

**International Human Trafficking in Canada:
Why so few prosecutions?**

by

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Abstract

This study investigated the anomaly between the claims that international human trafficking is wide spread in Canada versus the paucity of international trafficking prosecutions that have been achieved in this country following almost a decade of anti-trafficking enforcement. It relied upon a research approach that was anchored by Pierre Bourdieu's 'field' theory in order to unite the disparate issues that were examined in this project into a cohesive explanation for why there have been so few international human trafficking prosecutions in Canada. This thesis examines how moral reform and radical feminism have come to dominate the trafficking discourse and how that dominance has resulted in a general understanding of the crime where the victims are vulnerable foreign women and children trafficked for the sex trade. The study traces the interaction that has taken place between the international anti-trafficking social movement and the Canadian government in order to demonstrate the influence that this social construction of international trafficking has had upon the government's anti-trafficking policy, law and enforcement strategies. Through an analysis of government documents, statistical enforcement results, study research interviews, and alternative explanations that have been offered to account for the lack of international trafficking prosecutions, this thesis establishes that the most plausible explanation for so few international trafficking prosecutions in Canada is that the international trafficking of foreign women and girls into Canada for prostitution is not as systemic in this country as many have claimed. The examination of the lone international trafficking prosecution reveals that the victim formation which underpins the understanding of international trafficking can appreciably affect prosecutions because it dismisses from consideration as victims those persons who exist beyond the parameters of the accepted international human trafficking victim indicia.

Preface

This study was approved by the University of British Columbia Behavioural Research Board, certificate number H09-02773.

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1. International Human Trafficking in Canada

1.1 Introduction

The Canadian government, in fulfilment of its obligations as a signatory of the *United Nations Convention against Transnational Organized Crime (Annex II- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children)*¹, has been actively pursuing the crime of human trafficking within Canada since 2000. Government efforts have included the advancement of anti-human trafficking public awareness campaigns, the creation of anti-human trafficking legislation, the implementation of new immigration policies related to human trafficking, the development and implementation of anti-human trafficking policing enforcement strategies and training, and the provision of expanded trafficking victim services that span all levels of government, in partnership with non-government organizations (NGOs).² During this same period, human trafficking has also received considerable attention from NGOs, international and national, as well as from the Canadian media, who together have advanced the message that international human trafficking is extensive and prolific in Canada.³

¹ *United Nations Convention against Transnational Organized Crime (Annex II - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children)*, 15 November 2000, UNTS vol 2237 at 319, G.A. Res. 55/25.

² *Immigration and Refugee Protection Act*, SC 2001, c.27, s. 118; *Criminal Code of Canada*, RSC 1985, c. C-46, s 279.01, (CCC amendment 2005). Department of Justice Canada, “Trafficking in Persons” (2009) online: Department of Justice Canada <<http://www.justice.gc.ca/eng/fs-sv/tp/>>.

³ The media and NGO attention regarding international human trafficking is detailed in the literature review of Chapter 2, the examination of the Anti-trafficking social movement in Chapter 3 and the Analysis of the Trafficking Victim Construction provided in Chapter 4. Recent media and NGO examples are: Daphne Bramham, “Canada still has much to do when it comes to human trafficking” (June 19, 2010) *Vancouver Sun Newspaper*, Vancouver, Canada. Article indicates that globally, 12.3 million people are trafficked annually of which 56 percent are women and girls. The article also references a Royal Canadian Mounted Police (RCMP) study of 2003 which indicated that 6 to 8 hundred persons are trafficked into Canada each year, with a notation in the article that immigrant service agencies believe the RCMP estimate of persons trafficked into Canada each year is too low; Navdeep Bains, “Stop epidemic of human trafficking” (May 24, 2010) *The Hill Time (online)*, Ottawa, online: The Hill Time <www.thehilltimes.ca>. The article indicates that 800,000 people are trafficked

Yet, by the end of 2010, following almost a decade of focused attention on the part of the Canadian government, NGOs and the media, there had not been one successful prosecution in Canada of ‘cross border’ human trafficking. Not only had there not been one successful international human trafficking prosecution in Canada but up until early 2011, there had only been one such prosecution ever attempted.⁴ Currently, there are only two cases, involving multiple defendants, related to international trafficking that are before the courts, one in British Columbia and the other in Ontario.⁵ This study has pursued the question: Why have there been so few ‘cross border’ human trafficking prosecutions in Canada given the numerous published claims that transnational human trafficking is widespread across the country?

The answer, I believe, rests within the complex interrelationship among a variety of contributing factors that have been influenced by one overarching theme. Specifically, this research project demonstrates that Canada’s efforts to combat and prevent ‘cross border’ human trafficking have been predicated upon a singular understanding of human trafficking that has equated transnational human trafficking in Canada to a crime largely involving vulnerable women and girls forced into prostitution. However, contrary to the many published claims that have advanced this understanding, there is actually little evidence to support the belief that this form of international human trafficking exists within Canada to any substantial degree. The

across borders each year and references the anecdotal story of a Canadian victim of sex trafficking as a means of encouraging more enforcement action in Canada;

The Future Group (2010) <<http://www.thefuturegroup.org>> - Website for Canadian NGO focused on human trafficking which has claimed that: “One of today’s biggest human rights crises is the international trafficking of women and girls (and, to a lesser extent, boys) into sex slavery. Human trafficking is the third largest criminal industry in the world...”

⁴ *R. v. Ng* [2007] B.C.J. No. 1388, 2007 BCPC 2004 (QL). The only cross border trafficking prosecution undertaken during the study period which was unsuccessful.

⁵ See the following news reports for details of the charges that are currently before the Court: CBC News. “Slavery Charge issued against BC woman”, May 16, 2011, online: CBC News <<http://www.cbc.ca/news/canada/british-columbia/story/2011/05/16/bc-human-slavery-charge.html>>; Aimee Mayer, “Family Faces Criminal Charges For Human Trafficking in Canada” (2011) online: Human Rights Brief <<http://hrbrief.org/2011/04/family-faces-criminal-charges-for-human-trafficking-in-canada/>>.

thesis traces out this theme by evaluating existing evidence, Canadian government enforcement strategies, social and political discourses, and prosecution results.

There have been a small number of successful prosecutions with respect to ‘domestic’ human trafficking, in which a person has been trafficked within Canada without having crossed the country’s international boundaries.⁶ However, the issue of ‘domestic’ human trafficking has not been incorporated into this study other than as a peripheral consideration in relation to the subject crime of transnational human trafficking. This thesis focused on examining the issue of ‘cross border’ human trafficking because it was the main concern of the international community that first precipitated the creation of the 2000 UN Human Trafficking Protocol. And, it is because, globally, international human trafficking was, and has remained, the central consideration of the public and political discourse about human trafficking.

In light of the pivotal role that prostitution plays with respect to the dominant public conception of international human trafficking and that of the associated victim, this dissertation does examine the two major opposing feminist positions regarding prostitution in order to situate this social issue within the trafficking debates and to demonstrate why prostitution is of central concern to the dominant voices within the trafficking discourse. But, the presentation of this social issue is not intended as a commentary on or as an agreement with any of the views regarding prostitution that are identified and referenced within this paper.

⁶ *R. v. Lazore*, [2008] O.J. No. 4545, 2008 ONCJ 578 (QL) is the only reported case. There are three other separate convictions in Ontario, and two in Quebec, for domestic human trafficking but are currently unreported but referenced on various websites and news releases on the Internet. These cases all involved Canadian women/girls duped and/or forced into prostitution. See for example: Benjamin Perrin, “Confronting human trafficking in Canada” (2009) *The Lawyers Weekly*, online: <<http://www.lawyersweekly.ca/index.php?section=article&articleid=849>>.

Many people feel very strongly and passionately about human trafficking. This study is not about disputing that thousands of people are being trafficked around the globe and forced into a life of exploitation and enslavement. I believe this to be an unfortunate reality that is faced by many impoverished people who have become the victims of unscrupulous and violent traffickers through no fault of their own. I am sensitive to the reactions that some readers may have regarding this study and I wish to stress that there is no intention on my part to dispute the existence of the international trafficking of women for the sex trade. Rather, I am suggesting that the claims that underpin the belief that international sex trafficking is widespread in Canada do not stand up to scholarly scrutiny.

1.2 Reflexivity

Sociologist Pierre Bourdieu referred to the practice of self-socio-analysis or conscious self-referencing as the practice of ‘reflexivity’ – the constant struggle for a researcher to remain objective in terms of their objective and subjective analysis within a particular area of research. Bourdieu suggested that there are three types of biases that may influence the outcome of a sociological analysis – social origins (class, gender, ethnicity); the position occupied within the academic field (how the academic field situates and defines the person); and, the person’s ‘intellectual bias’ (how he or she may view the world as a set of significations to be interpreted – intellectual introspection - rather than as concrete problems to be solved practically). As a consequence, Bourdieu believed that the researcher must constantly apply the process of reflexivity in order to ensure as balanced and as objective a result as possible.⁷ Bourdieu’s

⁷ Pierre Bourdieu and Loic J. D. Wacquant, *An Invitation to Reflexive Sociology* Chicago: The University of Chicago Press, Ltd., 1992) 7 -59.
Mathew Eagleton-Pierce, “Examining the Case for Reflexivity in International Relations: Insights from Pierre Bourdieu”, (2009) 1 *Journal of Critical Globalization Studies* 111 at 111 – 113.

process recognizes that no analytical perspective is completely objective but that ‘objectivity’ is an ideal to which the researcher should aspire through conscious and continued reflection. To that end, the following brief description of my professional involvement with Canada’s anti-human trafficking efforts allows me to further situate myself within this study and to provide the reader with a clear understanding of why I embarked upon this thread of inquiry.

I am a middle class white male who grew up in a stable middle class family, and who has enjoyed a successful career and all the associated benefits of living in a free and open society. However, although removed from the stark realities and affects of poverty and the violence that exist for many within society, especially with regards to the victims of human trafficking, my career as a police officer with the Royal Canadian Mounted Police (RCMP) has assured that I have developed a deep appreciation of the struggles that many people face while coping with the inordinate challenges that poverty renders. One challenge for me as I worked through this study was to continually situate myself and my experiences, both personal and professional, in relation to the research analysis that I was conducting in order to ensure that I was providing a tempered and balanced assessment.

In 2002, I was a manager in the Royal Canadian Mounted Police (RCMP) with 26 years of service as a police officer. I was stationed in Ottawa, and was in the process of completing the establishment of a national border integrity program that involved a partnership between Canadian and American enforcement agencies to enhance Canada/US border security as part of the Canadian/American response to the tragic events of ‘911’. It was at this time that I was approached by RCMP management to assume responsibility for the organization’s national immigration enforcement program. As the new Director, I went through a series of briefings provided by the program’s staff during which I became aware of the newly created offence of

human trafficking as a result of the then recent enactment of the *Immigration and Refugee Protection Act* of 2002.⁸ From a personal perspective, I was shocked to hear that people, predominantly women, were being held in slave like conditions in large numbers in our country and forced to work in the sex trade. From this unquestioned understanding of human trafficking, I initiated a number of measures, in concert with others, to ensure that human trafficking investigations would become a national priority of the RCMP's immigration enforcement program. By the beginning of 2005, I had moved on in my career but I kept both a personal and professional interest in the human trafficking strategies that have been deployed by the RCMP's immigration enforcement program. And, after retiring from the RCMP, I have turned this interest into scholarly study.

I recognize that my research pivots on the argument that the understanding of international human trafficking in Canada has been framed as a crime involving poor vulnerable women trafficked from developing countries into Canada for the purposes of prostitution. And, as suggested by Bourdieu, I constantly revisited my analysis of the research during the course of this project in relation to my social origins, my academic position and my intellectual bias as I pursued the goal of an objective and balanced assessment. But, I also believe that as a result of my unique experience as a police officer and the valuable analytical insights that this professional experience has provided, especially as the former Director of the immigration enforcement program for the RCMP, coupled with a graduate level legal education, this study has resulted in producing a more complete understanding of human trafficking in Canada than has previously existed. My experiences working in this field also influenced my selection of the theoretical framing for this study.

⁸ *Immigration and Refugee Protection Act*, S.C. 2001, c.27, s 118.

1.3 Theoretical Approach

Alan Hunt believed that law and society are mutually constituting entities that eliminate “... the uncomfortable dichotomy between the importance and unimportance of law... [This theoretical understanding, he argued] ... serves to focus attention on the way in which law is implicated in social practices, as an always potentially present dimension of social relations, while at the same time reminding us that law is itself the product of the play and struggle of social relations.”⁹ From a broad perspective, I am suggesting that Canada’s response to human trafficking in the form of the 2000 UN Trafficking Protocol is a reflection of the dynamics at play in relation to the mutually constituting relationship between law and society of which Hunt spoke.

Pierre Bourdieu, in his examination of the relationship between law and society, argued that in order to understand social relations, it is critical to examine the social space (the field) within which these relations take place. He believed that society is comprised of an infinite number of ‘fields’. Each field contains a shifting balance of power relationships within the hierarchical structure of the respective field, and between the ongoing struggles of agency and change that affect the field. Bourdieu contended that society’s social fields have varying degrees of dynamic interaction dependent upon the power relationships within society and within the principal actors relative to the respective fields.¹⁰

⁹ Alan Hunt, *Explorations in Law and Society: Toward a Constitutive Theory of Law* (New York: Routledge, Inc., 1993) at 3.

¹⁰ Cheleen Mahar, Richard Harker, and Chris Wilkes, “The Basic Theoretical Position”, in Richard Harker, Cheleen Mahar and Chris Wilkes, eds, *Introduction to the Work of Pierre Bourdieu*, (London: The MacMillan Press Ltd, 1990) at 1- 25;
Patricia Thomson, “Field”, in Michael Grenfell, ed, *Pierre Bourdieu Key Concepts* (Stocksfield: Acumen Publishing Limited, 2008) Chapter 5 at 67 - 77.
Derek Robbin, *The Work of Pierre Bourdieu* (Buckingham: Open University Press, 1991) at 85 – 101.

In his study, Bourdieu maintained that “the social practices of the law are in fact the product of the functioning of a “field” [the juridical field] whose specific logic is determined by two factors: on the one hand, by the specific power relations which give it structure and which order the competitive struggles (or, more precisely, the conflicts over competence) that occur within it; and on the other hand, by the internal logic of juridical functioning which constantly constrains the range of possible actions and, thereby, limits the realm of specifically juridical solutions.”¹¹ It is this independent characteristic of internal professional power relationships within the juridical field which Bourdieu believed, although creating a level of autonomy from other social fields, in reality, tied it very closely to the other social fields through a relationship of intense resistance to the influence of competing forms of social practice.¹² Bourdieu postulated that most social fields wishing to achieve some form of social regulation from the juridical field with regard to emerging societal issues would be obligated to engage with the juridical field through a variety of measures in order to produce the desired outcomes. He argued that within social fields there is an ongoing struggle between actors within the field based on power relationships specific to the field and social relationships held by the actors, both internally within the field and externally to other social fields.¹³ This results in the creation of a structured hierarchy within the juridical field that produces the ‘habitus’ for the field - the habitual, patterned ways of understanding, judging and acting by the members within the field, the product of such influences as their cultural, educational, professional and regional origins, that when internalized creates a collective resemblance within the group.¹⁴ The habitus guides

¹¹ Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field” (1987) 38 *Hastings L.J.* 814 at 816.

¹² Richard Terdiman, “Translator’s Introduction - The Force of Law: Toward a Sociology of the Juridical Field” (1987) 38 *Hastings L.J.* 805 at 808.

¹³ Bourdieu, *supra* note 11, 814;

Thomson, *supra* note 10.

