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at the margins of the anti-trafficking efforts

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Abstract

As in many other countries, such as in Europe, Canada has increased its anti-trafficking efforts since this crime was included in the criminal code in 2005. However, trafficking for labour exploitation remains poorly addressed in the current anti-trafficking response. Concerns related to domestic sex trafficking have dominated the landscape and driven the bulk of government actions, leaving labour trafficking side way. This paper reviews the evolution the Canadian governance of trafficking and examines the key challenges in addressing trafficking for labour exploitation. The paper draws on a study conducted in Canada between 2011 and 2013, and which is based on 79 interviews with key stakeholders. One key argument of the analysis presented in this paper is that the Canadian policy has been shaped by national mobilisation around the issue of sexual exploitation of young women, especially adolescent girls as well as Aboriginal women. Further, this framing and conception of trafficking interact with the legal definition of trafficking in the criminal code and the ways in which it is applied. Indeed, the current trafficking offence is less easily understood as applying to situations of labour exploitation. However, labour trafficking is progressively emerging as a matter that deserves public and political interest. Migrants' and refugees' rights organisations, as well as civil society anti-trafficking initiatives, play a role in raising awareness about this issue and including this issue in the government actions.

Keywords

Trafficking, Severe Labour Exploitation, Migration, Canada.

1. Introduction

Trafficking in human beings is a growing concern in Canada, particularly since its inclusion as a criminal offence in the Canadian criminal code in 2005. During the last decade, the Canadian response to tackle this crime has developed and consolidated. There has been some important legislative and policy progress, and a National Action Plan (NAP) to Combat Human Trafficking was adopted in June 2012. Yet, there are still many shortcomings. The approach is still focused on crime-control with a special concern for domestic sex trafficking. Trafficking for labour exploitation is poorly addressed, and far from being a priority in the country. Further, the NAP has come to an end in March 2016 and was not renewed nor replaced by a new and more robust national strategy.

The fact that forms of trafficking other than sexual exploitation have received little attention is far from being exclusive to the Canadian context. However, in Canada, there has been an important shift towards trafficking that occurs within the Canadian borders. The phenomenon is now closely associated with sexual exploitation (local or inter-provincial) of adolescent girls, young women, with a particular concern for Aboriginal women and girls. There have been more police investigations and more media coverage on cases involving ‘the girl next door’ (Solyom, 2012) and thus it became a matter of public debate and public attention.

This paper looks at the key turning points in the evolution of the Canadian anti-trafficking response and the government policies (or lack thereof) concerning trafficking for labour exploitation. In doing so, the paper investigates the different dimensions of the policy, notably the development of the legal framework, the different frames and levels of actions (federal and provincial governments, non-government actions), and the evolution of the understanding of the phenomenon within the Canadian context.

The paper draws in part on the analysis of the results of a Canadian national study conducted in 2012 and 2013¹. The study is based on 79 semi-structured interviews with 90 stakeholders and practitioners from different sectors: community, law enforcement, social services, and health sectors. Further, the paper builds on recent research on trafficking in Canada, especially the literature examining labour trafficking (CWF, 2014; Fudge & MacPhail, 2009; Hastie & Yule, 2014; Kaye & Hastie, 2015; Kaye & Winterdyk, 2012; Quarterman, Kaye, & Winterdyk, 2012; RCMP, 2010, 2013; Ricard-Guay & Hanley, 2015)

The first part of this paper will present the development of the Canadian anti-trafficking efforts and policies. The second part will examine the challenges in addressing labour trafficking within the current Canadian framework. Two cases of successful convictions for this crime will be discussed as they illustrate some of the gaps in the current policy. Two main challenges are discussed in this paper: the shortcomings in the application of the law and the gaps in providing assistance and protection to persons who have been trafficked

2. Trafficking in Canada

There is still no national mechanism to collect data on trafficking across the different provinces (Government of Canada, 2012). The main source of data comes from law enforcement (RCMP, 2010, 2013; SRCQ, 2013), which provides only a partial portrait of the problem in the country. The cases

¹ This pan-canadian study was funded by the Department of Justice Canada and conducted by prof. Jill Hanley and Dr. Alexandra Ricard-Guay, from the School of Social Work, McGill University. The study took place as part of a wider community-based project undertaken by CATHII and that led to the creation of the Quebec Coalition Against Human Trafficking (2011).

faced by NGOs and other stakeholders are not counted in, and thus remain invisible. The lack of systematic collection of data hinders the development of policies to combat this crime.

Nevertheless, on the basis of available information, Canada is known to be a country of origin, transit and destination for trafficking in persons (TIP). The main forms of trafficking that are documented in Canada are trafficking for sexual exploitation and for labour exploitation, notably in agriculture, construction, restaurant and hotel business, as well as domestic work (RCMP, 2010). According to the federal policy agency, the Royal Canadian Mounted Police (RCMP), in its first assessment of the scope of trafficking in Canada, the majority of the victims identified in the criminal investigations (between 2005 and 2009) are Canadian nationals, and the cases are related to domestic sex trafficking (RCMP, 2010). This also confirmed previous information provided by the federal agency on criminal intelligence (CISC, 2008). When looking at international victims of trafficking for sexual exploitation, the regions of origin are mostly Asia and Eastern European countries.

In 2013, the RCMP released a second report, this time only dedicated to domestic sex trafficking – which illustrates the centrality of attention given to this issue. According to this report, the majority of victims are Canadians between 14 and 22.¹³ Almost 40% are minors. The groups that are identified as being the most vulnerable are young people – especially adolescents in the child welfare system, as well as women and girls from the First Nations communities (RCMP 2013)². The prevalence of domestic sex trafficking in the official data must be situated in a context in which the focus of state's resources and actions has been directed toward sex trafficking, leaving aside other forms of trafficking. It is estimated that the profits generated by trafficking for sexual exploitation range from \$500 to \$1000 per day for one person providing sexual services; that is, between \$168,000 and \$336,00 per year (RCMP, 2013: 10). Thus, profits are high. The RCMP report also documented cases of involvement of organised crime in trafficking for sexual exploitation (RCMP, 2010). Also, street gangs are involved in the recruitment of young women and girls.

