organization for Migration; and
- International Labour Organization.