¹⁴ Terdiman, *supra* note 12 at 811 – 812.

and influences the social field's power relationships and strategies exercised with other social fields leading to various outcomes that in a circular process reinforce and influence the respective social fields.¹⁵

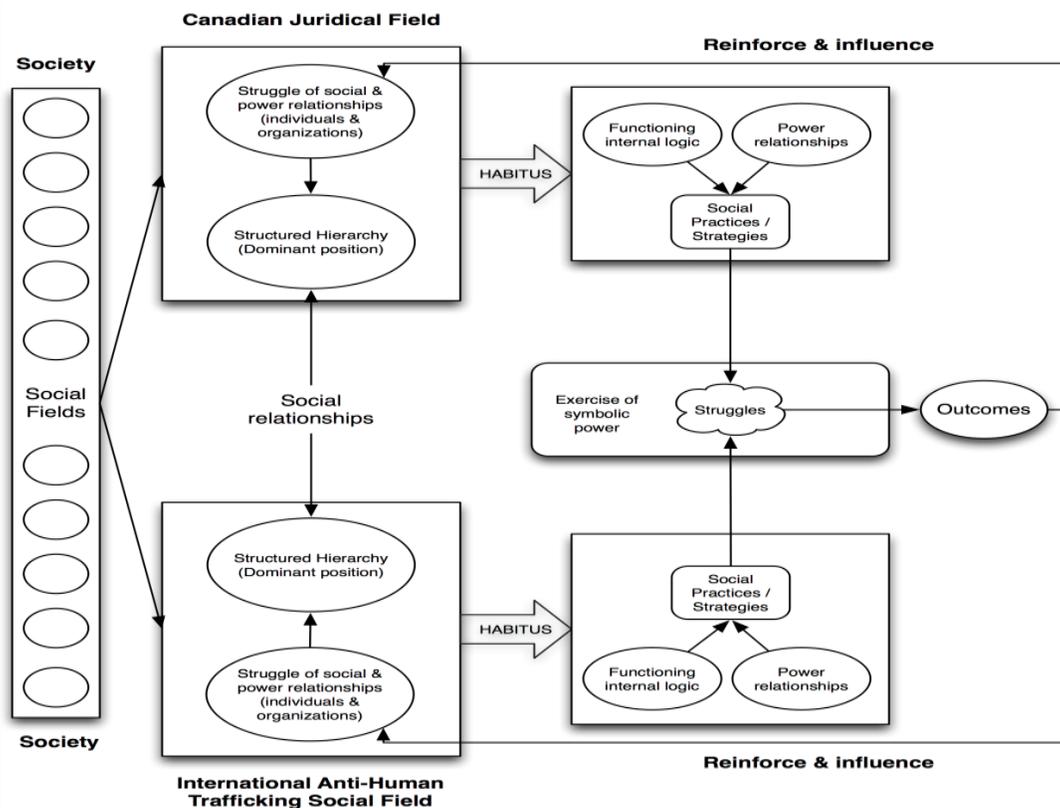
For the purposes of this thesis, the juridical field should be understood as a broadly inclusive term regarding the structure and activities of a field that creates, controls, interprets, applies and amends the law in relation to the interaction with other social fields that comprise society. It is mainly comprised but not limited to organizations, departments, entities, representatives, and individuals within the government (Federal, Provincial, Regional, Municipal) such as law enforcement, immigration, corrections, judiciary, prosecutors, and courts but also includes politicians and legislatures. It is important to understand that the juridical field is a complex composition of actors in the form of individuals and organizations that are also participants in a multitude of other social fields, with varying degrees of influence due to the intricate web of power relationships that exist among and between juridical participants that result in establishing a very complex hierarchal structure that governs the juridical field and its relationships with other social fields. These relationships are dynamic and in constant flux, dependent upon the results of the evolving power relationship struggles that affect the influence that can be exerted within the juridical field, collectively and individually, and the corresponding influence that can be exerted by the juridical field within other social fields and by other social fields within the juridical field - the mutually constituting relationship between law and society.

Figure 1-1 provides the reader with a general understanding of Bourdieu's field theory through a simple visual depiction of the functioning relationship that exists between the Canadian juridical field and the international anti-human trafficking social field. It does not

¹⁵ Ibid.

reflect the complexities of power relationships that these two social fields may have with other social fields in society that affect the struggles between these two fields, nor the power relationships that participants in either field may have within other social fields that affect their position within the hierarchy of either the juridical field or the international anti-trafficking social field:

Figure 1-1¹⁶ - Social Field Interaction



Bourdieu’s concept of field reinforces the overarching law and society theoretical framework of the study and brings together the disparate issues that have been examined in this project and unites them into a cohesive explanation as to why there have been so few cross

¹⁶ This schematic is a variation of a schematic referenced in: Pedro S. Hurtado, “Assessing the use of Bourdieu’s key concepts in the strategy – as – practice field” (2010) 20 Competitiveness Review: An International Business Journal 52 at 56. Please note that in this paper, I use the terms ‘juridical field’ and ‘government’ synonymously.

border human trafficking prosecutions in Canada. As will be demonstrated in the following chapters, I believe that the international anti-human trafficking social movement is a social field as envisaged by Bourdieu. And, drawing upon his analysis of the interaction between social fields and the juridical field, this thesis argues that the international anti-human trafficking social field successfully entered and shaped the responses to international human trafficking by the Canadian juridical field.

1.4 Research Methodology

This study has relied upon Bourdieu's theory for its structure and analytical strategies. It is not a project conducted from a 'police studies' perspective that is focused upon research involving the front line policing response to international human trafficking in Canada. Rather, the research for this study incorporated a socio-legal approach with the intent of exploring the broad interrelationship that has existed between the Canadian government and the international anti-human trafficking social movement, in terms of the government's response to international human trafficking. The methodology included targeted interviews, statistical data collection/analysis, social group and government document analysis, and case law research, all of which was designed to examine the interrelationship that exists between the two social fields in support of the central hypothesis to this thesis that the international anti-human trafficking social field influenced the Canadian juridical field's understanding of human trafficking.

It began with an analysis of the insights that Bourdieu's theory could bring to a review of the existing international human trafficking literature, as outlined in Chapter 2, in order to situate the discourse of international human trafficking that has occurred during this past century, globally and within Canada. And, in keeping with Bourdieu's social field concept, the literature review assisted in identifying the composition, the structure, the dominant power relationships,

and the key themes that have existed and continue to exist within the international human trafficking discourse and the associated social field. As a result, the literature review provided critical foundational historical knowledge that was then incorporated into other areas of research pursued during the course of this study.

A critical analysis of the international anti-human trafficking social movement was conducted that involved identifying first those international NGO's and IGO's that have raised the issue of international human trafficking through their publications and web-sites as a substantive concern and then secondly, those that have claimed that their actions and approaches to combating human trafficking have been at the international level (see Appendix A). Through an examination of the various publications and web-sites associated to these anti-human trafficking organizations, my analysis explored: their historical involvement in international human trafficking; their current views regarding the issue of international trafficking; the existence of broad interrelationships amongst the NGOs; the informal structure and composition of the international anti-human trafficking social movement; and the dominant voices of the social movement and in conjunction with its thematic focus; which were generally found to mirror the conclusions drawn from the trafficking literature review. This research step was repeated with respect to identifying anti-human trafficking NGOs that have been operating within Canada in which the NGO was or is a branch of or affiliated with an international NGO concerned about international human trafficking or was a uniquely Canadian NGO in origin that identified the need to combat human trafficking internationally from a Canadian perspective (see Appendix B).

To establish the proposition that there have been ongoing power relationship struggles taking place between these two social fields such that they have influenced Canada's response to

international human trafficking, an in-depth analysis was then conducted of reports centred on the issue of international human trafficking in Canada. This included the examination of related Canadian academic studies, Canadian government reports that have explored and analyzed the issue, international human trafficking reports provided by international organizations such as the International Labour Organization, and the US State Department's annually published assessment of the global community's efforts to combat international human trafficking. The objective of this document analysis was to validate the existence of power relationship struggles between the international anti-human trafficking social field and the Canadian juridical field. And in Chapter 5, four key reports are referenced to support the key finding of this analysis - that the international anti-trafficking social field did in fact influence the Canadian juridical field's understanding of international human trafficking as a result of direct and indirect power relationship struggles.

Face to face interviews were conducted with a number of Canadian juridical actors and with representatives from anti-trafficking NGOs during 2009 and 2010.¹⁷ These interviews represent a critical source of data for this study. They were designed to address not only any analytical gaps identified as a result of the document examination but were also to assist in validating and/or investigating the various themes that were identified as a result of the literature review and the associated analysis of the international anti-human trafficking social movement. Importantly, these interviews permitted the evaluation of the main hypothesis that has guided this project – that the international anti-human trafficking social field influenced the juridical field's conceptualization of international human trafficking such that it resulted in a limited anti-human trafficking enforcement response.

¹⁷ University of British Columbia Behavioural Research Ethics Board Certificate of Approval #H09-02773.

In terms of Bourdieu's theory of reflexivity, participation of juridical actors from key positions from within a number of government departments, both federally and provincially, was sought in order to ensure that I was not narrowing the focus of my inquiries such that those interviewed would simply echo my own perceptions derived from my past responsibilities as a juridical actor involved in the creation of Canada's initial anti-human trafficking strategy. In total, I interviewed thirteen juridical actors, past and/or present, who have held varying degrees of direct responsibility for determining Canada's anti-human trafficking enforcement strategy. This included representatives from such departments as the Department of Justice (DOJ), Citizenship and Immigration Canada (CIC), the RCMP, and Canada Border Services Agency (CBSA). It also included an interview with the former Minister of Justice during the formative years of Canada's initial anti-human trafficking strategy, Irwin Cotler. A number of attempts were made to secure the participation of representatives from fifteen international and/or domestic anti-human trafficking NGOs but only two agreed to participate. However, these two interviews did make a meaningful contribution to this study.

The majority of the juridical actors that participated in the interview process were invited to participate on the basis of their middle management to senior management level of responsibility in relation to the development and implementation of Canada's anti-human trafficking enforcement strategy. I anticipated that these actors would be in a position such that they could elaborate and explain in detail why Canada adopted a particular understanding of international human trafficking and how that understanding translated into the development of specific anti-human trafficking enforcement strategies that transcended downwards to be implemented by law enforcement within the country. It is because this is not a study of policing investigative practices and techniques that interviews of frontline anti-human trafficking

investigators were not pursued other than interviewing two juridical actors who have had direct oversight of frontline investigations. As was confirmed later during the statistical analysis of law enforcement's anti-trafficking efforts, the majority of frontline anti-trafficking investigations do align with the direction and strategy determined and promoted by those holding management positions within government departments.

Bourdieu's theory of reflexivity not only influenced the interview candidate selection process for the study but also impacted the formulation of the interview questions and the methodology used for conducting the interviews. To ensure that I was not imposing my views of international human trafficking in Canada upon the interview candidates, a generic interview script containing 'open-ended' questions was developed (See Appendix 'C') to guide the interview through a broad range of topics that would promote candid responses and discussion. Given the magnitude of the subject matter, I anticipated that the results of a survey format interview process would be limiting in nature and would not adequately capture the necessary information sought. International human trafficking reaches well beyond simply being a law enforcement consideration and raises a number of issues such as irregular migration, migration policy, and government anti-trafficking strategies that could be best explored in a free flowing open dialogue rather than through specific survey questions. As anticipated, many of the responses to these questions led to numerous secondary questions that sought further details that were not initially considered within the interview script but were prompted by the initial responses given by the person being interviewed. The interview questions were developed partly based on my own experience and knowledge regarding Canada's anti-human trafficking enforcement efforts balanced by incorporating the various themes and concerns that were

identified during the course of the literature and anti-human trafficking social movement analyses.

Each interview lasted approximately 1 ½ hours. Each interview was taped while detailed hand written notes were also taken. Each interview was transcribed at a later date, in whole or in part, in order to facilitate their analysis. The interview script was generally followed but in many instances, the interview respondents engaged in lengthy discussions and explanations at various points during the course of the interview that incorporated several potential interview questions within one response while at the same time raising additional issues. For example, during Mr. Cotler's interview, which lasted approximately 45 minutes due to time constraints, only 4 questions were asked but his responses addressed most of the questions contained in the interview script while providing new insights into the government's perception of international human trafficking in Canada. From a broad perspective, these interviews were designed to elicit a juridical actor's and NGO representative's understanding of international human trafficking in Canada; their perception of the government's understanding of international human trafficking in Canada; their perception of how the government arrived at the particular understanding; and did those perceptions of international human trafficking shape the government's anti-human trafficking enforcement response. The analysis of these interviews reaffirmed, extended and challenged key points identified within the literary analysis, revealed the patterns of the power relationship struggles between the anti-human trafficking social field and the Canadian juridical field, and provided personal and professional insights and explanations for the lack of international human trafficking prosecutions within Canada.

Although few official statistics exist to legitimate any of the claims that have been made that international human trafficking is extensive in Canada, inquiries were made with a number

of Canadian government agencies with the view to determining if sufficient data existed that could through analysis determine the extent and direction of international human trafficking investigations in Canada.¹⁸ It was anticipated that this data analysis would either refute or support the perception that the Canadian government had embraced the particular social construction of international human trafficking being promoted by the international anti-human trafficking social movement such that it developed enforcement strategies that aligned with that understanding of international trafficking. The results of this analysis confirmed not only that there has been only one attempted prosecution of an international human trafficker in Canada but also provided independent statistical information with respect to the number and nature of the international human trafficking investigations that have been undertaken in the country. In addition, the statistical analysis also confirmed the number of potential international human trafficking victims that were identified by various Canadian government agencies and the number of victims who ultimately were granted a temporary resident permit in recognition of their human trafficking victimization status.

The media have played a major role in advancing our understanding of international human trafficking in Canada. Two key studies of how the Canadian media have presented this issue to the public covering the period of 1999 to 2005 were examined in detail.¹⁹ Additionally, a survey sampling of media news reports covering a randomly chosen 30 day period of time in 2010 was also conducted via an Internet electronic search in order to determine if the media,

¹⁸ Inquiries were conducted using the *Access to Information Act* (R.S.C. 1985, c. A-1) s 6, with: the RCMP, Citizenship and Immigration Canada (CIC), Canada Border Services Agency (CBSA), Immigration and Refugee Board (IRB), and the Department of Justice (DOJ).

¹⁹ See Chapter 4:
Girish L. “Jeff” Gulati, “Media Representation of Human Trafficking in the United States, Great Britain, and Canada” (2010) at 16 and 22, online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633574>.
Christine Bruckert and Colette Parent, *Trafficking in Human Beings and Organized Crime: A Literature Review* (Ottawa: Royal Canadian Mounted Police - Research and Evaluation Branch, 2002) at 20 - 21.

both globally and within Canada, were continuing to present the issue of international trafficking in the same manner and from the same perspective as previously identified in the two studies. The results of this analysis further informed and supported the central hypothesis that has guided this study.

The final research component of this study focused on an extensive examination of the only attempted prosecution of international human trafficking that has occurred in Canada. This involved a comprehensive analysis of the judicial decision in relation to: the evidence of human trafficking that was presented during the course of the trial; the prosecution and defence strategies deployed during the trial; the victim construction accepted by the Court, and the eventual outcome of the prosecution. The objective was to identify the reasons for the failure of this particular prosecution and to determine if those reasons for the dismissal of the charges related to the social construction of international human trafficking that has been advanced by the international anti-human trafficking social movement.

1.5 The Story of Human Trafficking Legislation

The following is a brief overview of the chronology of the human trafficking instruments of international law, and of Canadian legislation (existing and proposed), since the beginning of the 20th century. This summary is intended to provide a reference point for the reader in relation to the later discussions and analyses that take place throughout this dissertation with respect to the Canadian government's historical and contemporary responses to the issue of international human trafficking. It is understood that human trafficking is a component of the larger issue of human slavery which was first condemned internationally through the *Vienna Congress Treaty (adopted 9 June 1815) Act XV*, Declaration relative to the Universal Abolition of the Slave Trade (adopted 8 February 1815) 63 CTS 473 and, more than a century later, culminated in the United

Nations *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (1956).²⁰ However, this chronology is confined to only the Canadian legislative and international legal instruments that specifically relate to the crime of human trafficking.

The first international anti-human trafficking agreement of the 20th century was the *International Agreement for the Suppression of the “White Slave Traffic”, 18 May 1904*.²¹ This agreement was a reflection of the international community’s concern regarding the then emerging ‘white slavery panic’²². It committed the signatories of the agreement to act in concert to protect women and girls “... against the criminal traffic known as the “White Slave Traffic””.²³ This was to be accomplished by instituting measures in each country that would facilitate the identification of potential victims and the exchange of information regarding female trafficking victims from abroad who had been procured for immoral purposes. It also obligated the signatories to ensure that attempts would be made to repatriate the victim to their respective home country.²⁴

This initial international agreement was then followed by the *International Convention for the Suppression of the White Slave Traffic, 4 May 1910*.²⁵ This Convention supplemented the previous agreement of 1904 and introduced an obligation upon the signatories to punish any person who enticed, lured, deceived, threatened or abused any women or girl, for an immoral

²⁰ Office of the United Nations High Commissioner for Human Rights. “Abolishing Slavery and its Contemporary Forms” (2002) at 3 – 7, online: OHCHR <<http://www.ohchr.org/Documents/Publications/slaveryen.pdf>>.

²¹ *International Agreement for the Suppression of the “White Slave Traffic”, 18 May, 1904*, 1 LNTS 83.

²² The term of ‘white slavery panic’ is a term that has been generally used in the trafficking literature to describe the public reaction to the phenomenon of white slavery that emerged during the latter part of the 19th Century. This is further discussed during the literature review contained in Chapter 2.

²³ *Supra* note 21 at Preamble.

²⁴ *Ibid* at Articles 1 and 2.

²⁵ *International Convention for the Suppression of the White Slave Traffic, 4 May 1910*, 8 LNTS 278, 30 UNTS 23.

purpose, even if she consented, into gratifying the passions of another person.²⁶ Both this Convention and the previous international agreement were not signed by Canada because Canada was viewed as a dominion of Great Britain and thus, Great Britain's signature alone was considered binding on all its dominions.