Often wrongly confused with smuggling of migrants – meaning the organisation or facilitation of the illegal entry of migrants – cross-border human trafficking does not automatically involve illegal entry into the country. Entry can be legal, with a tourist visa or a work permit. Cases of fraudulent use by criminal groups of the visa-exemptions policies have been reported in cases of foreign nationals migrating to work in the sex trade. Further, more recently, there is growing concern regarding abusive practices and exploitation – including some situations of trafficking - occurring within the low-skilled temporary migrant workers programmes: Temporary Foreign Worker Program (TFWP) and Seasonal Agricultural Worker Program (SAWP). Migrant workers who are coming legally in Canada, under government-regulated programmes, may also be victims of abusive practices, including trafficking.

Regarding the number of convictions, since the first human trafficking charges were laid in 2005 (under immigration law) and the first conviction obtained in 2008 (under criminal law), there was an increase in the number of trafficking cases brought before the courts and of the number of convictions for human trafficking: from 8 in 2008, to 27 in 2009, to 33 in 2012, and 14 in 2013. According to the latest estimates provided by the RCMP, there have been 85 cases in which convictions related to trafficking were secured, for a total of 151 individuals being convicted of trafficking specific and/or related offences (i.e. confinement, sexual assault, procuring, etc.) in cases of trafficking³.

² Both the terms First Nation and Aborigines are used in this paper.

³ The latest data are provided on the website of the RCMP, see <http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm> (accessed on the 25th of April 2016). The problem with available data is that charges for human trafficking and charges for related offences are amalgamated, which does not differentiate cases in which the charges for trafficking have been dropped and convictions for related offences were secured.

3. The Canadian anti-trafficking response

Since the early 2000's, Canada has strengthened its response. Canada has been active during the negotiations leading to the adoption of the Palermo Protocol and has been among the first countries to ratify it. Nevertheless, many components of an effective anti-trafficking response are still lacking. Only in 2012, a first National Action Plan (NAP) was adopted after more than a decade of pressure from various advocates and civil society groups on the government to develop a stronger national anti-trafficking response. Yet, the NAP fell short of many of the expectations and recommendations that were made to the government (Ricard-Guay & Hanley 2015).

The first decade of development of the Canadian response to trafficking was also marked by a rapid and eclectic emergence of various associations and anti-trafficking initiatives emerging from civil society. There has been an unprecedented mobilisation against trafficking in Canada, which also focused on sexual exploitation.

Despite few achievements, the criticisms that were made against the government (lack of) actions in the early 2000s, are still accurate today (Oxman-Martinez, Lacroix, & Hanley, 2006). The anti-trafficking response is characterised the predominance of a crime-control approach (prosecution of traffickers and fighting irregular migration) and therefore the weak protection mechanisms for victims (Ricard-Guay & Hanley 2015). Further, labour trafficking has been overlooked (Dandurand & Chin, 2014; Fudge & MacPhail, 2009; Hastie & Yule, 2014; Kaye & Hastie, 2015; Quarterman et al., 2012; Ricard-Guay & Hanley, 2015; Sikka, 2013; Winterdyk & Reichel, 2010).

a. Legal framework

Canada ratified the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Palermo Protocol) and has conformed to its minimal obligations by introducing trafficking as a criminal offence under two laws: the *Immigration and Refugee Protection Act* (IRPA) in 2002 and the *Criminal code* in 2005. It is worth noting that the first time trafficking was included as a criminal offence in Canadian law it concerned exclusively unauthorised entry into the country. In other words, trafficking offence was initially confined to the issue of irregular immigration. Indeed, under IRPA, the trafficking offence is related to the organisation of cross-border trafficking; and is defined as the organisation of entry into Canada by fraud, deception, abduction, or use of threat or force or coercion (art. 118)⁴. This offence has been scarcely used in situations of trafficking, pointing to the inadequacy of linking and limiting trafficking to the only ambit of irregular migration.

Three years later, in 2005, the trafficking offence was included in the criminal code, and its scope was significantly expanded. The definition of trafficking in Canadian law is different from the definition established in the Palermo Protocol. Some of those differences are relevant to outline when looking at labour trafficking.

According to the Canadian Criminal Code (art. 279.01), anyone who recruits, transports, holds, harbours or *exercises control or influence over the movements*⁵ of a victim for the purpose of exploiting her/him or facilitating her/his exploitation commits a trafficking offence. The exploitation in a situation of trafficking means to 'cause [another person] to provide, or offer to provide, labour or a service by engaging in conduct that, in all 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 the service/work (Criminal Code, Art. 279.01).

As opposed to other countries, such as in most European countries, the Canadian penal definition of trafficking in persons (TIP) does not differentiate the different forms of exploitation. The criminal

⁴ Articles 122 and 123 make it an offence to falsify travel documents to facilitate illegal immigration.

⁵ Emphasize from the author.

code does not provide a precise definition of trafficking for labour exploitation or forced labour, and it does not establish a stand-alone offence for the latter. There is one broad definition for all situations of TIP. In comparison, the Palermo Protocol sets a non-exhaustive list of different forms of trafficking (forced prostitution, forced labour, removal of organs, slavery or slavery-like practices). For example, the EU Anti-trafficking directive⁶ definition of trafficking have not only included these different forms of exploitation, but has even expanded it to include TIP for begging, and TIP for criminal activities.⁷

Also, the Canadian legal definition - in addition to the list of acts related to the offence of TIP as established in the Palermo Protocol (e.g. recruiting, harbouring, transporting)⁸ - includes the notion of ‘exercising control, direction or influence over the movements of a person’. This terminology originates from the definition of procurement in prostitution. The inheritance from the legal framework and the language related to prostitution shapes the scope of the interpretation of the offence of trafficking, which tends to associate more closely trafficking to prostitution, in other words to trafficking for sexual exploitation (Kaye & Hastie, 2015).

Further, at the core of the definition of exploitation is the notion of ‘fear for safety’ – which is a determining and distinctive element of the trafficking offence in Canadian law. Before the amendments brought to the criminal code’s offence of trafficking in 2012, as opposed to the Palermo Protocol, there was no specification regarding the means of coercion used in the process of trafficking. It reinforced the centrality of the notion of ‘fear for safety’ in assessing trafficking crime. In 2012, a list of elements that the courts may take into consideration in assessing a situation of trafficking has been added (279.04), those items include having *used or threatened to use* (i) violence, (ii) force or any other form of constraint, or otherwise (iii) having made false declarations or used other fraudulent means. This list is similar to that established in the Palermo Protocol.

The interpretation of the Criminal Code is still narrow. Some scholars have argued that it is not well adapted to the specifics of non-sexual forms of exploitation in trafficking, namely forced labour and/or labour exploitation (Kaye & Hastie, 2015). The absence of clear reference to the different forms of exploitation does not help in moving the understanding of TIP beyond the restrictive ambit of sexual exploitation.

b. Policy and institutional framework

The institutional vacuum

There have been two important moments in the development of the anti-trafficking response in Canada: the introduction of the offence of trafficking in the criminal code in 2005 and the adoption of

⁶ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (hereafter EU anti-trafficking directive)

⁷ By transposing the EU anti-trafficking Directive into national legislations, most EU member states have expanded their TIP offence to include forms other than sexual exploitation (when it was previously inexistent). For example, in Greece, the offence of labour exploitation/forced labour was not existent and introduced only in 2009. In Cyprus, in 2007, labour trafficking was introduced as a self-standing crime. In the UK, the Coroners and Justice Act in (CJA) 2009 made important changes and introduced new offences regarding servitude and forced labour as stand-alone crimes. It has to be noted that both in the UK and in France, rulings of the European Court of Human Rights (ECtHR), have influenced the States to include new offences (servitude and forced labour) in order to comply with the court decision. The court had ruled that their national legislation had failed to protect the victims, because of the vagueness or inexistence of these offences.

⁸ The Palermo Protocole provides a tripartite definition of trafficking, which encompasses: the act (e.g. recruitment, transportation, harbouring a person), the means (e.g. threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of authority) and the purpose: exploitation. Elements of those three components have to be present in order for a situation to qualify as trafficking.

the NAP in 2012. Both of these advancements have been the impetus for government mobilisation of efforts, mainly regarding legislative development (amendments brought to the offence related to trafficking) and government support to raising awareness campaigns. Also, important to mention is the introduction of a temporary residence permit (TRP) for international victims of trafficking in 2006.

However, in general terms, there has not been a strong commitment from the government to develop an institutional structure and framework to oversee the strategy for tackling trafficking. Having included a criminal offence related to trafficking without having a strategy (until 2012), and more importantly without giving a specific and clear mandate to a governmental agency constitute an important gap. Further, there has been little efforts to strengthen the protection and support services for victims.

In Canada, there is currently no national system to collect data on the number of victims, no specific government programme to offer assistance to trafficking victims, and no national referral mechanism to ensure that victims receive adequate services. Support services are coordinated through local, regional and provincial initiatives, mainly non-governmental. Indeed, in the absence of a strong government response, the support and protection for victims of trafficking were in most provinces initiated by local groups and non-governmental organisations working with populations at risk of trafficking.

No independent government agency has a specific mandate regarding the national anti-trafficking strategy. Only in 2012, with the adoption of the National Action Plan in 2012, a Human Trafficking Taskforce has been put in place under the auspice of Public Safety. The task force is responsible for overseeing the implementation of the NAP. Yet, its mandate is limited. Before that, apart from an interdepartmental working group⁹, which role was nearly inactive, there was a political and institutional vacuum. One exception stands and sheds light on the key predominance of the crime-control approach in the early development of the Canadian framework: the leading role that law enforcement has played and continues to have.

The role of law enforcement

In 2005, following the introduction of the trafficking offence in the Canadian criminal code, the RCMP, the federal police agency, established a Human Trafficking National Coordination Centre (HTNCC). This coordination centre is responsible for acting as a liaison between law enforcement organisations in the country, and to coordinate the criminal intelligence. Also, this centre had the mandate to coordinate national prevention and awareness raising initiatives. Between 2008 and 2012, the RCMP has provided training and awareness sessions about trafficking to 39,000 law enforcement officers, border and immigration agents, prosecutors, NGO staff, and to the broader public (National Action Plan: 30). The RCMP has also developed a national awareness campaign called, "I'm Not for Sale," and, more recently, an awareness campaign targeting youth. In addition, six regional trafficking awareness coordinators (which later have been reduced) were appointed and were responsible for carrying out the awareness raising activities and to network with the local organisations working in the field of trafficking. In sum, a significant part of the Canadian government's involvement in awareness raising activities has been accomplished by the federal law enforcement agency. Provincial

⁹ An Interdepartmental Working Group on Trafficking in Persons (IWGTIP) was set up in 1999, and its main mandate was to develop a national orientation for the anti-trafficking response, which took until 2012 to take form through the NAP. Initially created as an ad hoc initiative, the working group's mandate was revised in 2004 to include the development of a pan-Canadian strategy for action. It wasn't until 2012 that the National Action Plan was adopted and this strategy formally developed. Formerly co-chaired by the Ministry of Justice and the Ministry of Foreign Affairs and International Trade, the working group was brought under the authority of the Ministry of Public Safety of Canada, which is responsible for implementing the National Action Plan and coordinating the Canadian government's measures to combat human trafficking. The working group is composed of ten key ministries and relies on two sub-committees: (i) prevention and partnership; and (ii) prosecution and protection.

coordinators have been, in certain regions, a central actor in setting up a network of stakeholders working with populations at risk of trafficking.