In 1921, the League of Nations (LN), in a desire to address a number of perceived deficiencies that had been raised with respect to the two previous international agreements, introduced the *International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921*.²⁷ In addition to the obligations of the previous agreements, this Convention incorporated the offence of the trafficking of children of either gender, included the provision of punishment for attempted trafficking, and set out the terms for extradition of offenders between the signatories where no extradition treaty was in existence.²⁸ This was also the first of the international anti-human trafficking agreements that Canada specifically ratified.

The *International Convention for the Suppression of the Traffic in Women of Full Age, 11 October 1933*, introduced a new dynamic into the issue of human trafficking. In particular, this Convention was structured such that it only viewed human trafficking in terms of crossing an international boundary and it was limited to the trafficking of women or girls of full age abroad for an immoral purpose.²⁹ In effect, it permitted various countries that tolerated domestic prostitution to support international anti-human trafficking measures without having to face the need to change any internal domestic legislation or policies in relation to prostitution.

²⁶ Ibid at Articles 1 and 2.

²⁷ *International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921*, 9 LNTS 415.

²⁸ Ibid at Articles 2, 3 and 4.

²⁹ *International Convention for the Suppression of the Traffic in Women of Full Age, 11 October 1933*, 150 LNTS 431, 53 UNTS 13, Article 1.

Following World War II, the newly established United Nations introduced the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others*, 2 December 1949.³⁰ This Convention represented a consolidation of the previous four international agreements but more importantly, introduced two significant issues that had not been previously addressed. First, the Convention used terminology that was gender and race neutral such that a victim of trafficking could potentially be from either gender and from any race. And secondly, the Convention specifically raised the issue of prostitution as a matter of international law and not just an issue of domestic politics.³¹ Canada was among the many countries that did not ratify this Convention.³²

These first five international agreements established human trafficking as a crime involving women and prostitution. Although the 1949 Convention gives the appearance of gender neutrality, arguably, it remained an international legal instrument that continued to define human trafficking as predominantly an issue involving women and prostitution. As will be discussed in Chapter 3, it is my belief that this Convention failed to secure any significant degree of support among the international community because of its strict adherence to an unpopular anti-prostitution stance while ignoring the larger issue of human trafficking in the form of labour exploitation.

The next step regarding international anti-human trafficking legal instruments took place approximately 50 years after the 1949 Convention. The UN *Convention against Transnational Organized Crime* was designed to formalize the need for international cooperation in order to

³⁰ *Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others*, 2 December 1949, 30 UNTS 23.

³¹ Ibid at Preamble and Articles 1 through 6.

³² See history of ratification of the Convention at:
<http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-11-a&chapter=7&lang=en>.

combat international organized crime groups whose activities were of a growing concern during the 1990s.³³ This Convention was preceded by the establishment of an Open-Ended Intergovernmental Ad Hoc Committee by the UN in 1998 that was assigned the responsibility of developing an anti-organized crime treaty that went beyond the initial concept and would incorporate concerns raised by numerous NGOs regarding organized crime's involvement in international human trafficking, international human smuggling and the international trafficking of firearms, all of which eventually became annexed protocols to the Convention.³⁴ Canada was a signatory of the Convention and the annexed protocols that were produced.

As a result of the 2000 UN Convention (Annexed Human Trafficking Protocol), international human trafficking was defined as:

“‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of 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.”³⁵

The significance of this Protocol, as per Article 5, is that it obligated the participating nations to criminalize the defined conduct of human trafficking within their own respective domestic legislation, although it did not impose the requirement for any specific criminal law sanctions. But, Article 4 of the Protocol limited this international legal instrument to offences that are transnational in nature and to those which involved organized crime. As a result, this Protocol does not necessitate the creation of national legislation by any party in relation to

³³ *Supra* note 1 at Preamble.

³⁴ *Ibid.*

³⁵ *Ibid* at Annex II - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 3.

‘domestic’ or ‘internal’ human trafficking, nor does it obligate the criminalization of trafficking if it has been carried out by less than 3 persons, the agreed upon number to constitute an organized crime group.³⁶

In response to the 2000 UN Convention, Canada, for the first time in its history, created the specific offence of human trafficking by incorporating the offence into the then new *Immigration and Refugee Protection Act (IRPA)* of 2002. The Act did not define human trafficking *per se* but did define the offence of human trafficking as:

“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.”³⁷

Notably, this section indicates that the offence of human trafficking can be committed by as few as one person. Additionally, there is no reference within this section as to the various types of exploitation that constitute human trafficking, nor is there any reference requiring the involvement of organized crime in order to constitute the offence.

In 2005, as a result of Bill C-49, Canada introduced ‘domestic’ human trafficking legislation through amendments to the *Criminal Code*. Section 279.01 introduced the new offence of ‘domestic’ human trafficking wherein the crossing of Canada’s international boundary was not a requirement for committing the offence. However, Section 279.01 can also be used in relation to a charge related to cross border human trafficking, but to date, this has not occurred. The four sections collectively provide a more detailed understanding of the offence of human trafficking in keeping with the 2000 UN Trafficking Protocol but the sections refrain from

³⁶ Ibid at Articles, 4 and 5. See also main convention: *United Nations Convention against Transnational Organized Crime* at Article 2 (a), “Use of terms”.

³⁷ *Immigration and Refugee Protection Act*, S.C. 2001, c.27, s 118 (1).

highlighting the sex trade as a form of trafficking exploitation.³⁸ Rather, Section 279.04 defines exploitation as:

“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; or
- (b) cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.”³⁹

Bill C-268, a Private Member’s Bill, was submitted to the Canadian House of Parliament by Member of Parliament, Joy Smith, on January 9th, 2009. The Bill proposed a number of further amendments to the *Criminal Code* by introducing the offence of human trafficking specifically related to children (Section 279.011), and by imposing a minimum five year penalty for the offence of human trafficking, and a minimum penalty of 6 years if aggravated circumstances applied. This Bill received Royal Assent on June 29th, 2010.⁴⁰

Two other Canadian legislative initiatives have also been undertaken. The first was another Private Member’s Bill for the House of Commons, Bill C-269, which was introduced by Member of Parliament, Marlene Jennings, and calls for an amendment to the *Immigration and Refugee Protection Act* (Section 24) so that the decision as to whether or not to issue a ‘temporary resident permit’ to a trafficking victim is not dependent upon the victim’s participation in the trafficking investigation nor any subsequent legal proceedings. This Bill

³⁸ *Criminal Code* R.S.C. 1985, c. C-46, s 279.01 through 279.04, inclusive.
Laura Barnett, “Bill C-49, An Act to Amend the Criminal Code – Trafficking in Persons” (2006) online: Library of Parliament, Law and Government Division
<http://www2.parl.gc.ca/Sites/LOP/LegislativeSummaries/Bills_ls.asp?Parl=38&Ses=1&ls=C49>.

³⁹ *Criminal Code* R.S. 1985, c. C-46, s 279.04.

⁴⁰ Canada, Bill C-268, *An Act to amend the Criminal Code* (minimum sentence for offences involving trafficking of persons under the age of eighteen years of age), 2nd Sess, 40th Parl, 2009, (as passed by the House of Commons 30 September 2009).

passed first reading as of January 29th, 2009 and was deemed to have been considered and approved at all stages completed at the time of Parliament's prorogation in March of 2011.⁴¹

The second Bill, Bill S-223, is a Private Senator Public Bill that was initially introduced by Senator Gerard Phalen on February 4th, 2009 and became the responsibility of Senator Sharon Carstairs upon Senator Phalen's retirement. The Bill called for an amendment to the *Immigration and Refugee Protection Act* such that a trafficking victim would initially receive a 'temporary resident permit' to stay in Canada for a period of 180 days, and be eligible for an additional permit of up to three years if the victim co-operated with law enforcement authorities with respect to the trafficking investigation and prosecution. This Bill passed third reading in the Senate as of December 9th, 2009 and was to then proceed to the House of Parliament for consideration but died on the 'order paper' when Parliament was prorogued in March 2011.⁴²

I have provided this chronology of both international and Canadian legislative responses to the issue of human trafficking, not only to detail the historic legal evolution of the crime of human trafficking in order to situate the discussions concerning trafficking that take place in the dissertation, but also to highlight that Canada has all the necessary legal authority to investigate and prosecute offences of international human trafficking in Canada.

1.5 Thesis Organization

The six chapters that follow this introduction are structured to advance the core finding of the study – that the international anti-human trafficking social movement has contributed to the low prosecution rates of international human traffickers in this country by influencing the

⁴¹ Canada, Bill C-269, *An Act to amend the Immigration and Refugee Protection Act* (victim – trafficking in persons), 2nd Sess, 40th Parl, 2009, (first reading 29 January 2009).

⁴² Canada, Bill S-223, *An Act to amend the Immigration and Protection Act and to enact certain other measures in order to provide assistance and protection to victims of human trafficking*, 2nd Sess, 40th Parl, 2009, (first reading 4 February 2009).

Canadian government into accepting a specific social construction of international human trafficking. Each of the chapters contributes to an understanding of the complex interrelationship between the international anti-human trafficking social field and the Canadian juridical field. This includes such areas as the composition and development of an anti-trafficking social movement, how this movement has successfully advanced its promoted conceptualization of trafficking, and how the Canadian government's responses have drawn upon this understanding.

Chapter 2 provides an analysis of the trafficking literature with the intent of identifying the major themes and debates that have been framed within the material and advanced by the dominant voices of the trafficking discourse, moral form and radical feminism. This includes examining the literature in terms of such issues as: the historical connections between the white slavery panic and contemporary human trafficking; the debates over the ability of women to exercise 'agency' with respect to participation in prostitution; the role of organized crime in orchestrating human trafficking; the imbedded issue of women's human rights; and the assertion that human trafficking is a continuation of the moral panic that first emerged during the white slavery panic.

Chapter 3 begins the empirical work of the thesis by examining a study pertaining to a social movement that interacted with a juridical field in order to underscore the relevance of Bourdieu's field concept to this study. The chapter then proceeds with the analysis of the literature, NGO publications and NGO websites concerning the international anti-human trafficking social movement⁴³ over the course of its evolution during the 20th century. The

⁴³ Scholars such as James Hathaway have often referred to the existence of the 'anti-trafficking social movement', inferring that it is an informal group of individuals and organizations that share a collective interest to influence government responses to human trafficking. I am using the term 'international anti-

analysis includes the application of Bourdieu's theory in concert with social movement literature to explain why disparate organizations that would not normally be affiliated due to conflicting agendas can come together and collaboratively form a seemingly unified anti-trafficking movement. The chapter establishes the foundation of the interaction between the anti-trafficking social field and the juridical field through the identification of: the dominant voices within the social movement that reflect the power relationships within the structured field, the historic lineage of the movement from its international inception during the white slavery panic to today's contemporary version, and the thematic focus of the social movement which has been premised upon concerns over morality and the changing role of women in society.

Chapter 4 is devoted to examining the human trafficking victim as portrayed by the dominant voices of the anti-trafficking movement, moral reform and radical feminism. It analyzes the imagery and narratives used in the literature, on NGO websites, in newspapers, and in government publications to depict the victim. It is my belief, in keeping with Bourdieu's work, that the sympathetic vulnerable female victim that has been portrayed and has dominated the trafficking discourse and literature, is symbolically situated within the juridical field as a 'signpost' - a guide for the police, the government, legislators, and social activists to understand human trafficking as a crime against women, and to respond accordingly. This particular socially constructed trafficking victim provides a unity of purpose for the diverse parties that comprise the juridical field, based on their acceptance of her role as 'the' victim, which has reinforced and nurtured a singular understanding of international human trafficking.

trafficking social movement' from much the same context. But, I have added the word 'international' to denote that this movement, as is discussed in detail in Chapter 3, is international in scope. And, because this study has been confined to examining the issue of international human trafficking, the designation of 'international' is also used in the hope that this will avoid any confusion with respect to anti-trafficking social movements concerned with domestic human trafficking.

Chapter 5 builds upon the analyses offered in the preceding chapters and provides the reader with a detailed examination of Canada's response to international human trafficking. Through an analysis of: interviews conducted with key actors from the Canadian juridical field and the anti-human trafficking social field, Canadian law, government intelligence reports, government statistics, reports from government parliamentary committees, and my personal reflections while Director of the RCMP immigration enforcement program, this chapter demonstrates how the international anti-trafficking social field influenced the Canadian juridical field into accepting international human trafficking as an issue involving women and prostitution. The analysis not only confirmed that the Canadian government's view of human trafficking is in sync with the international anti-human trafficking social movement but also determined that there is a mismatch between the intense government effort to produce evidence of international human trafficking into Canada on the one hand and the scarce results on the other. This is not the typical experience of other, arguably, similar crimes.

Chapter 6 supplements the findings of Chapter 5 through a 'case study' analysis of the only international human trafficking prosecution in Canada during the study period. Using a step by step process, the analysis sets out the factual parameters of the case, the policing investigative approach to this particular anti-trafficking enforcement action, and the judicial reasons for the dismissal of the trafficking charges. The intent of this analysis is to highlight the reasons for the failure of this particular prosecution and to demonstrate the existence of a strong correlation between the promoted social construction of the international human trafficking victim and the decision rendered by the Court. It is my argument that the limited conceptualization of the trafficking victim accepted by the Court fails to address the broader social and legal complexities involved in international human trafficking. And as a result, I raise the concern that this

attempted prosecution of an international trafficker has only resulted in the formal sanctioning of a specific understanding of human trafficking by the juridical field that in many respects is not relevant to Canada's situation and may affect future prosecutions of this nature.

The final chapter provides a summary of the results of this study. It threads together the research findings to which each chapter has spoken with the view to supporting the final conclusion - transnational human trafficking in Canada is a misunderstood crime. And, it is because it has been misunderstood that the strategies that have been developed in order to combat this crime in Canada have proven ineffective, resulting in only one attempted prosecution.

This study contributes to a more complete understanding of international human trafficking in Canada beyond the rhetoric that currently exists. It goes beyond explaining the crime itself and the superficial reasons that have been provided for why there have been so few prosecutions. It incorporates an analysis of a number of broadly interrelated and influential societal issues and theories, as reflected by the dominant voices of the international anti-human trafficking social movement, in order to account for why the Canadian government has approached human trafficking from such a very limited perspective, and as a result, generated so few trafficking prosecutions. This study suggests that much of what has transpired to date in Canada with respect to combating international human trafficking is actually a reflection of deeply entrenched and unresolved social issues involving morality, migration and gender inequity.

2. Human Trafficking (A Literature Review)

2.1 Introduction

This chapter sets out the main parameters of the contemporary human trafficking discourse that I believe are framed and embodied within the trafficking literature. Through reference to selected works of legal scholars and academics from related disciplines, I examine the trafficking literature in terms of: the historical origins of contemporary human trafficking, the identification of the central human trafficking debates and themes, and the research gap that exists within the trafficking literature. I have also included brief references to reports produced by international and national organizations such as the annual report on human trafficking produced by the International Labour Organization (ILO) and the annual trafficking report prepared by the US State Department because I believe that in many instances these types of reports have framed some of the academic contribution to the field of human trafficking literature.

Many authors have argued that there is a strong lineage and ongoing connection between the ‘white slavery panic’ that emerged during the latter part of the 19th century and today’s concerns that are being voiced within the issue of contemporary human trafficking. As a result, this chapter begins with a review of the literature in relation to the historical antecedent of contemporary human trafficking – white slavery. This includes examining the central issue that grounded white slavery - concerns regarding white women involved in prostitution – and how and why that issue, transformed into an issue of white women being trafficked for the purposes of sexual slavery, nurtured a ‘moral panic’.

The chapter then proceeds to outline the central debates and themes of today's contemporary human trafficking discourse. This entails an examination of: the argument that the human trafficking discourse represents a continuation of the moral panic that occurred during the white slavery panic; the debate over women's 'agency' with respect to their participation in prostitution; the contested role of organized crime in orchestrating human trafficking which underpinned the rationale for the inclusion of the Trafficking Protocol into the 2000 UN *Convention Against Transnational Organized Crime*; and the relationship between human trafficking victims and international human rights.