The predominant role of the RCMP in the development of the Canadian anti-trafficking response has a double-edged dimension. Some of the participants from our study have expressed their concerns in that regard, especially regarding the involvement of the provincial RCMP coordinator in local coalitions. On one side, it poses the risk to create tensions between a law enforcement approach and an approach based on the protection of undocumented workers. There is a division between the opposed mandates of different organisations. As an illustrative example, it can be delicate to initiate collaboration between law enforcement and groups working with undocumented migrants. Given the obligation of law enforcement to disclose the irregular status of migrants to immigration authorities, there is a founded fear of being deported when a migrant comes forward. On the other side, other participants in the study have outlined the positive implications. Some experiences of local anti-trafficking coalitions have shown that the active role of the RCMP provincial coordinator did in practice contribute to building a trust relationship with some representatives of law enforcement.

The missing link in the Canadian response: victims' protection

Regarding the protection of trafficking victims, the main measure taken by the government was the introduction in 2006 of the Temporary Resident Permit (TRP) for non-national victims of trafficking. There was previously no specific visa allowing a person who had been in a trafficking situation to remain in Canada, temporarily or permanently. First set for 120 days, the TRP was extended to 180 days in June 2007 and is renewable for a maximum of three years. An important element of the TRP is that it is not conditional on the victim's collaboration to criminal investigations and judicial proceedings. Further, TRP holders can apply for a work permit without the usual administrative fees, and they have access to healthcare covered by the Interim Federal Healthcare Programme (IFHP) and services for therapy. The introduction of this permit was seen as a positive move towards a better protection of foreign trafficking victims. In comparison, the EU Directive on the residence permit for victims of trafficking¹⁰, which has been transposed in many European countries, foresees a temporary permit for victims of trafficking of 90 days (referred as the reflection period), and the permit is conditional on the victim's collaboration to criminal investigations (with the exception of Italy system of victims' assistance).

Thus, when compared to other countries, the Canadian TRP may appear comprehensive. However, in practice, very few permits have been delivered so far. The under-utilisation of the TRP as a protection tool has been outlined in our study as well as in other research reports in Canada (CCR, 2013; Ricard-Guay & Hanley, 2015). Citizenship and Immigration Canada (CIC) issued an average of 32 TRPs each year between 2006 and 2012. Just 14 permits were issued across the country in 2013, the most recent year for which figures are available (Carman, 2015). In addition, there are many loopholes in this temporary permit programme, as it will be further discussed in the paper.

The long awaited National Plan of Action, adopted in 2012, did not respond to the various critics toward the lack of government actions, and in addressing the critical shortcoming: the absence of a coordinated national strategy and the lack of government support for assistance and protection services for victims. The NAP does not provide funding for services to victims and does not foresee the setting up of a national referral mechanism or coordination to support and protect victims. While 5 millions of funding are provided to law enforcement, the NAP only provides a stream of funding of 500,000\$ for victim services (not exclusive to trafficking).

¹⁰ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

In this context of the absence of funding from government to NGOs and community sector, there are no specialised services for persons who have been trafficked in Canada, no or very few specialised units or personnel with the criminal-justice system.

c. The Canadian federalism and the role of the provinces in anti-trafficking efforts

The Canadian federalism explains in part the difficulties of mounting a coordinated and integrated national response, especially regarding cases involving non-nationals. Multiple levels of legislative bodies and jurisdictions are involved (Barrett, 2010). For example, immigration falls under federal jurisdiction (with federal-provincial agreements in the case of Quebec and increasingly other provinces). Labour standards fall under provincial jurisdiction, but the federal government regulates the foreign worker programmes. Assistance for the victims of crime is a shared jurisdiction, and, youth protection is a matter of provincial jurisdiction. Within law enforcement, trafficking investigations can fall under municipal, provincial or federal (that is, RCMP) police jurisdictions, depending on where the crime takes place. The RCMP is responsible for international trafficking investigations, although in these cases there is often close collaboration with municipal police.

This obviously creates a complexity that must be taken into account in the development of any national response. However, the NAP did not foresee to overcome these challenges and has not established inter-provincial coordination mechanisms (except the collaboration between law enforcement agencies). Yet, many participants in our study identified the lack of inter-provincial coordination as being a crucial gap. Trafficking may have occurred in different provinces, which requires collaboration between various actors from the different provinces (e.g. police, community services). Besides, the person who has been trafficked may need to access shelter in another province than her or his place of residence, for safety reasons (such cases were documented in the study).

In the absence of a strong national political response, the leadership of provincial and territorial governments becomes important in setting up a framework to prevent and respond to trafficking. In that regard, some provinces have been more (pro)active.

Measures and strategies undertaken at provincial level differ considerably. Three main strategies emerge from the analysis of the current local and provincial anti-trafficking initiatives (Ricard-Guay & Hanley 2015). A first model consisted in the creation of a governmental agency. A second example of provincial response was the setting up of civil society coalitions – some of which became the provincial anti-trafficking leading actor. The third model is based on the development of different local initiatives without having a provincial strategy (city-based efforts, mostly in important urban centres). British-Colombia is a unique case where a governmental agency dedicated to the fight against trafficking was created, in 2007, the Office to Combat Trafficking in Persons (OCTIP). The province was also the first to adopt a provincial action plan to address trafficking for sexual exploitation and labour exploitation (2013 to 2016). In the province of Alberta, the Action Coalition on Human Trafficking in (ACT Alberta), set up as a civil society coalition in 2007, soon became the leading provincial actor (Quarterman et al., 2012)¹¹. Then, in other provinces, other models and initiatives of coordinated response to combat trafficking have been put in place with various success and sustainability. Besides, another example stands out, that of Manitoba. It is the only province that adopted a provincial legislation addressing trafficking, the *Child Sexual Exploitation and Human Trafficking Act* (2012). However, this law concerns exclusively trafficking for sexual exploitation. The starting point of Manitoban government's actions, since the early 2000s was its concern for the sexual