2.2 White Slavery

The international concern for human trafficking that first emerged during the latter part of the 19th century has been characterized by authors such as Jo Doezema and Mary Ann Irwin as the 'white slavery panic'.¹ And as referenced in Chapter 1, this heightened concern over the issue of white slavery eventually resulted in the creation of an international legal instrument (*International Agreement for the Suppression of the "White Slave Traffic"*) in 1904 ostensibly designed to rescue women who had been procured to participate in immoral activities abroad. This international agreement was not concerned with whether or not white women were voluntary participants in a deemed immoral activity, rather, it obligated the signatories to take white women found to be participating in such immoral activities as prostitution into protective custody and to return them to their country of origin. The international Convention of 1910, supplemented the 1904 agreement, with the additional obligation that the signatories criminalize

¹ Jo Doezema, "Loose Women or Lost Women? The re-emergence of the myth of 'white slavery' in contemporary discourses of 'trafficking in women'" (1999) 1 at 4 – 9, online: Walnut <<http://www.walnet.org/csis/papers/doezema-loose.html>>; Mary Ann Irwin, "White Slavery As Metaphor – Anatomy of a Moral Panic" (1996) 5 *Ex Post Facto: The History Journal* 1 at 17 - 23, online: Walnut <<http://www.walnet.org/csis/papers/irwin-wslavery.html>>.

and punish those who enticed, lured, deceived, threatened or abused women or girls, for an immoral purpose, even if they consented.²

The trafficking literature that has studied the phenomenon of white slavery although limited does reflect an overarching theme that the white slavery panic that emerged towards the end of the 19th century was in fact a moral panic that masked deeper societal fears. Authors such as David Langum have suggested that the anti-white slavery legislation created during this period was actually a reflection of western societal anxieties regarding the issues of morality and the changing role of women in society as a result of large scale immigration due to industrialization. They have argued that the global migration of the day not only created a fear among existing influential groups within western society of being overwhelmed and consumed by strange cultures – racialized fears - but also challenged their perceptions of the role of women in society as a result of ongoing changes precipitated by migration and industrialization.³

Langum suggested that much of the social tension, especially in the US, at the end of the 19th century was focused on the migration of young girls from rural areas towards the urban

² *International Agreement for the Suppression of the "White Slave Traffic"*, 18 May, 1904, 1 LNTS 83. *International Convention for the Suppression of the White Slave Traffic*, 4 May 1910, 8 LNTS 278, 30 UNTS 23, Articles 1 and 2.

³ David Langum, *Crossing Over The Line: Legislating Morality and the Mann Act* (Chicago: University of Chicago Press, 1994) at 15 -23.

See also:

Brian Donovan, *White Slave Crusades: Race, Gender, and Anti-Vice Activism, 1887-1917* (Chicago: University of Illinois Press, 2006) at 5 - 36;

Phillipa Levine, "The White Slave Trade and the British Empire", in Louis A. Knafla, ed, *Crime, Gender and Sexuality in Criminal Prosecutions* (Westport: Greenwood Press, 2002) 133;

Kamala Kempadoo, "Introduction - From Moral Panic to Global Justice: Changing Perspectives on Trafficking", in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik, eds, *Trafficking and Prostitution Reconsidered – New Perspectives on Migration, Sex Work, and Human Rights* (London: Paradigm Publishers, 2005);

Petra De Vries, "An Image of Sexual Danger: The Dutch fight against the 'White Slave Trade' in the early Twentieth Century" (2005) 14:1 *Social and Legal Studies* 39;

Deborah Brock, "Victim, Nuisance, Fallen Woman, Outlaw, Worker? Making the Identity 'Prostitute' in Canadian Criminal Law", in Dorothy Chun and Dany Lacombe, eds, *Law as a Gendering Practice* (Toronto: Oxford University Press, 2000) 79.

centres due to the potential employment opportunities that could be realized as a result of industrialization. He theorized that the global migration due to industrialization held out the promise of increased economic independence for women within a male dominated society and thus, it inevitably increased social tensions by challenging the existing gender relationships.⁴

As a consequence of these multi-faceted fears, various academics have suggested that these influential interest groups of the 19th century were successful in swaying many western nations into creating restrictive immigration policies as a means of securing and protecting their coveted lifestyles, cultures, and perceived national identities (imagined communities). Elizabeth Rolf and Brian Donovan have suggested that interest groups in the US, who feared the diverse cultural norms reflected by the communities emerging from large scale migration, lobbied for increased restrictive immigration legislation, not only to regulate the movement of people in general but also to afford the opportunity to target specific migrant groups who were perceived as the greater threat to their cultural hegemony, often based on categories of white versus non-white.⁵

With respect to Canada, Mariana Valverde echoed the views of Langum and others by suggesting that the phenomenon of the white slavery panic in this country was the product of a complex global ‘moral panic’ reflecting the arrangements in play between a number of interrelated social issues rather than simply being the result of a unidimensional approach to an

⁴ Ibid - Langum.

⁵ Elizabeth Rolf (1992). *Immigration Policies: Legacy from the 1980s and Issues for the 1990s*, Santa Monica: RAND, at 4;
Donovan (2006), *supra* note 2 at 5 - 36.
See also:
Doezema, *supra* note 1 at 1 - 9;
Langum, *supra* note 3;
Levine, *supra* note 3.

underlying social issue that is represented by prostitution.⁶ According to Valverde, the white slavery panic, typified by the distorted vision of the forced prostitution of white women, was in reality a reflection of the concerns held by the Protestant middle class with respect to their ability to manage the tremendous changes in social, economic, and cultural relations that were occurring at the beginning of the 20th Century in relation to their continued economic and cultural superiority.⁷

Valverde argued that the image often used in the Canadian public domain to advance the panic was that of an innocent girl from a farm who was tempted to move to a large urban centre in the US, such as Chicago, in the hopes of securing reputable and high paying work but instead, found herself, through no fault of her own, trapped in a brothel in need of rescue. She suggested that prostitution as ‘the social evil’ within the white slavery discourse was quite an attractive concept to moral reformers, religious organizations and Canadian feminist groups as it permitted these diverse interest groups which may not necessarily have been in philosophical agreement in many areas, to have one point of common purpose.⁸

Defined as a form of slavery in the 1904 and 1910 international agreements, many academics such as Langum, Valverde, Doezema, and Donovan have contended that prostitution came to provide the unifying ideological platform from which the framework for the rise of the white slavery panic could be constructed. According to these authors, based on collective mutual interests embodied within an anti-prostitution stance for a number of diverse reasons, various interest groups banded together to form the anti-white slavery movement and influence western

⁶ Mariana Valverde, *Age of Light, Soap and Water: Moral Reform in English Canada 1885-1925* (Toronto: McClelland & Stewart Inc., 1991) at 89 - 90.

⁷ Ibid at 103.

⁸ Ibid at 77 - 79 and 93.

governments, including Canada, by swaying public opinion through what could be best described as a moral crusade.⁹

Canadian author, John McLaren, has suggested that the moral reform component of the anti-white slavery campaign that existed during the latter part of the 19th century in Canada consisted predominantly of mainline evangelical and protestant Christian organizations including Methodist and Presbyterian churches. These moral reform organizations believed that the moral values of society from their perspective were under risk of serious decline and that every effort needed to be made in order to protect the moral and physical well being of the nation.¹⁰ Hobson and McLaren have argued that these organizations focused on the issue of prostitution because, at the time, it was one of the most visible and publically exposed sexual activities in society, an issue with which they believed the public could relate because it mainly took place in legally defined public spaces such as parks and streets. Prostitution was transformed into being a decadent sexual behaviour symbolizing everything that was wrong in society - a major social ill. For moral reform organizations, prostitution constituted a socially destructive force that placed at risk the moral reform's sharply defined community values, including the defined social roles for men and women, that if left unchecked, posed a very real threat to the continued existence of western society.¹¹

⁹ See *supra* note 3.

¹⁰ John McLaren, "The Canadian Magistracy and The Anti-White Slavery Campaign", in W. Wesley Pue & Barry Wright, eds, *Canadian Perspectives on Law & Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988) 329.

¹¹ *Ibid*;

Barbara Meil Hobson, *Uneasy Virtue: The Politics of Prostitution and the American Reform Tradition* (New York: Basic Books, Inc., Publishers, 1987) at 141- 154;

See also:

Valverde, *supra* note 6 at 89 - 99;

Mark T. Connelly, *The Response to Prostitution in the Progressive Era* (Chapel Hill, NC: University of North Carolina Press, 1980) at 8 - 9.

Although the moral reform portion of the anti-white slavery movement contended that the growth in prostitution, associated with the growth in cities due to industrialization, was an ever present and growing menace to societal values, Jo Doezema believes that the campaign against prostitution did not resonate well with the general public.¹² Hobson shares Doezema's viewpoint and explained that the reason why the anti-prostitution campaign failed to capture overall public attention prior to the anti-white slavery campaign was because moral reform organizations did not appreciate that prostitution was viewed by many as a necessary form of labour for impoverished women. Due to their middle class consciousness, Hobson believes that the moral reform groups, especially feminist moral reformers, were often "unable to grasp the motivations, moral codes, and survival strategies of poor women - that prostitution could appear as a viable alternative to low wages and lack of employment options"¹³ Thus, Doezema, Hobson, Valverde and Langum have all suggested that the efforts of the moral reform organizations were shaped by their predisposition to view the world in terms of the values of the then Protestant middle class which in many respects did not include large segments of society, especially the new immigrant. However, the emergence of the fear of white slavery, according to these authors, afforded moral reform organizations the opportunity to redefine its anti-prostitution strategy in such a way as to secure public interest - to move away from the philosophy of the rescue, punishment and redemption of the wanton, sexually deviant prostitute who challenged existing social morality, and to move towards the concept of the rescue and protection of the innocent sex slave, a pure victim of immorality.¹⁴

¹² Doezema, *supra* note 1 at 6 - 7.

¹³ Hobson, *supra* note 11 at 5.

¹⁴ Doezema, *supra* note 1 at 6 - 9;
Langum, *supra* note 3 at 15 - 47;
Valverde, *supra* note 6 at 77 - 103; and
Hobson, *supra* note 11 at 141 - 154.

The trafficking literature suggests that moral reform groups became allied with the emerging feminist organizations because many of the participants in moral reform, especially with regards to temperance and purity social groups were also actively involved in newly forming feminist organizations which re-enforced the sharing of the common concern over prostitution. From the perspective of these authors, although there were varying feminist viewpoints expressed about the issue of white slavery, sometimes conflicting both amongst themselves and within the moral reform component, one apparent objective of many feminist organizations during the early 20th Century was to use the issue of prostitution as a way of advancing either their political and/or social influence.¹⁵

McLaren contended that many feminist reform groups in Canada such as the Women's Christian Temperance Union (WCTU), the National Council of Women (NCW) and the Young Women's Christian Association (YWCA) actively participated in the anti-prostitution white slavery campaign in order to raise the profile of women's political and social rights but made little effort to actually understand the root causes of prostitution. He suggested that many feminist moral reformers, like their male counterparts, viewed the participants in prostitution as being the product of moral and possibly mental weaknesses, women in need of rescue and salvation.¹⁶

This is not to say that all feminist activities of the day were strictly moral crusades, far from it. There were also a number of diverse groups within and associated to the emerging feminist movement that held different political and social ideologies from that of moral

¹⁵ Langum, *supra* note 3 at 15 - 37;
Hobson, *supra* note 11 at 150 - 154;
McLaren, *supra* note 10 at 329/330;
Valverde, *supra* note 6 at 93 - 95.

¹⁶ Ibid – McLaren at 329/330.

reformers, who were very active on a number of social fronts. For example, Canadian author Janice Newton indicated that the socialist movement's concern over white slavery was from the perspective that white slavery reflected the proof of the immorality and corruption of capitalism itself.¹⁷ To socialists, as depicted by Newton, white slavery was just another example of how the elite of society dehumanized and violated the rights of the working class under the capitalist system. Prostitution represented the manner in which rich capitalists took advantage of low wage earners, forcing women to seek this type of employment in order to feed themselves, and obligating male workers to use the services of prostitutes because of insufficient wages that inhibited single men from marrying.¹⁸

Newton wrote that female socialists did not always agree with the viewpoint of their male colleagues. She believes that feminists like Mary Cotton Wisdom viewed prostitution not only as a reflection of the traditional political conflict between capitalism and socialism but that it also involved equally important and complex gender issues such as the economic exploitation of women by men, and the problem of unfettered male sexual domination and oppression of women. Newton felt that many female socialists lobbied their male counterparts to speak out on these issues, other than from just an economic perspective, and to argue for a just social resolution to the problem of prostitution. Despite these efforts, Newton suggested that the concerns raised by the small female contingent within the left movement were mostly ignored by the male dominated leadership as it would have required the leadership to repudiate the sexual

¹⁷ Janice Newton, "From Wage Slave To White Slave", in Linda Kealey & Joan Sangster, eds, *Beyond the Vote: Canadian Women and Politics* (Toronto: University of Toronto Press, 1989) 217 at 227.

¹⁸ Ibid 217.

oppression of women by men, an opinion which they did not necessarily share with their feminist associates.¹⁹

There were other elements within moral reform organizations who also questioned some aspects of the white slavery discourse. According to Valverde, although small in number and largely disorganized, some individuals shared the feminist socialist view that the economic exploitation of women by men might be at the root of women's vulnerability.²⁰ And, Valverde indicated that to some extent there was a limited awareness by some feminists regarding the racist aspects of the white slavery campaign when a few within the WCTU and NCW recognized that most of the potential victims of white slavery were not white. "But they did not openly and consistently challenge the racist undertones of the moral panic. To do so would have necessitated revising their views about men of colour."²¹ Thus, the overtones of racism, discrimination, economic exploitation and gender inequity were recognized by some feminists and by others within the moral reform movement as concerns embedded within the white slavery discourse but were deemed issues best left to be addressed at another time.²²

Comprised mainly of moral reform and feminist interest groups, Doezema and Mary Ann Irwin have argued that the anti-white slavery social movement was publically premised upon the need to rescue a unique victim - a pure vulnerable white female forced into a life of prostitution through deception and/or use of violence who came to symbolize all that was wrong with society.²³ Phillipa Levine argued that the imagery used in the white slavery narratives published during the 19th century to induce public sympathy was dependent upon the depiction of women

¹⁹ Ibid at 228 - 231.

²⁰ Valverde, *supra* note 6 at 94.

²¹ Ibid at 94 - 95.

²² Ibid.

²³ Doezema at 4 - 7 and Irwin at 1 - 4, *supra* note 1.

as passive individuals forced into satisfying the immoral sexual demands of men.²⁴ Publications of the day by such authors as Clifford Roe and W. T. Stead contained vivid descriptions of vulnerable white female virgins, abducted and held against their will through the use of or the threat of violence, for the deviant sexual pleasures of unscrupulous men designed to evoke considerable public outcry against white slavery.²⁵

What is important about these types of narratives is not that they generated considerable public attention and alarm for that was the intent of the stories - to appeal to the public's sense of morality and decency - to inflame their passions against the horrific crime of white slavery through the use of appalling images of injustice such that the public would collectively demand their respective governments act to seek immediate redress. What is significant about the very effective imagery presented in these narratives about white slavery that resonated so well with the public is that it linked together in the minds of the general public two previously separate social issues - prostitution and slavery.²⁶ Prior to the white slavery panic, prostitution was presented to the public by society's anti-prostitution faction consisting of various moral reform groups as a separate issue of immorality, a reflection of society's decay, with virtually no overt linkages to slavery. As suggested by Levine, the anti-prostitution discourse of the day ignored the sexual exploitation and inhumane treatment of women of colour who had been victimized during the preceding centuries of the 'slave trade' and instead, constructed prostitution in western

²⁴ Levine, *supra* note 3 at 135 - 137.

²⁵ Clifford G. Roe, *Panders and Their White Slaves* (New York: Fleming H. Revell Company, 1910); W. T. Stead, "The Maiden Tribute of Modern Babylon I: the Report of our Secret Commission" (July 6, 1885) *The Pall Mall Gazette*, online: YARMM Webcraft <www.attackingthedevil.co.uk/pmg/tribute/mt1.php>.

²⁶ Irwin, *supra* note 1 at 1 - 4;
Levine, *supra* note 3 at 133 - 146;
De Vries, *supra* note 3 at 43 - 45.

democracies along racial lines.²⁷ If white women were involved, they became constructed as fallen women or sexual deviants, while if it involved women of colour their involvement in prostitution was seen as a normal aberration of their culture, neither image garnering much public sympathy or attention.²⁸

The linking of prostitution with the powerful image of slavery, at a time of strong abolitionism, represented a new approach for the anti-prostitution element of society by permitting them to eliminate the issue of voluntary prostitution or prostitution based on deviant behaviour which, up to that point, had failed to attract much public reaction. Instead, in the assessment of such authors as Valverde, Levine and Donovan, the white slavery issue provided the anti-prostitution moral reform movement the opportunity to re-package the image of prostitution and transform white prostitutes from immoral deviant wanton women into vulnerable victims who had been abused by unscrupulous traffickers and forced into a life of sexual slavery.²⁹

Tying prostitution to the issue of slavery created a powerful and persuasive image that resonated well with the general public but for the moral reformers to succeed against prostitution under the guise of the white slavery campaign, it was also essential that the public understood that white prostitutes could not be held responsible for their situation. According to De Vries, white prostitutes became cast as either feeble-minded women, irresponsible and lacking the ability of normalcy such that traffickers could take advantage of them or they were white women

²⁷ Ibid - Levine at 133 - 146.

²⁸ Ibid;

²⁹ Doezeema, *supra* note 1 at 6 - 9.