¹¹ Most local and provincial initiatives, either taking the form of a task force, a coalition, or a committee were created after the introduction of the criminal code offence of trafficking, around 2007, which illustrates the turmoil created by this new criminal offence for which no intervention tool existed. Practitioners and organisations from different sectors put their efforts together to respond and mobilise resources for victims. For a complete analysis of the different approaches, mandates and actions of the coordinated response to trafficking in Canada, see Ricard-Guay & Hanley 2015.

exploitation of Aboriginal women and girls in the sex trade. It is only later, and progressively that trafficking was included in their strategy and became a priority, especially the domestic trafficking of Aboriginal women and girls. At the time of writing this paper, the government of Ontario had just adopted a provincial anti-trafficking strategy, which also gave emphasis on the issue of trafficking affecting Aboriginal communities. The plan provides for a substantial funding over the next four years, as well as the creation of a coordination centre (Grant, 2016).

In sum, most of the provincial anti-trafficking efforts have given priority to trafficking for sexual exploitation, with special attention on Aboriginal communities being affected by trafficking.

In summary, examining the local and provincial levels of action illuminates the fact that a significant part of the impulse for the Canadian anti-trafficking response has come from local and provincial initiatives, rather than from the federal government and a top-down approach. Many grassroots and bottom-up initiatives across the country have precipitated the development of coordinated local action to handle cases of trafficking, and by doing so, prompted the government to take action later. It preceded public funding and government support. The two exceptions are British-Columbia and Manitoba.

4. The framing of trafficking: When trafficking becomes local: old stakes with new names

An essential element to consider when examining anti-trafficking policies and its political and social evolution is the way this crime is understood and perceived. The understanding of trafficking has evolved and has shaped the policies and funding programs in place. Three main phases can be identified in the Canadian context. First, human trafficking was mainly perceived as international, affecting women coming to Canada from overseas (Asia or Eastern Europe), who were trafficked for sexual exploitation. In that regard, it followed a similar trend to that of other countries. Further, TIP was, and still is, strongly associated with organised crime, and viewed as an issue connected with irregular migration. TIP was perceived and situated outside of the mainstream economy, and not easily related to labour market structures and regulations (Rijken, 2011). TIP was confined to the 'extraordinary', to the underground and illegal sectors of activities. Gradually, the focus shifted towards **domestic trafficking for sexual exploitation**, meaning trafficking that takes place within the Canadian borders and involving Canadian victims. Within that frame, the criminal component and the links with organised crime, especially street gangs, are still prominent. Finally, there has been a recent interest regarding forced labour, affecting mostly non-Canadians. However, the predominant concern remains focused on domestic trafficking for sexual exploitation.

The focus on domestic trafficking for sexual exploitation has to be put against the backdrop of the reframing of two related issues: young people's involvement in the sex trade and abuses and violence against women and girls from Aboriginal communities (namely in the sex trade). Indeed, there has been a re-conceiving of the issue of young people's involvement in the sex trade. Until the 1970s and 1980s, this issue was referred to as being juvenile prostitution. Progressively, the question was reframed as being 'sexual exploitation' in prostitution or 'commercial sexual exploitation of minors'. And more recently, this issue is more and more associated with trafficking. This change in terminology reflects the common view today that youth involvement in the sex trade is first and foremost sexual abuse (Cusick, 2002; Estes & Weiner, 2001; Melrose & Pearce, 2013; Pearce, 2009).

The exploitation of Aboriginal women and girls in the sex trade also gained attention within a particular political context. A context in which the Canadian public has only recently begun to pay attention to violence against Aboriginal women. Awareness regarding sexual exploitation in the sex trade of Aboriginal women emerged along recent concern for the disappearance and murder of thousand of women from First Nations. This reality is rooted in colonialism, and enduring racist, social and economic inequalities and discrimination (CWF, 2014). By examining the underlying

causes of the overrepresentation of Aboriginal women in the sex trade and cases of sexual exploitation, the Native Women Aboriginal of Canada outlined the impact of colonialism on Aboriginal communities. Notably, the residential schools system has inter-generational effects on family violence and childhood abuse. This legacy from the Canadian history is coupled with persisting poverty, race and gender discrimination and social isolation of Aboriginals coming to the cities, and which increases vulnerability (NWAC, 2014).

In conclusion, Canadian anti-trafficking policy is characterised by its strong focus on sexual exploitation and particularly so on the occurrence of this phenomenon within the country, without necessarily involving international border crossing for victims or perpetrators. This trend has also been observed in the USA, and northern European countries (Choi-Fitzpatrick, 2016). Linking trafficking with young people and Aboriginal women and girls in the sex trade in Canada has been a trigger to mobilise political and NGO efforts. It has served to give visibility to an issue that was previously not attracting such public sympathy and concern. However, it has also had the negative effect of channelling most of government and private foundations' funding to combatting this form of trafficking (De Shalit et al., 2014), neglecting the challenge of labour trafficking.

5. Trafficking for labour trafficking: still at the margins of anti-trafficking efforts?

I think we're at the tip of the iceberg. [we cannot say] we're dealing with this issue effectively, we haven't had a labor case, and I guarantee you we have labor, forced-labor cases. The fact that none of them are on our radar means we're not looking for them. (Interview 62, Law Enforcement)

It has been since the early 2010s that trafficking for labour exploitation has emerged as a policy concern. Migrants' and refugees' rights organisations have prompted a greater acknowledgement that this crime also occurs in Canada. For example, in 2012, in the context of the adoption of the NAP, Public Safety Canada organised a series of consultations with civil society, community and public sectors. One of these meetings' aims was to contribute in guiding future government anti-trafficking actions. Two areas of concern were identified by civil society and NGOs: trafficking for labour exploitation and trafficking affecting Aboriginal communities, especially women and girls (Public Safety Canada, 2013). Still under-researched and little known, those two issues were identified as being in need of more research and actions.

In addition to the above, legal programmes for temporary migrant workers are pinpointed as creating vulnerability to exploitation. Indeed, having a temporary status and work permit which is moreover tied to a single employer and also given the loopholes in the enforcement of the contracts and of the programmes' regulations (Basok, 2016; CCR, 2016; Fudge & MacPhail, 2009) creates vulnerability that can lead to situations of trafficking. According to law enforcement (RCMP 2010), as well as civil society organisations (CCR 2016) there have been several cases of fraudulent uses of the TFW programmes. The fact that there has been a significant increase in migration in Canada under those programmes of temporary migration is linked with this increase of concern regarding abuses of migrant workers. Indeed, the migration trends in Canada have significantly changed over the last 15 years, whereas temporary migration (regulated and facilitated through the programmes mentioned above) has overcome longer term/permanent immigration and other trends of migration (CCR 2016).

4.1 Case law related to trafficking for labour exploitation

There have been only a few cases of trafficking for labour exploitation brought to the courts. Only two out of all convictions for trafficking have involved labour trafficking in Canada. The first case

includes numerous workers in the construction sector, the Domotor case (2011). The other case concerns domestic servitude, the Orr case (2013). These cases illuminate some of the gaps in Canada's response: concerning the implementation of the law, the services (or absence of thereof) for victims (e.g. absence of shelters for male victims, or for victims of forced labour), the Temporary Residence Permit (TRP) for trafficking victims.

a. The Orr case: a case of trafficking or a case of violation of Immigration Law?

The Orr case involved trafficking of a domestic worker, a Philippine woman, who came with her employer, Mr Orr and his wife, to Canada. The couple had helped the Philippine woman, Ms Sarmiento, to obtain the visa to enter the country. The events took place over a period of two years and occurred in British-Columbia. Ms Sarmiento, the nanny, had to work 16 hours a day and was prohibited from leaving the home. She was only allowed to call once a month her family in Philippine. Thus, many elements commonly identified in trafficking cases were present: long and exhausting hours of work, the confiscation of the identity documents, and control over the movement and the personal liberty of the person.

In 2013, Mr Orr was sentenced to 18 months in prison for charges related to trafficking. It was the first conviction for trafficking for labour exploitation under IRPA, the Immigration Law (R. v. Orr, BCSC, 2013). As mentioned earlier, the offence of trafficking under the Canadian Immigration Law relates to the organisation of the migration into the country by fraud, deception, abduction, or use of threat or force or coercion (art. 118). Mr Orr was accused of three offences: employing a foreign national illegally, human trafficking (art. 118, IRPA), and misrepresenting or withholding material facts in the application for a temporary visa for entry to Canada that he made for the complainant.

While anti-trafficking advocates and law enforcement representatives have applauded this conviction, as setting new ground in the Canadian jurisprudence and in raising awareness on the issue (Woo, 2013), much emphasis was put on the violation of immigration law. As reported in the media, the sentencing was viewed as a deterrent to misuse or violate the immigration law, rather than a deterrent in exploiting a worker (Anon, 2013; Moore, 2013).

b. The Domotor case: a precedent or a unique case of labour trafficking?

The *Domotor* case (R. v. Domotor, ONSC, 2011) was the first successful conviction of labour trafficking in Canada. As argued by Hastie and Yule, based on a case-law analysis, while this case has been hailed as being a milestone in the Canadian experience, its uniqueness may diminish its impact for future jurisprudence (Hastie & Yule, 2014). It had opened new ground of mobilisation and lines of actions, concerning, on one hand, service and protection to victims and, on the other hand, interpretation of the law.

The case involved a Hungarian family exploiting many other Hungarians in the construction sector in Ontario. The police investigation, called Operation Opapa, involved ten suspects, including four charged with human trafficking and other offences, and 19 victims (the majority are men). In addition to having been forced to work for little or no wages in construction sites, the victims lived in poor conditions. Their identity documents had been confiscated, and their movements were tightly controlled, as well as the contacts with their families. The victims were subjected to personal threats and violence as well as threats against their families in Hungary. This case was not limited to forced labour, but also included fraud activities: welfare and refugee claims fraud. The victims were induced to make refugee claims on the basis of false statements and to apply for welfare, which was then pocketed by the traffickers. The victims were also compelled to commit theft of cheques in the mail. The victims agreed to testify, and the prosecution was facilitated by the availability of physical evidence (Kaye, 2013). Two of the accused received sentences of 7 and 9 years in prison.

From a criminal justice perspective, it documents several offences related to human trafficking and many aspects of exploitation in a forced labour context. This case illustrates multiple forms of control and compulsion and closely conforms to the common image of labour trafficking, involving threats and violence. As argued by Hastie and Yule in their case law analysis (2014), beyond the necessary and more common elements determining trafficking, the case also presents many unique and atypical factors (atypical with regard to more common situations of labour trafficking). For example, this case involved criminal organisation, and a combination forced labour, forced criminal activities and fraud schemes. Hastie and Yule question the use and applicability of this conviction for future cases of labour trafficking, given this uniqueness. The criminal organisation component of this case has had an important weight, and may explain the heavy sentencing. The same for the pre-trial detention decision, while it was the first time that trafficking was included in the grounds supporting pre-trial detention; the gravity and the element of the criminal organisation were dominant in the court decision. Thus, future situations of labour trafficking, which do not involve a high level of criminal organisation might not receive the same treatment (Hastie & Yule 2014). Further, given the uniqueness of this case, many loopholes in the interpretation of the law may remain unaddressed.