Valverde, *supra* note 6 at 89 – 95;

Levine, *supra* note 3;

Donovan, *supra* note 3 at 17 - 36;

See also:

Janie A. Chuang, “Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy” (2010) 158 U.Pa.L.Rev. 1655 at 1666 - 1668.

forced into sexual slavery, due to their vulnerability. As a consequence, De Vries indicated that anti-prostitution measures, designed to rescue these vulnerable victims in dire need from sexual slavery, were aggressively pursued within the established moral boundaries of the 'white slavery panic' because of assured strong public support.³⁰

It is this image of a sexually violated vulnerable white women forced into sexual slavery (prostitution) that permeated the white slavery literature and according to today's trafficking literature, was used to form the bulwark of a moral panic that infused the white slavery discourse. By appealing to public emotion within western nations through the descriptive accounts of human trafficking by such authors as Roe and Stead that detailed the horrific treatment of white women by unscrupulous villains, the anti-white slavery movement shaped public sentiment to such an emotional degree that it resulted in a significant public outcry for action by western governments to protect these purportedly frail victims. In effect, today's academics believe that these narratives created an artificially heightened environment of turbulent public emotions that nurtured a sense of psychological panic, a sense of urgency, with respect to the need to do 'something' quickly and decisively to protect the innocent.³¹

What I am observing in the literature is a recognition that many authors believe that the success of the white slavery panic in terms of capturing public attention, securing international cooperation and legislation, and focusing domestic enforcement efforts against prostitution, was directly dependent upon the anti-white slavery movement's skilful use of effective imagery through exaggerated narratives that advanced a moral panic that cloaked larger societal interests. This notion of a moral panic is important to underscore at this juncture because it not only

³⁰ De Vries, *supra* note 3 at 43 - 49 and 53 - 56.

³¹ See *supra* notes 3, 11, and 25, and the chronology of international legal instruments provided in Chapter 1 which reflect the international community's reaction to public pressure.

underpinned the literary analysis of the white slavery panic, but it is this concept that has now become implicated within the trafficking literature regarding contemporary human trafficking. First introduced by Stanley Cohen in 1972, he presented the conceptual understanding of a moral panic in relation to how the public had reacted to published media accounts of what was taking place in Britain regarding the emerging youth sub-culture of the 1960s. Cohen suggested that media accounts of youth behaviour, designed to capture public attention, were a collection of stories focused on youth violence in the form of biker gangs and skin heads that resulted in the distorted impression that these stories reflected the substantive behaviour of all newly forming youth groups. As a result of these media narratives, Cohen concluded that the public began to psychologically experience a sense of vulnerability and as a result, formulated a belief that all emerging youth groups were a threat to the then existing social norms and moral standards of society.³²

Using a case study involving the ‘Mods and Rockers’, two popular but diametrically opposite youth groups, Cohen demonstrated how media actions, providing a distorted focus on one element of the emerging 1960s youth sub-culture, are able to intentionally or unintentionally manipulate public sentiment such that the two youth groups, in the minds of the general public, came to represent the substance of all threatening youth behaviour in Britain. Through his analysis of the phenomenon, Cohen identified one of the most critical aspects of a moral panic – a disproportionate focus by the media on a particular issue such that it distorted the issue and resulted in encouraging public attention and reaction beyond what would normally have been expected.³³ In furtherance of Cohen’s work, Stuart Hall and his colleagues, Chas Critcher, Tony

³² Stanley Cohen, *Folk Devils and Moral Panics, 3rd Edition* (Cornwall, Great Britain: T J International Ltd., 2002).

³³ Ibid.

Jefferson, John Clarke and Brian Roberts studied how a particular crime in Britain, ‘mugging’, had become such a social phenomenon during 1972/1973 that it generated a public panic based on the unreasonable belief that the crime represented a threat to the social order, resulting in inordinate public demands for action on the part of the government in order to protect society. They concluded that a number of the claims that had underpinned the public’s fear of the crime were based upon unreliable statistics. More importantly, they determined that because the media had used these statistics in their news stories, the public had presumed their legitimacy and had accepted the statistical information as fact. Similar to Cohen’s conclusions relative to the media’s presentation of the Mod and Rockers youth groups, Hall and his colleagues surmised that the distortion of the statistical information by the media as to the true extent of the crime resulted in an elevated out of proportion public reaction with respect to the threat the crime actually represented to society.³⁴

Today’s trafficking literature suggests that the narratives contained in the white slavery literature reflect a classic example of a moral panic as conceptualized by Cohen and Hall. Authors such as Hobson and Irwin contend that the white slavery narratives were exaggerated depictions of white slavery designed to elevate public concern, with a particular focus on the behaviour of a specific group within society – prostitutes. They believe that the moral reform component of the anti-white slavery movement encouraged the portrayal of prostitution within the white slavery literature as a form of sexual immorality orchestrated by inhumane traffickers against an unwitting society. White female prostitutes, regardless of whether or not their participation in prostitution was voluntary or involuntary, were portrayed as victims of human traffickers in need of rescue and salvation, no exceptions. By casting the threat to society within

³⁴ Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke and Brian Roberts, *Policing The Crisis: Mugging, The State, and Law and Order* (New York: Holmes & Meir Publishers Inc., 1978) at 3 - 28.

the linked images of prostitution and slavery, the anti-white slavery literature was able to successfully generate a consensus of views amongst the public such that it was able to cast prostitution involving white women as a crime against women involving sexual slavery. Prostitution became understood as a very real threat to social norms, necessitating immediate and urgent action. This manipulation of public sentiment by the moral reform led anti-white slavery social movement has been construed by many scholars as disproportional to the reality of white slavery. No one knows the true extent of white slavery but most agree that if white slavery existed at all, it was very minimal and did not justify the moral outrage that had occurred.³⁵

Given the numerous international agreements and related national legislation that was created in western countries to address white slavery such as the Mann Act in the United States, the white slavery moral panic clearly affected the then legal framework of moral regulation and social control in a number of western societies. The panic was able to effectively map out and entrench consciously through public affirmation the moral and ideological boundaries of the existing western society as defined by moral reform groups, with prostitution symbolizing the boundary that represented a threat to the very social fabric of society. McLaren indicated that the moral panic strategy of the anti-white slavery movement was also successful in Canada but in a slightly more subtle fashion. He suggested that the changes in prostitution offences within the then existing Canadian legislation were a result of the anti-white slavery campaign but were not designed to protect or rescue prostitutes as alluded to in the anti-white slavery rhetoric, except for those who could establish their virtuous innocence who were few in number, but rather, the

³⁵ Hobson, *supra* note 11 at 141 - 154;
Irwin, *supra* note 1 at 1 - 4;
Doezema, *supra* note 1 at 1 - 10;
De Vries, *supra* note 3 at 53 - 56;
Langum, *supra* note 3 at 15 - 37; and
Levine, *supra* note 3 at 135.

legislative changes permitted the targeting of prostitution as an immoral enterprise, holding prostitutes criminally responsible, in keeping with the anti-prostitution sentiment of the moral reform.³⁶

For example, McLaren noted that moral reformers were successful in persuading the Canadian government to expand the definition of ‘a common bawdy house’ in 1907 to include the individual prostitutes who worked out of their own residences.³⁷ Thus, rather than focusing the justice system efforts on targeting criminal organizations that ran brothels and purportedly were the organizers of white slavery, McLaren believes that moral reformers were pressuring the police and the courts into targeting individual prostitutes who from the reformers perspective represented the more visible threat to society’s religious and moral views as a result of their projected deviant sexual behaviour. In effect, at a time when cultural and sexual standards were seen to be shifting and in flux, according to McLaren, the only person that would be given the court’s protection would be the ‘innocent’ victim while in contrast, the ‘fallen woman’ would be dealt with harshly while her male customer enjoyed the double standard of treatment (gender inequity) embedded within the law, receiving only a minimal sentence for his transgression.³⁸

In a similar study, Petra de Vries analyzed the affects of new anti-white slavery legislation in Holland in terms of its impact on the issue of prostitution and the influence that had been exerted by moral reform organizations. She concluded that the anti-prostitution moral reform element of society (like its counterpart in North America) had accomplished its objective through an effective moral panic because the “new legal measures [in Holland], together with

³⁶ McLaren, *supra* note 10.

³⁷ Ibid at 331;

See: *Criminal Code Amendment Act*, S.C. 1907, c.8, s.2. - expanded the definition of keeping a common bawdy house such that it included individual prostitutes working out of a residence.

³⁸ Ibid.

other policies on trafficking made an increasing degree of control over some aspects of women's lives possible, while creating indifference to other aspects."³⁹ Like McLaren, De Vries concluded that the anti-white slavery legislative efforts were not really about the trafficking of white women but were in reality, attempts to control the sexual behaviour of women in western society during a period of time when the activities of women were seen to be challenging traditional gender roles.

The white slavery panic has been portrayed in the contemporary literature as a coalescing of moral reform and feminist organizations into a social movement that generated considerable public concern and tension by linking together the two social issues of prostitution and human slavery. In terms of a moral panic, the literature also suggests that the anti-white slavery social movement was able to problematize prostitution as 'the' activity that represented all that was wrong in society and deserving of public and government attention which underpinned a panic that masked deeper social concerns. Through an analysis of the narratives, imagery, and government responses contained within the white slavery literature, today's academics have concluded that the social movement of a century ago against white slavery did successfully influence various governments into imposing restrictive regulations for both immigration and for acceptable sexual behaviour in society. My analysis of the human trafficking literature that examined white slavery has also suggested that the understanding of human trafficking that began with the advent of white slavery as a crime involving the trafficking of women for prostitution continues to occupy a prominent position in the understanding of contemporary human trafficking. As will be examined in the coming pages, it is this thematic thread that many

³⁹ Devries, *supra* note 3 at 54.

authors believe binds the two phenomena, white slavery and contemporary human trafficking, together.

2.3 Contemporary Human Trafficking

For over fifty years during the life cycle of the white slavery campaign, human trafficking was understood as the trafficking of women for prostitution. So it should not come as a surprise that this core understanding of human trafficking that was reflected in the international agreements between 1904 and 1949 has continued to influence our understanding of contemporary human trafficking. Authors such as Jo Doezema have suggested that the re-emergence of trafficking as an international priority in the late 1980s coincided with the collapse of the Soviet Union, the increased movement and migration of peoples in Latin American countries, and the notable feminization of global migration that was taking place during a new era of globalization. And like the conclusions drawn from her analysis of the white slavery panic, various authors have suggested that the current attention that contemporary human trafficking is receiving is directly related to the similar concerns raised during the white slavery campaign - the changing and evolving role of women in society, precipitated by increased global migration (industrialization), and perceived by various interest groups, especially those in western democracies, as a further challenge to existing societal norms.⁴⁰

⁴⁰ Doezema, *supra* note 1 at 9 - 25;
Barbara Sullivan, "Trafficking in Women – Feminism and New International Law" (2003) 5:1 International Feminist Journal of Politics 67 at 68 - 79;
Maggy Lee, "Introduction: Understanding human trafficking", in Maggy Lee, ed, *Human Trafficking* (Portland, Oregon: Willan Publishing, 2007) 1;
Elaine Pearson, "Historical development of Trafficking – The Legal Framework of Anti-Trafficking Interventions", in Sector Project against Trafficking in Women, eds, *Challenging Trafficking in Persons: Theoretical Debate & Practical Approaches* (Baden-Baden: Nomos Verlagsgesellschaft, 2005) 20;
Emek M. Ucarer, "Trafficking in Women: Alternate Migration or Modern Slave Trade?", in Mary K. Meyer and Elisabeth Prugl, eds, *Gender Politics in Global Governance* (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 1999) at 236 - 237.

According to Janie Chuang and Jo Doezema, moral reform and feminist organizations which had previously dominated the anti-white slavery movement and the associated discourse were again dominating the discourse of contemporary human trafficking and the international anti-human trafficking movement. They have suggested that as a result of this dominance, moral reform and feminist organizations resurrected the white slavery rhetoric of a century ago in relation to the trafficking of women for prostitution in order to renew the pursuit of the shared objective of global anti-prostitution reform. As a consequence, these authors believe that the anti-human trafficking movement has once again ‘problematized’ the issue of human trafficking as a crime involving women and prostitution.⁴¹

Ronald Weitzer, in his assessment of how the understanding of contemporary human trafficking has been advanced in the US, believes that the anti-trafficking movement has “... transformed itself from a social movement into a project of the U.S. government, becoming almost fully institutionalized in official discourse, legislation, and enforcement practices under the Bush administration.”⁴² He has argued that through this approach the anti-human trafficking social movement has again successfully implemented another ‘moral panic’ in order to influence government responses to human trafficking – responses in which prostitution has again been

⁴¹ Chuang, *supra* note 29 at 1655 - 1169;
Doezema, *supra* note 1 at 10 - 27;

See also:

Ronald Weitzer, “The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade” (2007) 35:3 *Politics & Society* 447.

⁴² Ibid - Weitzer at 467.

Example: The US State Department produces an annual report – Trafficking in Persons Report – beginning in 2001 that assesses global efforts to combat human trafficking. This report penalizes any country through threat of economic sanctions if the US believes the identified country has not made a minimal effort to combat human trafficking. This report claimed for several years that women and prostitution was the main form of human trafficking. Up until 2005, the US had assumed this mantle of global referee, without any international endorsement or without having signed the 2000 UN Convention Trafficking Protocol.

framed as the unqualified evil of society based upon unrealistic claims and anecdotal horror stories of human trafficking advanced by ‘right wing’ moral reformers.⁴³

Chuang, in her study of US government responses to international human trafficking, used the term ‘neo-abolitionists’ to describe the “... unlikely alliance of feminists, conservatives, and evangelical Christians who have used the anti-trafficking movement to pursue abolition of prostitution around the globe”.⁴⁴ She has argued that this group, the neo-abolitionists, have controlled the anti-trafficking movement and trafficking discourse to such an extent that anti-human trafficking enforcement efforts have become transformed into an anti-prostitution enforcement campaign that marginalizes the victims of non-sex trafficking.⁴⁵ Chuang noted that neo-abolitionists have successfully influenced the US government into understanding international human trafficking as mainly an issue concerning the sexual enslavement of women and girls. And, as a result, Chuang believes that the “control over the meaning of trafficking has been perhaps the greatest of the ‘neo-abolitionists’ gains because it has significantly influenced how anti-human trafficking interventions are constructed and implemented on the ground.”⁴⁶

Silvia Scarpa, in her study of human trafficking, indicated that the NGOs, who participated in the eleven Vienna conferences of 1999 to draft the Trafficking Protocol portion of the Convention, although opposed philosophically in defining human trafficking, were primarily focused on the issue of women and prostitution. The first group, the International Human Rights Network, was comprised of approximately 140 NGOs consisting of moral reform and radical feminist organizations that advocated that all forms of prostitution (voluntary or forced) constituted acts of human trafficking. While the other major contingent of NGOs involved in the

⁴³ Ibid at 467- 468.

⁴⁴ Chuang, *supra* note 29 at 1658.

⁴⁵ Ibid at 1682 - 1683.

⁴⁶ Ibid at 1658 - 1659.

conferences, the Human Rights Caucus, was a smaller grouping of largely feminist NGOs that supported the sex trade workers, who wanted to ensure that consensual prostitution should not be considered a form of human trafficking, and that the understanding of trafficking should be expanded such that it would include all forms of labour exploitation of either gender.⁴⁷

Scarpa and other academics such as Doezema and Claudia Aradau have suggested that although a compromise was eventually reached among the participants at the Vienna conferences that resulted in a broad inclusive definition for human trafficking, a tacit acknowledgement that human trafficking does involve a wide variety of forms of labour exploitation, the negotiations themselves were consumed by the debate among feminist NGOs regarding a woman's right of 'agency' - her ability to choose freely as to whether or not she wanted to be a prostitute. These debates received considerable attention at the time which resulted in the focusing of public attention away from the broad legal understanding of human trafficking detailed in the Convention towards the premise that international human trafficking, like its historical predecessor that was identified during the white slavery campaign, is once again an issue centred on women and the sex trade.⁴⁸

⁴⁷ Silvia Scarpa, *Trafficking in human beings: Modern Slavery* (Oxford: Oxford University Press, 2008) at 55 - 62.

See Also:

Jo Doezema, "Now You See Her, Now You Don't: Sex Workers At The UN Trafficking Protocol Negotiations" (2005) 14 *Social & Legal Studies* 61 at 62 and 67.

⁴⁸ Ibid - Doezema at 79 - 83 and Scarpa (2008) at 42, 55 - 62;

Claudia Aradau, *Rethinking Trafficking in Women: Politics out of Security* (New York: Palgrave MacMillan, 2008) at 29 - 33;

See also:

Sullivan, *supra* note 40 at 79 - 85;

Kara Abramson, "Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol" (2003) 44 *Harv.Int'l L.J.* 473.

A further analysis of the feminist debate over 'agency' is provided in Chapter 4 in relation to the social construction of the trafficking victim.