4.2 Addressing labour trafficking in Canada: gaps and challenges

The under-utilization of the offence of trafficking in a situation of labour exploitation may be explained by different factors. First and foremost, there is a lack of awareness about the occurrence of this phenomenon, which leads to an under-identification of cases. Our study results have shown that trafficking for labour exploitation is a neglected aspect of police intervention. There are more resources available and more attention given to sexual exploitation. Police already have far more experience investigating activities related to prostitution. In some municipal police, there is already a special unit dedicated to activities related to prostitution, and in Montreal specialised in the issue of the commercial sexual exploitation of minors.

Trafficking for labour exploitation is new and still little understood. Investigations regarding labour exploitation are more complex and difficult to detect (Sikka, 2013). It often involves an intricate combination of violations of labour standard, immigration policies, criminal charges that can be both under the immigration law or the criminal code (Sikka 2013). Further, there might be breaches or misuse of the legal temporary migration programmes (TWFP). Investigations into international cases of trafficking are the responsibility of the federal police (RCMP). Cases of labour trafficking mostly involve migrants, who may be undocumented. Migrants are much more reluctant to disclose and come forward to the police and authorities:

The international cases are a lot more complicated. [...] survivors don't want any police involvement. They don't want to go the RCMP route. So much of that remains under the radar.
(Interview 35, Coalition)

The challenges in detecting and investigating case are also linked to the understanding of trafficking by frontline workers, including police. Girls and young women involved in the sex industry are more easily seen as potential victims, then adult men in cases of trafficking for labour exploitation (when a minor is involved there is automatically criminal offence). Further, another difficulty in detecting cases of labour trafficking is that the initial arrangement is mostly voluntary-based. The person has consented to migrate (if migration is involved) and to engage in a labour arrangement. Coercive recruitment in situations of labour trafficking is not common. Thus, the question of consent is more complicated to address (Sikka 2013). The following stakeholder expresses clearly the lack of understanding of trafficking for labour exploitation:

[I]n our experience, because so few cases of trafficking [of labour trafficking] come up with government agencies, they don't know how to deal with it... [...] They say, "Oh, well, where was the exploitation here? She could have left anytime. How is this forced? Because she knew going in what was happening, right?" (Interview 37, Labour Rights)

Interviews with stakeholders from different sector showed that there is still a lack of knowledge and of familiarity within law enforcement to address cases of trafficking that are not for sexual exploitation:

I mean, a lot of times cops are not very comfortable with the non-traditional form of trafficking which we advocate for. Meaning labour or meaning forced marriages. (Interview 12, Legal Assistance)

Cases of labour trafficking may occur in very diverse settings: in a private household, in supply chains, through a process of individual and private-based recruitment process, or recruitment through the use of intermediaries and employment agencies. Gaining knowledge and awareness in such diverse settings is not an easy task.

Challenges in the use of the criminal code in situations of trafficking for labour exploitation

Another problem relates to the scope of the interpretation and of the applicability of the criminal offence in cases of labour exploitation. As suggested by Kaye and Hastie (2015), the criminal code offence is still perceived by law enforcement and other practitioners as being less applicable to situations of labour trafficking. The terminology related to the 'exercise control over the movement of a person' originating from the definition of procurement, is a determining element of the interpretation and is still closely associated with sexual exploitation (Kaye & Hastie, 2015; Sikka, 2013). The other distinctive element of the Canadian legal definition of trafficking, the 'fear for safety', also presents some challenges, particularly salient in situations of labour trafficking. The notion of safety is closely associated with physical harm (Hastie & Yule, 2014; Sikka, 2013) (Sikka 2013; Hastie and Yule 2014), which limits its application in situations of labour trafficking that do not involve physical harm or threat to physical safety, but encompass rather psychological means of coercion and economic coercion. When there is initial consent, such as in most labour trafficking situations, it may be harder to prove the fear for safety. In documented cases, charges of THB were dropped based on the absence of proof of fear for one's safety, and this, despite the presence of other coercion means (as established in the Palermo Protocol) (Kaye & Hastie 2015)¹².

Challenges in the interpretation of the legal definition do not have implications limited to the law enforcement and judicial sectors, but it still shapes the national response as a whole. If not enough attention or concern is given to labour trafficking, it is also related to a question of perception and understanding. There has been a strong re-shifting, re-conceiving of exploitation within sex trade, notably when involving adolescents, as being potentially a form of trafficking. As expressed by interviewees in our study, this change of perception has triggered a collective awakening regarding the seriousness of exploitation within sex trade. This re-conceiving has not yet taken place regarding labour exploitation (Sikka 2013).

Another challenge is the discretionary level of the decisions in the assessment of trafficking situations, at all stages: from the investigations to immigration officers delivering the temporary permit to prosecutors. This discretionary dimension may change significantly based on the sensitivity or knowledge of police or immigration officers, which leads back to the question of understanding of trafficking.

¹² The first court decision that has provided a thorough interpretation of the offence of trafficking concerned trafficking for sexual exploitation, in *R. v. Urizar*. In its decision, the Court of Appeal of Quebec reiterated that transport or "forced movement" was not a necessary element of "exploitation". Further, this judgement recognized the importance of the psychological dimension of constraint and control in exploitation (*Urizar v. R.*, 2013: p. 19). This court decision was considered important in advancing the understanding and scope of the interpretation of the offence of trafficking (SRCQ 2013), but its scope do not necessarily resonate to labour trafficking.

Loopholes from a protection perspective

The Domotor case has confronted the overall response system in place, from NGOs, service providers in the public and community sectors (health, shelter, psychosocial support, etc.), to law enforcement, investigation capacities and legal proceedings (pre-trial detention, sentencing and interpretation of the law). For a first time (of documented known case), a large number of victims – nineteen workers - all needed at once support and protection. The case has shed light on gaps in providing assistance and services to victims of trafficking, and even more so in situations of labour trafficking involving men victims.

A first key element was the absence of shelters that is specific or appropriate for victims of trafficking. Concerning coordination and referral mechanism, this case best illustrate the complete lack of government mechanism in the matter. The case has precipitated and triggered the consolidation of a local network of service providers, by necessity. In Canada, there is to date, very few (2 at the time of our study) shelters that were adapted and dedicated to victims of trafficking, one being only for victims of sex trafficking, and the other for any type of trafficking. Besides, referring to the network of existing shelters for other groups present many challenges (lack of availability, the incapacity of immediate referral, and inadequacy of security and safety measures). The most common network of shelters that is used in situations of trafficking is the network of shelters for women who had experienced domestic violence, and, to a lesser extent, few shelters specifically providing support to women exiting prostitution. Shelters for refugees and asylum seekers (very few) and shelter for homeless people also constituted an option.

Our study' interviews confirmed that few or no resources exist for male trafficking victims.

[T]he services for men are really few and far between and not always very appropriate for the needs of the victims. (Interview 5, Coalition)

About protection measures, the case also raises more general challenges faced by foreign victims (not limited to labour trafficking.), notably the temporary resident permit. One of the victims was not even informed of the existence of the special permit for victims of trafficking, and rather made a refugee claim that was later denied (Hastie and Yule 2014) Also, it is worth noting that the trafficking victims who testified in the case were not protected after the trial. For example, a key witness in the trial explained in detail how family members in Hungary feared for their security and even their lives. The Canadian Border and Security Agency (CBSA) nevertheless proceeded to deport his wife and step-daughter shortly after the trial because their refugee claims had been refused. This example sheds light on one of the many aspects of the weak and inadequate protection net.

Moving the discussion beyond the Domotor case, it is important to outline that there are many barriers to accessing the TRP. While it is possible to apply for a TRP without reporting the situation to the police or participating in an investigation or prosecution, in practice the absence of an open criminal investigation is an important obstacle (if not a requirement) in obtaining the permit. Based on the interviews conducted in our study, the insecurity of getting a TRP is a barrier in the NGOs' work and is an impediment to making a claim. There is a fear of reprisal, or even to be deported if the investigation does not lead to a successful prosecution.

Once they have a TRP as a victim of trafficking, they have to go through all the procedures to identify the people who are guilty. Just that can be something that stops the majority of migrant workers from using that program because they're afraid of reprisals. If immigration Canada gets what they want, they can just deport them, right? So, I think the lack of real protection or any kind of guarantees to protect migrant workers, the lack of not only their own security but that of their families – all of these discourage people from using the TRP. (Interview 50, Immigration)

Other immigration status options are then explored (asylum claim or permanent residency status on humanitarian and compassionate grounds).

However, from the law enforcement perspective, the TRP is seen as a very good option for people participating in police investigations and prosecutions. Interviews with law enforcement officers suggest that TRP is more of a tool to secure convictions when criminal investigations are open than to ensure adequate access to assistance and support services for the victims.

The TRP is there for the purposes of law enforcement... It assures that the victim will be there to testify in court because it's a long process. So if the trial is a year, the TRP will still be valid. A refugee claim can take a year. So, yeah, we might have them here for a year but if they are refused as a refugee, they have to go back... With a refugee claim, it's like rolling a die. [...] The TRP is more secure for us, in law enforcement. (Interview 21, Law enforcement)

Further, while the TRP gives access to the federal program for health care for non-nationals (this is also offered to refugees and asylum seekers), there is no coordinated system of referral or assistance for victims of trafficking in Canada. This is translated into practice by a vacuum and a vicious cycle of inadequate support system.

While it is an important tool for temporary protection, it has proven insufficient. The challenges in obtaining a TRP is not limited to cases of trafficking for labour exploitation. In cases of labour exploitation, undocumented migrants or migrants in a precarious situation will be very reluctant to come forward. Further, if there are less criminal investigations, less resource invested in the law enforcement agencies to tackle trafficking for labour exploitation, than migrant workers who are trafficked have little chance to get a TRP.

Conclusion

Canada is now facing a new turning point in its anti-trafficking response. The NAP came to an end in March 2016, and there has not been a renewal or a new proposal for a national strategy to combat trafficking. The inadequacies and deficiencies of the Canadian response to trafficking will not be overcome in a near future. In that perspective, labour trafficking may remain at the margins of government anti-trafficking efforts.

As a conclusion, it is relevant to highlight the role played by non-government actors in raising awareness regarding trafficking for labour exploitation in Canada. Based on the analysis of the experiences of different coordinated response and mechanisms (e.g. coalition, task force, the OCTIP in British-Colombia), our study suggests that those instances of intersectoral collaboration are an important vehicle to bring to the forefront the issue of labour trafficking. Indeed, in their early development, most anti-trafficking initiatives were focused on sexual exploitation – echoing the evolution of the Canadian response we described in this paper. Progressively, the issue of labour trafficking was incorporated. New actors dealing with labour rights issues were included in the networks and coalitions. The fact of fostering collaboration between actors that were traditionally not working together (trade unions and shelters for women victims of violence) did bring visibility to the less known issue of labour trafficking. The sharing of knowledge and of practices in dealing with cases of labour trafficking has contributed to raising awareness, even in a very limited scope, within the anti-trafficking field, about this issue. For example, in the Domotor case, the community organisation that identified the situation of trafficking played a crucial role in advocating that this situation was trafficking and to later mobilise the community.

Recently, a national mobilisation of migrant workers who migrate and work in Canada under the low-skill temporary work programmes has raised awareness on the abusive practices they face. These programmes create vulnerabilities and put the worker in a precarious position. These programmes have been reformed over the last decade making it easier and faster to hire migrants on a temporary basis, which has led to feeding a demand for disposable workers. The national mobilisation has prompted the current Trudeau government to review the low-skill migration programmes. This is an example of a bottom-up mobilisation that has raised government attention. It is a welcome step that

may open new ground for raising awareness regarding the broad issue labour exploitation occurring in the country.

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Legislation

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