The influence exerted by the international anti-trafficking movement appears to have resulted in little attention within the contemporary trafficking literature having been paid to other forms of international human trafficking such as the trafficking of persons for the purposes of labour exploitation. Although such trafficking literature does exist, often in the form of International Labour Organization (ILO) and International Organization for Migration (IOM) publications, up until recently, the literature has tended to acknowledge the existence of trafficking for labour exploitation but then largely concentrate much of its attention on the analysis of the social construction of human trafficking - women trafficked for the sex trade. Authors such as Ann Jordan and Monika Smit have suggested that there are several reasons why the international trafficking of people for labour exploitation has failed to capture public attention.⁴⁹

Jordan and her colleagues claim that in the past, human trafficking for labour exploitation lacked a visibility in the trafficking discourse comparatively to the attention that sex trafficking was receiving. They attribute this in part to the focused public interest on sex trafficking, in part

⁴⁹ Ann Jordan, "Slavery, Forced Labor, Debt Bondage, and Human Trafficking: From Conceptual Confusion to Targeted Solutions" (2011) at 8 – 9, online: Program on Human Trafficking and Forced Labour, American University Washington College of Law < <http://rightswork.org/wp-content/uploads/2011/09/Issue-Paper-2.pdf>>;
Monika Smit, "Trafficking in human beings for labour exploitation. The case of the Netherlands" (2011) 14:2-3 Trends in Organized Crime 184.
See generally:
Sally Cameron, "Trafficking and Related Labour Exploitation in the ASEAN Region" (2007) at 7 – 10 and 201 – 203, online: International Council on Social Welfare (ICSW) <<http://www.icsw.org/doc/Trafficking%20Labour%20Exploitation%20in%20ASEAN%2007.pdf>>;
Jill E.B. Coster van Voorhout, "Human trafficking for labour exploitation: Interpreting the crime" (2007) 3:2 Utrecht Law Review 44;
Annina Jokinen, Natalia Ollus and Kauko Aromaa, "Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia" (Helsinki: Finland – European Institute for Crime Prevention and Control, Publication Series No. 68, 2011) online:
<<http://www.heuni.fi/Satellite?blobtable=MungoBlobs&blobcol=urldata&SSURIdapptype=BlobServer&SSURIdcontainer=Default&SSURIsession=false&blobkey=id&blobheadervalue1=inline;%20filename=HEUN I%20report%2068.pdf&SSURIsscontext=Satellite%20Server&blobwhere=1296728524945&blobheadervalue1=Content-Disposition&ssbinary=true&blobheader=application/pdf>>.
See Chapter 3 at 102 - 109 for information concerning ILO and IOM publications.

to the lack of internationally acceptable standards for measuring and defining international human trafficking for labour exploitation, and in part due to the uneven application of acceptable work standards for the work environment that violations thereof might be construed as human trafficking. They indicate that the outmoded public perceptions of forced labour in the form of people being forced to work at gunpoint or to be chained in sweatshops fails to address the prolific types of labour exploitation that now exist within a legal and illegal labour market that may or may not necessitate migration. In their opinion, the boundaries between human smuggling and human trafficking have become so obscured that persons can reside legally and work illegally or reside illegally and work legally or any variation thereof that may or may not be construed as a form of human trafficking or conversely human smuggling. And as a result, they suggest that it is difficult for researchers to capture an accurate picture of what is transpiring regarding labour exploitation which may impact the ability to compete with sex trafficking for public attention.⁵⁰

According to Wendy Chapkis, in her 2003 analysis of the US government's *Trafficking Victims' Protection Act (TVPA) of 2000*, and the debates surrounding its creation and implementation, feminist and anti-prostitution conservative organizations within the US captured the public discourse and focused attention on one aspect of international trafficking, sex trafficking, while obscuring the role that exploitative employment practices, restrictive US immigration legislation and policy, and the economic disparity between the have and have-not nations may play in the human trafficking narrative.⁵¹ She argued that the legislation "... was presented both to legislators and the American public as a necessary response to a massive

⁵⁰ Ibid.

⁵¹ Wendy Chapkis, "Trafficking, Migration and the Law: Protecting Innocents, Punishing Immigrants" (2003) 17:6 *Gender & Society* 923.

violation of innocent women and children by depraved sex traffickers”⁵² and that international trafficking victims are often “... described as vulnerable women and children forced from the safety of their home/homelands into gross sexual exploitation...”⁵³ Chapkis noted that the use of unstable and misleading claims within the trafficking discourse by such organizations as the US National Organization for Women (NOW), assisted in advancing publically the concept that international trafficking was largely an issue of women and children forced into sexual slavery.⁵⁴ She reasoned that the use of these unreliable claims, focused on sex trafficking, although serving to rally public support for victims of trafficking abuse at a time when the US public was hostile towards the presence of irregular migrants (undocumented workers) in US industry, actually limited the public understanding of a much more complex issue.

In addition, she argued that although the TVPA appears to symbolically support the concept “... that all prostitution is sexual slavery, the law carefully differentiates between “innocent” and “guilty” prostitutes and provides support only to the innocent.”⁵⁵ Chapkis explained that within the legislation there was a recognition that all prostitutes were considered victims of sexual slavery, but at the same time, the TVPA differentiated between those who were eligible to receive protection services and those who were not - the vulnerable woman forced into prostitution who is entitled to protections established by the TVPA because she is considered to be a victim of a severe form of trafficking versus the sex worker who is recognized as a victim of sex trafficking, in general, because of her recruitment and or transportation for the purposes of commercial sex, but is denied any trafficking protections because of her voluntarily

⁵² Ibid at 925.

⁵³ Ibid at 924.

⁵⁴ Ibid at 925 - 926.

⁵⁵ Ibid at 924.

participation in prostitution.⁵⁶ As a result, Chapkis encouraged feminists to question anti-trafficking legislation such as the TVPA that limits a broader understanding of international trafficking and “... relies heavily on narratives of female powerlessness and childlike sexual vulnerability”⁵⁷ I conclude from her comments that Chapkis was concerned that the acceptance of anti-trafficking legislation, American or otherwise, premised upon a narrow gender victim construction that portrays all women involved in prostitution as passive vulnerable females forced into the sex trade, promotes a simplistic understanding of trafficking and results in an anti-prostitution enforcement approach rather than addressing the far more complex issues that exist within human trafficking such as labour exploitation, poverty, irregular migration, human rights violations, immigration policy constraints, border security, economic discrimination and gender inequity in migration.

Jo Doezema and Barbara Sullivan also noted that the international trafficking victim within the trafficking discourse has been largely portrayed as a vulnerable woman or child trafficked for the sex trade, a sympathetic victim that resonates well with the public and one that anchors the promoted belief that sex trafficking is the most dominant form of international human trafficking taking place. They contend that the trafficking literature depicts the trafficking victim in broad terms, highlighting her gender, innocence, naivety and desperation, often originating from conditions of severe poverty in a Third World country, vulnerable to

⁵⁶ Ibid at 924 - 932.
Trafficking Victims Protection Act of 2000 (TVPA) also known as the *Victims of Trafficking and Violence Protection Act of 2000*, Section 110, Pub. L. No. 106-386, 114 Stat, Pub. Law. No. 106-386, div. A, 114 Stat 1466 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.). Section 103 (8) defines sex trafficking as a severe form of trafficking if the victim has been induced to participate in a commercial sex act by force, fraud, or coercion. Section 103 (9) broadly defines sex trafficking as: “ the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”. And Section 107 (1) (a) stipulates that only victims of a severe form of trafficking qualify for assistance, online: <<http://www.state.gov/documents/organization/10492.pdf>>.

⁵⁷ Ibid at 935.

sexual exploitation by transnational organized crime groups.⁵⁸ Doezema is critical of these sensationalized victim narratives that she believes are designed to encourage public demand for government action against prostitution in order to rescue the perceived vulnerable victim. She is of the view that an anti-trafficking enforcement strategy centred on the sex trade will likely be harmful to sex trade workers because of its inherent anti-prostitution stance.⁵⁹ Doezema contends that an anti-prostitution focus within existing anti-trafficking enforcement strategies, rather than protecting sex workers, will force these workers into situations that place them at greater physical risk in relation to their clients in order to avoid anti-prostitution police enforcement.⁶⁰

Authors such as Galma Jahic and James O. Finckenauer suggest that the image of the young unsuspecting woman, vulnerable to sexual exploitation, has been a useful tool for advancing the issue of trafficking in the public discourse but, like Chapkis, believe that this victim construction is in reality an oversimplification of a very complex problem. They believe that the advancement of this issue from a simplistic victim conceptualization – mainly vulnerable women trafficked for the sex trade - coupled with unverified statistic claims, limits the development of appropriate and effective government anti-trafficking policies and strategies in relation to the larger issues of irregular migration, poverty and labour exploitation.⁶¹ Christine Bruckert and Colette Parent have expressed similar concerns to those raised by Jahic and Finckenauer during their review of the trafficking literature. They have suggested that a simplistic approach to the conceptualization of the victim within the trafficking discourse limits

⁵⁸ Doezema, *supra* note 1 at 13 - 18 and 27 - 28;
Sullivan, *supra* note 40 at 73 - 79.

⁵⁹ Ibid – Doezema at 27 - 28.

⁶⁰ Ibid at 25 - 26.

⁶¹ Galma Jahic and James O. Finckenauer, “Representations and Misrepresentations of Human Trafficking” (2005) 8:3 Trends in Organized Crime 24.

an understanding of the scope of the problem by denying the victim a voice through which they can explain their actions.⁶² Bruckert and Parent emphasized that this is of particular concern in relation to the portrayal of prostitution in the discourse as sexual slavery because the debates among feminists concerning agency, prostitutes, and the sex trade reveal that this remains an unsettled issue.⁶³

Janie Chuang states that the attention that has been paid to international trafficking globally "... has mostly been in response to narrow portrayals of impoverished women and girls trafficked into the sex industry by shady figures connected to organized crime."⁶⁴ Like others, she is critical of the reductive victim construction in the trafficking literature – the vulnerable woman trafficked for prostitution – which she believes results in an incomplete understanding of trafficking because it fails to address the much more complex issue of labour exploitation encased within the phenomenon of international trafficking and the conditions that precipitate migration that render people vulnerable to trafficking victimization.⁶⁵ In her recent analysis of prostitution reform and anti-trafficking law and policy in the US, Chuang noted that the anti-trafficking movement has been transformed into an anti-prostitution movement by the alliance of moral reform and radical feminist organizations (neo-abolitionists).⁶⁶ She argues that the neo-abolitionists have resurrected the white slavery rhetoric of the past and have effectively controlled the contemporary discourse through the promotion of a limited understanding of trafficking that relies upon the portrayal of vulnerable women trafficked for the sex trade (forced

⁶² Christine Bruckert and Colette Parent, *Trafficking in Human Beings and Organized Crime: A Literature Review* (Ottawa: Royal Canadian Mounted Police - Research and Evaluation Branch, 2002) at 12.

⁶³ Ibid at 12 – 13.

⁶⁴ Janie A. Chuang, "Beyond a Snapshot: Preventing Human trafficking in the Global Economy" (2006) 13:1 *Ind.J.Global Legal Studies* 137 at 139 - 140.

⁶⁵ Ibid 137.

⁶⁶ Chuang, *supra* note 29 at 1664 - 1671.

and voluntary).⁶⁷ Thus, she contends that the issue of international trafficking “rather than [being understood] as a complex phenomenon driven by deep economic disparities between wealthy and poor communities and nations ... [has become constructed] ... as a moral or social problem driven by social deviance or entrenched male patriarchy ...”⁶⁸

Although the trafficking literature does provide some focus on labour exploitation,⁶⁹ I have found during the course of this literature review that the contemporary trafficking narratives largely reflect the victimization of vulnerable passive women trafficked for the sex trade⁷⁰ and that this victim construction is very similar to the trafficking victim that grounded the narratives during the white slavery panic. Arguably, although the dimension of the victim construction contained in the contemporary literature has changed over time, common features between the white slavery victim and today’s human trafficking sufferer are clearly evident. As identified by Doezema and Chapkis, innocence of character, for those who have been forced into the sex trade, is one of the major concepts incorporated into the constructs that echo across the span of time.⁷¹

⁶⁷ Ibid at 1666 - 1668.

⁶⁸ Ibid at 1683.

See also:

Weitzer, *supra* note 41;

Alison Murray, “Debt-Bondage and Trafficking – Don’t Believe the Hype”, in Kamala Kempadoo and Jo Doezema, eds, *Global Sex Workers* (New York: Routledge, 1998) at 51 – 64;

Kamala Kempadoo, “Introduction: Globalizing Sex Workers’ Rights”, in Kamala Kempadoo and Jo Doezema, eds, *Global Sex Workers* (New York: Routledge, 1998) at 1 – 28;

Jyoti Sanghera, “Unpacking the Trafficking Discourse”, in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik, eds, *Trafficking and Prostitution Reconsidered – New Perspectives on Migration, Sex Work, and Human Rights* (London,: Paradigm Publishers, 2005) 3;

Claudia Aradau, *supra* note 38 at 29 – 33.

⁶⁹ See e.g. *supra* note 49.

⁷⁰ See also the literature reviews of :

Christine Bruckert and Colette Parent, *Trafficking in Human Beings and Organized Crime: A Literature Review* (Ottawa: Royal Canadian Mounted Police - Research and Evaluation Branch, 2002);

Elzbieta Gozdziaik and Elizabeth A. Collett, “Research on Human Trafficking in North America: A Review of Literature” (2005) 43: 1-2 *International Migration* 99; and

Samantha Dowling, Karen Moreton, and Leila Wright, “Trafficking for the Purposes of Labour Exploitation: A Literature Review” (2007) online: Immigration Research and Statistics Service (IRSS), Home Office, England <http://www.childtrafficking.com/Docs/dowling_2007_0807.pdf>.

⁷¹ Doezema, *supra* note 1 at 13 - 14;

In addition, the international human trafficking victim, as noted by Doezema, is often projected as a blameless female, the victim of a patriarchal system vulnerable to organized crime traffickers, and thus, in need of rescue, to which I draw a parallel to the white slavery victim narratives in which the victim, when lacking innocence as a result of her voluntary participation in prostitution, became conceptualized as feeble minded and thus, vulnerable to unscrupulous men.

Within the trafficking victim construction, the dominant theme that appears to resonate in the literature today as it did in the past is that the victim is not responsible in any manner for her situation and thus by default, has no autonomy or agency. In keeping with the critiques of the trafficking literature by Chapkis, Doezema and Chuang, I believe that the portrayal of the victim as a passive and vulnerable woman subject to the sexual exploitation of unscrupulous traffickers has resulted in an oversimplification of the issue of trafficking victimization that masks the complexities that exist within the phenomenon of international human trafficking. Although a range of conflicting views and perspectives provided by moral reform, radical and moderate feminist organizations regarding the issues of women, prostitution and agency in terms of human trafficking, is evident within the literature, the focus on women and prostitution by the anti-trafficking movement has ensured that the vulnerable sexually exploited female victim has dominated the discourse.

The prevailing trafficking narratives perpetuate an understanding of international trafficking in terms of the international sexual exploitation of vulnerable women. Given the focus of moral reform and radical feminist organizations, it is understandable that their approach to the issue of trafficking has been from the perspective of the sexual exploitation of women. In

Chapkis, *supra* note 51 at 923 - 932.

that regard, I hold out the writings of such authors as Donna Hughes and Victor Malarek as representative of the sex trafficking victim narratives that dominate today's trafficking literature. Similar to the white slavery narratives compiled by Roe and Stead at the turn of the 19th century, Hughes provides a number of brief accounts of individual trafficking victimizations that together, collectively, emphasize the vulnerability of the female victim trafficked for the sex trade. She draws attention to the appalling treatment these vulnerable young women endure at the hands of traffickers in order to underscore the sense of urgency that exists for the public and government to act in order to protect the vulnerable victim.⁷² Similarly, Victor Malarek, in his book *The Natashas: The New Global Sex Trade*, provides detailed descriptive imagery of the trafficking tragedies suffered by vulnerable women and children forced or coerced into the sex trade. His book is presented as a factual exposé of the lives of the victims in conjunction with the lives of others involved in the sex trade such as traffickers, politicians and police. Through an engaging style of writing, Malarek develops a picture of a segment of society that he suggests needs to be brought into the light of public scrutiny. He recounts a number of practices used to enslave vulnerable women into a life of prostitution, all of which, to varying degrees, are comparable to those accounts detailed in the white slavery narratives. The stories span the spectrum of women and girls being duped by family or friends into the sex trade, to those who succumb to false work advertisements and find themselves being subsequently victimized when removed from their familiar environment, or to those who inadvertently, as a result of circumstances of dire poverty,

⁷² Roe and Stead, *supra* note 25.
Donna Hughes, "The "Natasha" Trade – The Transnational Shadow Market of Trafficking in Women" (2000) online: University of Rhode Island < http://www.uri.edu/artsci/wms/hughes/natasha_trade.pdf >.
See also:
Donna Hughes, "Legalizing Prostitution Will Not Stop The Harm" (Coalition Against Trafficking in Women, 1999);
Donna Hughes, Janice G. Raymond and Carol Gomez, "Sex Trafficking of Women in the United States" (Coalition Against Trafficking in Women, 2001).

become the targeted victim of violent organized crime gangs who are trying to satiate the growing demand for sex in western societies.⁷³

Chuang and David A. Feingold have argued that contrary to published media accounts and the literary narratives which have often depicted international human trafficking in terms of women and prostitution, the growing belief that has recently been emerging in the literature has been that labour exploitation and not sex trafficking is the larger form of international human trafficking. These academics, like Chapkis, contend that the statistics about the sex trade have often been overrepresented and exaggerated in various publications that have resulted in giving the public a false impression that women and the sex trade comprise most of the victims of international human trafficking.⁷⁴ As early as 2000, John Salt raised the alarm that much of the trafficking literature at that time was preoccupied with sex trafficking narratives that advanced a particular understanding of international human trafficking based on unreliable claims as to its scope and nature. Salt argued that if these sex trafficking claims that lack legitimacy and credibility continue to be advanced in the trafficking discourse, it ran the risk of panicking the public, government and NGOs into getting ahead of the theoretical understanding of human trafficking and the factual evidence to support it. As a result, Salt was concerned that this could lead to poor anti-trafficking policy and enforcement measures because they would be based on a distorted understanding of trafficking that may not be accurate and thus, undermine anti-trafficking efforts.⁷⁵ Academic, Jyoti Sanghera, shares the belief that the current trafficking discourse is framed around a number of assumptions that have flowed from poor research, anecdotal information, and moralistic positions. Sanghera makes no argument for or against the

⁷³ Victor Malarek, *The Natashas: Inside the Global Sex Trade* (Toronto: Viking Canada, 2003).

⁷⁴ Chuang, *supra* note 29 at 1655 - 1658;

David A. Feingold, "Human Trafficking" (2005) 150 *Foreign Policy* 26.

⁷⁵ John Salt, "Trafficking and Human Smuggling: A European Perspective", in Reginald Appleyard and John Salt, eds, *Perspectives on Trafficking of Migrants*, (Geneva: IOM and OIM, 2000) 31.

truth and legitimacy of these claims, contending that this is not the issue she wishes to address. Rather, Sanghera suggests that the issue that needs to be explored is that the conclusions, developed through faulty research methodology, are directly contributing to the construction of a trafficking discourse reflecting a moral reform ideology – a distorted perception of international human trafficking.⁷⁶

The continual projection to the public of international trafficking stories about women and girls forced into the sex trade has reinforced in the public mind that human trafficking primarily involves the trafficking of women into sexual slavery (prostitution), interspersed with isolated instances of other forms of labour exploitation. This disproportional focus on women and prostitution in the literature has been based upon unverified and unreliable statistics that have been presented as established fact when there is no basis for such a claim. Andrea Di Nicola, for example, examined a 2001 European Commission report that claimed that 120,000 women and children were brought illegally into Western Europe with the majority of these persons being women trafficked for the purpose of prostitution. This claim was often duplicated and presented as fact at various times in the trafficking literature. However, Nicola was able to determine that although this figure had been extensively referenced around the world by academics, researchers and newspapers to encourage and justify government action against international human trafficking, no one knows the research methodology employed to produce the estimate or the legitimacy of the estimate. Nicola observed that simply because the trafficking projection was documented in a reputable report, it became widely accepted as fact when there was no basis to do so, and every reason to question its validity.⁷⁷

⁷⁶ Jyoti Sanghera, *supra* note 68.

⁷⁷ Andrea Di Nicola, “Researching into Human Trafficking: Issues and problems”, in Maggy Lee, ed, *Human Trafficking* (Portland, Oregon: Willan Publishing, 2007) 49 at 60 - 61.

Nicola's finding is not an isolated instance. For example, the trafficking literature in Canada has often referred to two particular government studies (US and Canadian) regarding the nature and scope of human trafficking, both within Canada and from a global perspective, in order to underscore the respective author's argument that there is an urgent need for government intervention to combat international human trafficking. These two reports, the annual Trafficking in Persons (TIP) Report produced by the US State Department which provides a global assessment of human trafficking and the 2003 RCMP intelligence assessment of human trafficking in Canada, infer that the international trafficking of women for the sex trade is the most prolific form of international human trafficking taking place in Canada. However, although these two reports are considered credible, neither the methodology used, nor the conclusions derived that underpin these reports has ever been challenged. As a result, the literature, instead of questioning the findings of the reports, has actually reinforced their legitimacy by repeating their conclusions.⁷⁸ In my view, as discussed in greater detail in Chapter 5, neither of these two reports are the result of credible research. Further, no other research has been conducted to date that clearly delineates the scope and nature of international trafficking in Canada using accepted research methodology. And, the RCMP 2003 intelligence analysis has since been withdrawn by the RCMP, with their more recent analysis conducted in 2010

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See e.g.:

Jacqueline Oxman-Martinez, Marie Lacroix and Jill Hanley, "Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector" (2005) online: Research and Statistics Division, Department of Justice Canada <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_3/toc-tdm.html>. The authors did not question the statistical projections of human trafficking in Canada as contained in the RCMP 2003 intelligence report which are not contained in the more recent 2010 RCMP intelligence report. See reports:
Royal Canadian Mounted Police, Criminal Intelligence Directorate, Criminal Analysis Branch, *Human Trafficking* (Ottawa: Royal Canadian Mounted Police, 2003) at 10;
Royal Canadian Mounted Police, Criminal Intelligence, *Human Trafficking in Canada* (Ottawa: Royal Canadian Mounted Police, 2010);
United States of America, Department of State, *Trafficking in Persons Report* (2001 – 2008) online: US State Department <<http://www.state.gov/documents/organization>>.

indicating that they are unable to determine the scope and nature of human trafficking in Canada.⁷⁹

As Lucie Ogrodnik of the Canadian Centre for Justice Statistics pointed out in 2010, exaggerated claims of trafficking can have an impact on the legal framework of the country (Canada) in terms of how the government responds, legislatively and by policy, to erroneous projections. Her study emphasized that current data collection activities regarding human trafficking in Canada “reveal many shortcomings: data are limited in scope, incomparable and insufficient to ascertain the true extent of the problem in Canada.”⁸⁰ Ogrodnik’s study identified many reasons for the incompleteness of statistical information, “including law enforcement and NGOs each using their own criteria to define a victim of trafficking thus generating non-comparable information.”⁸¹ Strikingly, the report surmised that “in the absence of reliable, ongoing information to inform the issue, it is unknown whether incidents of human trafficking are increasing or decreasing, and whether the current justice responses are effective, which in turn, renders policy decision-making a challenge.”⁸²

Exaggerated and unverified statistical claims appears to be a trend within the international trafficking literature that has resulted in the disproportional representation of the crime of international human trafficking as a crime against women involving the sex trade conducted by organized crime. The reliance on weak research by these narratives has only served to elevate public concern regarding women and the sex trade in the same manner that took place during the white slavery panic. Authors such as Doezema believe that these types of

⁷⁹ Ibid - RCMP, Criminal Intelligence (2010) at 8.

⁸⁰ Lucie Ogrodnik, Lucie, “Towards the Development of a National Data Collection Framework To Measure Trafficking in Persons” (2010) at 5, online: Statistics Canada, Canadian Centre for Justice Statistics <<http://www.statcan.gc.ca/pub/85-561-m/85-561-m2010021-eng.pdf>>.

⁸¹ Ibid.

⁸² Ibid.

narratives have contributed once again to the international anti-trafficking movement's promotion of a moral panic similar to what occurred during the white slavery campaign.

In terms of the theoretical criteria for a moral panic, as first identified by Cohen and later expanded upon by Hall and Critcher, the major elements that are necessary to constitute a moral panic are evident within the contemporary international trafficking discourse. It is as a result of the presence of these factors within the current trafficking literature that some academics have drawn a parallel to the experience of the white slavery panic. Both discourses, as reflected in the literature, mirror the 'elevated concern' through the use of unverified and exaggerated claims regarding the same specific social group – prostitutes. Both discourses exhibit 'hostility' towards the group by socially constructing human trafficking as a crime involving prostitution, a form of implied sexual immorality, orchestrated by international traffickers upon an unsuspecting society. And, as occurred during the white slavery panic, contemporary human trafficking has again linked prostitution with slavery and has successfully generated a 'consensus of views' among the public such that prostitution has become equated to the crime of international human trafficking.⁸³

I note that the most prevalent gap that appears to exist within the contemporary international human trafficking literature is the lack of quality research to support the arguments that are being offered. As indicated by a number of authors, there have been no credible studies of international human trafficking conducted to date that would withstand close scrutiny and provide verifiable answers concerning the true scope and nature of international human

⁸³ See the following in relation to the criteria for a moral panic:
Cohen, *supra* note 32;
Hall, Critcher, Jefferson, Clarke and Roberts, *supra* note 34;
Chas Critcher, *Moral Panics and the Media* (Philadelphia: Open University Press, 2003) at 16 – 19;
Erich Goode and Nachman Ben-Yehuda, *Moral Panics: The Social Construction of Deviance*, (Cambridge, Mass.: Blackwell Publishers, 1994).

trafficking, either globally or in Canada. As Salt, Sanghera and Ogrodnik have suggested, unless future academics and researchers address the failure to develop internationally agreed upon standards for conducting international human trafficking research in order to give us a better understanding of the crime, we will continue to produce studies that lack legitimacy upon which governments naively rely for policy and enforcement decisions.⁸⁴

2.4 Organized Crime

There is a 3rd cluster of contemporary literature concerning human trafficking that is primarily linked to organized crime. The initial premise of the 2000 UN *Convention against transnational organized crime* was not designed to address the issue of international human trafficking. Rather, the Convention was a recognition that transnational organized crime enjoyed an unfettered fluidity of movement across territorial boundaries by ignoring border control laws, regulations and/or policies, with the sole objective of maximizing profits by expanding criminal enterprises. Thus, the Convention represented a desire to create a willingness among the signatories to work collaboratively in their efforts to combat all forms of transnational crime that was being carried out by transnational organized crime groups.⁸⁵

Previous attempts by UN Conventions to address transnational organized crime had been limited in their scope because they were crime specific.⁸⁶ The 2000 UN Convention represented a

⁸⁴ See also the following regarding trafficking research:
Frank Laczko, “Data & Research on Human Trafficking” (2005) 43 *International Migration* 5;
Gozdziak and Collett, *supra* note 70 at 99 - 128;
Guri Tyldum, “Limitations in Research on Human Trafficking” (2010) 48:5 *International Migration* 1.
Sheldon X. Zhang, Sheldon X. “Beyond the ‘Natasha’ Story – a review and critique of current research on sex trafficking” (2009) 10 *Global Crime* 178.

⁸⁵ *United Nations Convention against Transnational Organized Crime (Annex II- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children)*, 15 November 2000, UNTS vol 2237 at 319, G.A. Res. 55/25, Article 1.

⁸⁶ See e.g.:
United Nations Single Convention on Narcotic Drugs, 30 March 1961, UNTS vol 976 at 105;
United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 20 December 1988, UNTS vol 1582 at 95.

unique broad based approach to the problem that encouraged cooperation among the international community to combat all forms of organized crime activity that is transnational in nature through a shared understanding of organized crime. The Convention targeted two main elements that are common to most transnational organized crime - the proceeds derived from the transnational criminal activity and the corruption of government officials necessary to facilitate the criminal activity. In general, the Convention encouraged the signatories to cooperatively seek legal remedies against transnational organized crime groups at the national and international level by assisting each other to legally attach any profits associated with the activities of organized crime and to pursue any government official suspected of corruption that has facilitated the activities of a transnational criminal organization.⁸⁷

During the 1990s, the trafficking literature and media reports pressed forward with unsubstantiated claims that transnational organized crime, motivated by the potential for enormous illicit profits, was responsible for the international trafficking of women for the sex trade. The truth or accuracy of this presumption is now subject to question. However, by framing the issue of contemporary human trafficking within the activities of transnational organized crime, the anti-trafficking movement was able to capture international attention.⁸⁸ This eventually led to the UN's decision to include human trafficking within the Convention and resulted in the extension of an invitation to anti-trafficking NGOs, mainly moral reform and feminist organizations, to participate in the development of the annexed Trafficking Protocol to the 2000 Convention.⁸⁹

⁸⁷ See *supra* note 85, Articles 3 – 9.

⁸⁸ Christine Bruckert Christine and Colette Parent, *Organized Crime and Human Trafficking in Canada: Tracing Perceptions and Discourses* (Ottawa: Royal Canadian Mounted Police -Research and Evaluation Branch, 2004) at 1 - 4 and 33 - 56.

⁸⁹ Scarpa, *supra* note 47 at 55 - 62.

The Trafficking Protocol was presented to the international community as a new tool, an internationally sanctioned instrument for governments to use in the fight against the threat of rapidly expanding transnational organized crime groups that were believed to be profiting from the forced movement of, and abusive exploitation of, enslaved people across national boundaries. It is this understanding of transnational organized crime as reflected in the Protocol that has guided many of the various government enforcement strategies to combat trafficking.⁹⁰ However, a number of studies that have been published since the creation of the 2000 Convention are now challenging this popular presumption that organized crime was and is the main orchestrator of human trafficking.

Ahmet Icduygu and Sule Toktas, for example, in their study of trafficking in the Middle East, concluded that many of the traffickers and smugglers who were moving people across territorial boundaries were not actually a part of a large centralized transnational criminal organization as inferred in the trafficking literature. Rather, they suggested that the human trafficking process consists of a series of individuals, not affiliated with any criminal organization, that facilitate a particular aspect of the crime of trafficking. These individuals coordinate their efforts with each other within the trafficking process through the use of up-to-date communication technology which enhances their ability to adapt, as the needs dictate, to changing irregular migration patterns and anti-trafficking enforcement practices.⁹¹ Icduygu and Toktas indicated that a great deal of the literature concerning organized crime's involvement in

There were three Protocols: Trafficking in Persons, Smuggling of Migrants and the Manufacturing and Trafficking of Firearms. The wording for each of the preambles for the Trafficking and Smuggling Protocols emphasized a concern of what might happen if no action is taken against transnational crime groups, creating a sense of urgency to act.

⁹⁰ Ann Jordan, "Human Rights or Wrongs? The Struggle for a Rights-based Response to Trafficking in Human Beings" (2002) 10:1 Gender and Development 28 at 31 - 34.

⁹¹ Ahmet Icduygu and Sule Toktas, "How Do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East? (Evidence from Fieldwork in Turkey) (2002) 40:6 International Migration 25 at 26 - 30 and 45 - 50.

human trafficking lacks any empirical research rigour, consisting mainly of descriptive anecdotal evidence to support a claim that organized crime is extensively responsible for human trafficking when in fact this may not be the case.⁹²

Tamara Makarenko found that the Convention's definition of transnational organized crime, any "structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention in order to obtain, directly or indirectly, financial or other material benefit", confusing and misunderstands transnational organized crime's involvement in human trafficking. This misunderstanding, she has argued, has been reinforced by many published reports, prior to and since the creation of the Convention, that have left the impression that transnational organized crime groups involved in international human trafficking constitute the traditionally understood construct of a hierarchically structured criminal organization such as those represented by Asian gangs, 'biker' gangs or the Mafia, Russian or otherwise.⁹³

During the course of her analysis of the actors involved in the human trafficking process, Makarenko determined that in most instances of human trafficking, the culprits involved were not members of a structured organized crime group as required by the Convention definition. Instead, Makarenko contended that most human trafficking is carried out by a network of loosely affiliated individuals, each responsible for a specific section of the trafficking process based on social and family ties at the local or regional level, who work collaboratively for varying periods of time in an unstructured association - a situation that is not addressed within the Convention's

⁹² Ibid at 26.

⁹³ Tamara Makarenko, "Organized crime or crimes organized? Isolating and identifying actors in the human trafficking chain", in Anna Jonsson, ed, *Human Trafficking and Human Security* (New York: Routledge, 2009) 26.

Quoted definition obtained directly from: *United Nations Convention Against Transnational Organized Crime*, Article 2, *supra* note 85.

definition of organized crime. She acknowledged that traditional organized crime groups can be involved at either source or destination points in the human trafficking process but for the most part, she categorized their participation as limited.⁹⁴ Makarenko encouraged law enforcement to seek to understand the ‘real’ threat and social impact that human trafficking represents by concentrating on the role of the social networks, in both source and receiving countries, that feed the trafficking chain, and not be blinded by government priorities that tend to focus law enforcement efforts on street level criminal activity.⁹⁵

James Finckenauer, in his analysis of Russian organized crime’s involvement in human trafficking, concluded that there is a significant lack of reliable information and research upon which one could safely argue that the Russian mafia is involved to any great extent in human trafficking. He indicated that much of the research that has been conducted was not credible because it relied primarily on anecdotal information which he believes contributes to the media sensationalism with respect to the sex angle of human trafficking and the connection to Russian organized crime. Finckenauer suggested that as a result of this reliance on such questionable information by governments and law enforcement, it can only lead to misinformed and poorly designed policies and enforcement strategies.⁹⁶

In her critique of Canada’s temporary work visa program for foreign exotic dancers in 2003, Audrey Macklin echoed the findings of Makarenko and Finckenauer. She argued that the trafficking of exotic dancers to Canada from Eastern Europe is being conducted by an extensive but loosely associated network of independent smugglers, traffickers and pimps. She

⁹⁴ Ibid.

⁹⁵ Ibid at 44 - 45.

⁹⁶ James O. Finckenauer, “Russian Transnational Organized Crime and Human Trafficking”, in David Kyle and Rey Koslowski, eds, *Global Human Smuggling*, (Baltimore: John Hopkins University Press, 2001) 166.

acknowledged that traditional organized crime does become involved in the trafficking process but only after the victim has arrived in the receiving country, in this case Canada, by taking control of the exotic dancer after her arrival through the use of threats and/or the use of violence. Macklin's underlying theme within her critique of Canada's immigration policy regarding foreign exotic dancers weaves the argument that the government policies, misinformed about the nature of human trafficking, have resulted in the Canadian government actually unknowingly becoming complicit in the trafficking of the exotic dancers.⁹⁷

In 2004, Bruckert and Parent were contracted by the RCMP to review how the phenomenon of women trafficked into Canada for the sex trade by organized crime syndicates has impacted related Canadian government policies and practices. Among the many areas they explored was the examination of the Canadian government's strategies to combat trafficking which they contended have been framed in terms of a criminal justice solution based on a poorly documented understanding of organized crime. Bruckert and Parent reached similar conclusions to those of Makarenko, Finckenuer and Macklin based on their research interviews that revealed that contrary to the traditional concept of organized crime's involvement that had been advanced in the trafficking discourse, human trafficking is largely being conducted by loosely affiliated networks of individuals who have drawn upon cultural or social associations within their respective nations in order to facilitate the crime with no permanent affiliation to a structured organized crime group.⁹⁸ Even the recent 2010 RCMP human trafficking intelligence threat assessment exemplifies the growing uncertainty regarding the degree of transnational organized crime's involvement in human trafficking. The report concluded that: "Human trafficking may

⁹⁷ Audry Macklin, "Dancing Across Borders: 'Exotic Dancers,' Trafficking, and Canadian Immigration Policy (2003) 37:2 International Migration Review 464.

⁹⁸ Bruckert and Parent, *supra* note 88 at 1 - 4 and 33 - 56.

as likely be orchestrated by transnational organized criminal networks as it may be coordinated by a few family-based opportunists with little formal structure ... [and] ... Indications of organized crime involvement in human trafficking activities associated to organized prostitution have been identified; however, the level of sophistication among these groups and the extent of transnational criminal involvement have not been determined”⁹⁹

The question of whether or not organized crime has been and is controlling human trafficking is an important issue as this literature focus demonstrates. The unchallenged presumption of transnational organized crime’s involvement in trafficking has grounded and framed the trafficking discourse, the Trafficking Protocol, and much of the government anti-trafficking enforcement strategies that have been developed globally, and in Canada. However, as noted in the work of Macklin and Makarenko, it is evident that this generally held presumption concerning transnational organized crime lacks the requisite empirical research to support the legitimacy of such a claim. Given these concerns over the depth of participation that transnational organized crime organizations have played in human trafficking, I am suggesting that there is a pressing need for the Canadian government to revisit this generally held belief that has contributed to defining Canada’s response to human trafficking.

2.5 Human Rights

The issue of human rights is intricately woven into the discussion and literature of human trafficking. Moral reform and feminist groups have both argued that human trafficking is a violation of the fundamental human rights of women in terms of the abuse and violence to which women have been subjected by human traffickers as they are forced into the sex trade. And,

⁹⁹ RCMP (2010), *supra* note 78.
This report and the 2003 RCMP intelligence report are analyzed in greater detail in Chapters 5 and 6.

radical feminists have also expressed the additional belief that prostitution by itself represents another violation of women's rights because prostitution is cast as the ongoing violent subjugation and oppression of women carried out by men.¹⁰⁰ In the following pages, I trace three key viewpoints that are present within the trafficking literature regarding the provision of international human rights for trafficking victims. My objective is to demonstrate the spectrum of debate that exists within the trafficking literature concerning the international rights of trafficking victims and the related view that the recognition of international human rights by the state is a fragile process that is constantly subject to the ebb and flow of national and international politics. I am suggesting that the calls to protect the rights of the trafficking victim, as advanced by the international anti-trafficking movement, may be somewhat illusionary to the extent that they are limited to a specifically understood victim construction – vulnerable women involved in prostitution.

Joan Fitzpatrick suggests that the 2000 UN Convention actually does signal a new approach for the advancement of international rights in relation to human trafficking victims by providing governments with the opportunity to incorporate international trafficking victim rights protection provisions directly into state anti-trafficking and border security enforcement policies.¹⁰¹ Fitzpatrick recognizes that there can be a wide interpretation of international rights instruments that can lead to an unequal recognition of human rights among states, including the recognition of the rights of irregular migrants and especially those of trafficking victims.

However, she has suggested that the 2000 UN Convention represents the means by which the

¹⁰⁰ Doezema, *supra* note 1;
Chuang, *supra* note 29;
Weitzer, *supra* note 41.

¹⁰¹ Joan Fitzpatrick, "Trafficking as a Human Rights Violation: The Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking" (2003) 24 *Mich.J.Int'l L.* 1143 at 1148 – 1154 and 1165 - 1167.

state can avoid emerging tension between state immigration and border security policy, and international migrant rights, by integrating the rights of migrants and trafficking victims into other related state areas of responsibility beyond the legally framed Convention such as: state law enforcement strategies, the provision of social services by the state, the economic development plans in source countries, and the creation of migration policy in receiving countries.¹⁰² Fitzpatrick believes that this type of approach would ensure that both objectives, international rights of trafficking victims and state security, are met rather than one achieved at the expense of the other.

Ryszard Piotrowicz wrote that the tension between state interests (border security) and trafficking victim rights arises when the crime of human trafficking is perceived foremost as a threat to the stability and security of the nation-state in terms of the apparent violation of state immigration laws. He has indicated that the rights of the victim become a source of tension for the state if the state is unwilling or unable to implement the victim protection provisions within the Convention if those provisions are perceived as undermining the security of the state. The challenge for the state then, as perceived by Piotrowicz and by Fitzpatrick, is to manage the tensions that arise between the state's legitimate interests in combating the crime of trafficking by creating new migration controls that enhance border security and detect traffickers while ensuring that the new migration controls do not violate but instead protect, the rights of the victim.¹⁰³

Although Fitzpatrick has cast the Trafficking Protocol as a step forward in the coalescing and advancement of human rights on the international stage, others have suggested the converse.

¹⁰² Ibid 1143.

¹⁰³ Ryszard Piotrowicz, "Trafficking of Human Beings and their Human Rights in the Migration Context", in Ryszard Cholewinski, Richard Perruchoud and Euan MacDonald, eds, *International Migration Law: Developing Paradigms and Key Challenges* (The Hague: T.M.C. Asser Press, 2007) 275.

Ann Jordan, for example, has argued that the Protocol is nothing more than an international law enforcement instrument and not an international agreement that addresses the rights of the irregular migrant in the form of a trafficking victim. Jordan has suggested that it was only during the latter stages of the Protocol's development that the NGOs of the Human Rights Caucus were successful in attaining some human rights protections for victims of trafficking. As she and other authors have noted, the enforcement provisions of the Protocol use strong terminology to obligate the signatories to specific enforcement actions, while obscuring the rights protection provisions because they have been couched in weaker terms and left to the interpretation of each state. These authors have indicated that due to the expressed weakness of rights protections within the Protocol, human rights advocates will have to rely on associated international legal instruments in order to ensure that victims of trafficking receive adequate rights protection.¹⁰⁴

Contrary to Fitzpatrick and Jordan, James Hathaway has perceived the Trafficking Protocol as an international instrument that serves to privilege the rights of a small segment of slavery victims within the larger issue of contemporary slavery while marginalizing the rights of the majority of the world's slaves. Hathaway has contended that the Trafficking Protocol has provided the state the means to appear to be protecting human rights by publicizing state efforts

¹⁰⁴ Ann Jordan, "The Annotated Guide to The Complete UN Trafficking Protocol" (2002) at 2 – 4, online: Human Rights Education Associates <http://www.hrea.org/index.php?base_id=104&language_id=1&erc_doc_id=818&category_id=22&category_type=3&group=>.

See also:

Anna Marie Gallagher, "Triply Exploited: Female Victims of Trafficking Networks – Strategies for Pursuing Protection and Legal Status in Countries of Destination" (2004) 19 *Geo.Immigr.L.J.* 99 at 102 – 117;

Anne T. Gallagher, "Using International Human Rights Law To Better Protect Victims of Human Trafficking: The Prohibitions on Slavery, Servitude, Forced Labour and Debt Bondage", in Leila Nadya Sadat and Michael P. Scarf, eds, *The Theory and Practice of International Criminal Law: Essays in Honour of M. Cherif Bassiouni*, (Leiden: Martinus Nijhoff, 2008) 397.

Bernadette McSherry and Susan Kneebone, "Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights" (2008) 12 *The International Journal of Human Rights* 67;

Sara Dillon, "What Human Rights Law Obscures: Global Sex Trafficking and the Demand for Children" (2008) 17 *UCLA Women's Law Journal* 121 at 159 - 174.

against human slavery in the form of combating human trafficking but in reality, the Protocol has permitted the state to quietly ignore the larger aspects of the crime of human slavery which he has suggested are culturally engrained and endemic in many parts of the world in various forms such as debt bondage in Asia and the chattel slavery system in Africa.¹⁰⁵ By focusing attention on this small sub-set component of human slavery, Hathaway has argued that the issue of trafficking has not only drawn attention away from the larger issue of slavery, negatively impacting the rights of the larger number of slavery victims, but has also reduced the overall availability of funding and resources from the state that could be used to combat slavery. He has suggested that the anti-trafficking efforts to date have simply been a pretext by the state to enhance border security, purportedly to protect trafficking victims, but in reality, have only resulted in more damage to human rights than in advancing them. Hathaway believes that increased anti-trafficking efforts have quietly increased the criminalization of irregular migration such that persons attempting to escape poverty and persecution through human smuggling routes are now viewed as participants in a transnational organized crime. He has suggested that enhanced border security has had a tremendous detrimental effect on the rights of those who legitimately seek asylum.¹⁰⁶

Hathaway questioned why the anti-trafficking movement did not raise any opposition to the increased border security aspects of the Trafficking Protocol during the drafting process when it was self-evident that these measures would impact negatively upon irregular migrant rights. He has contended that as a result of state compliance with the Protocol in the form of

¹⁰⁵ James C. Hathaway, "Human Rights Quagmire of Human Trafficking" (2008) 49 *Va.J.Int'l L.* 1. See also the following article that, similar to Hathaway's position regarding slavery and human trafficking, argues that the focus on sex trafficking by the US government has resulted in the privileging of a select segment of trafficking victims while marginalizing the rights of all trafficking victims:

Kathleen Kim and Grace Chang, "Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field" (2007) 3 *Stanford Journal of Civil Rights and Civil Liberties* 317.

¹⁰⁶ *Ibid* – Hathaway at 25 - 41.

greater border security, it has only served to violate the rights of legitimate refugee seekers by further limiting their access to a safe haven. And, he has suggested that the NGO anti-trafficking movement leadership, controlled by religious (moral reform) and feminist anti-prostitution advocates, were not interested in condemning the human rights pitfalls that were self-evident in the Protocol as it simply was not on their anti-prostitution abolitionist agenda. Hathaway has argued that the anti-trafficking movement leadership was so focused on ending prostitution during the Protocol's creation that the enslavement of all persons did not enter into their core considerations.¹⁰⁷

Fitzpatrick, Jordan and Hathaway have each provided some insight into the spectrum of the international rights debate for trafficking victims. It is evident that the recognition of international human rights, especially in relation to trafficking victims, is an ongoing complex issue. Much of the debate over the rights of trafficking victims has pivoted upon the perceived interests of the state conflicting with the interests of the victim – border security or victim protection – with the understanding that the victim, as generally portrayed in the trafficking literature, is a poor vulnerable female in need of rescue. As a result, I share the perceptions of Hathaway, Kim and Chang in as much as I believe that the specific social construction of the trafficking victim that has been advanced by the international anti-trafficking movement has only served to privilege the rights of a select segment of trafficking victims within the larger issue of contemporary human trafficking, creating the illusion of the overall advancement of human trafficking victim rights.¹⁰⁸

¹⁰⁷ Ibid at 45 - 46

¹⁰⁸ Ibid – Hathaway at 1 – 25, and Kim and Chang at 317 - 320 and 344, *supra* note 105.

2.6 Conclusion

The contemporary trafficking literature gives the appearance of being a much more informed and inclusive discussion of international human trafficking beyond the narrow confines of the literature that documented the white slavery panic. Yet, the central concepts of women, prostitution and sexual slavery that were embedded within the anti-white slavery literature are still very much present and applicable to much of what has been documented today regarding the international human trafficking discourse and the international anti-trafficking movement. Moral reform and radical feminism remain the dominant voices with respect to either trafficking discourse. And, as a result, the trafficking of women for prostitution that grounded the white slavery panic continues to be the central consideration within contemporary international human trafficking. The pure vulnerable white slavery victim that symbolized all that was wrong with society and grounded a moral panic continues to occupy the most prominent position within today's international human trafficking literature which underscores a sense of urgency for government action in order to rescue these vulnerable victims. And, the concerns over immigration and the changing role of women in society in relation to global migration due to globalization (industrialization) that buttressed the white slavery moral panic continue to inform the contemporary international human trafficking discourse and influence government responses.

The literature confirmed that there is a considerable gap in the amount of credible research that has been conducted to date in order to concretely underpin the various assessments and claims that have been documented regarding the nature and scope of contemporary international human trafficking. And, not only has this been evident in how the types and depth of international trafficking have been portrayed in the literature but it is equally apparent with regards to the various claims that have been made respecting the role of transnational organized

crime in orchestrating international human trafficking. Sound research is necessary in order to ground the anti-trafficking efforts of governments who to date have had to rely upon anecdotal and exaggerated trafficking claims.

The international rights of international trafficking victims have been and remain an unsettled issue. Whether or not the Trafficking Protocol is a step forward in the protection of victim rights as envisaged by Fitzpatrick or is simply an international law enforcement agreement that obscures trafficking victim rights and marginalizes the rights of other irregular migrants as suggested by Hathaway will continue to be the subject of much discussion. But, it is my position that in order to ensure that this 2000 Convention will eventually assist in the entrenchment and protection of the rights of all international trafficking victims, it is essential that the trafficking victim be understood beyond the narrow construction that currently dominates the literature.

3. The International Anti-Human Trafficking Social Movement

3.1 Introduction

This study relies upon Bourdieu's 'field' theory to explain the relationship between the international anti-trafficking social movement and the Canadian government, and how that relationship has contributed to the result of so few international human trafficking prosecutions in Canada. To this end this chapter sets out, through a practical and conceptual examination of the international anti-trafficking social movement, the movement's dominant voices, its composition, history and thematic focus in order to facilitate the analysis that takes place in this dissertation of the interplay between the Canadian government and the international anti-trafficking movement. The concept that a social movement is a 'social field' interacting with a 'juridical field' in pursuit of specific objectives as conceptualized by Bourdieu is one that has been used by other researchers. Peter P. Houtzager, for example, applied Bourdieu's field theory to his study of land reform in Brazil in order to account for the outcomes of the interaction that took place between the Brazilian agrarian land reform social movement and the Brazilian government.¹ In order to underscore the suitability of Bourdieu's field theory to my thesis, I begin this chapter with a summary of Houtzager's study.

¹ Peter P. Houtzager, "The Movement of the Landless (MST) Juridical Field, and Legal Change in Brazil", in Boaventura de Sousa Santos and Cesar A. Rodrigues-Garavito, eds, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005) 218. As referenced in Chapter 1, Bourdieu contended that society is comprised of an infinite number of interacting 'social fields' with each 'field' containing a shifting balance of power relationship between the hierarchical structure of the 'field' that exhibits the dominating social agents and institutions that determine what takes place within the 'field', and the existence of ongoing struggles of agency and change that affect the 'field'. He argued that 'social fields', when seeking some form of social regulation with regards to emerging social issues, will interact with the 'juridical field' in order to achieve their objectives. See Chapter 1 – Figure 1-1 for visual representation of Bourdieu's 'field' theory. See also the following for greater detail about 'field' theory: Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" (1987) 38 *Hastings L.J.* 814;

I then turn to a brief discussion of the features of social movements. This entails identifying the core elements that comprise a social movement – the foundational building blocks – followed by a synopsis of three of the prevailing concepts within the study of social movement theory - how social movements are formed, how they function and how they advance their collective interest. My aim is to provide a rudimentary understanding of social movements in order to situate the dynamics at play within the relationship between the international anti-human trafficking social movement and the Canadian government. Based on this core understanding of social movements, the heart of the chapter explores the contemporary international anti-human trafficking social movement from a largely pragmatic perspective. Beginning with an examination of the international aspects of the movement, I outline the opinions of various scholars who posit that the anti-trafficking movement is an international construction and not the product of a national grass roots movement. I then review selected international and Canadian non-government and inter-government organizations (NGOs and IGOs), grouped into three categories (historical, pre-existing and contemporary) that are not only representative of the movement’s international and Canadian composition but also of the dominant voices that emerged as a result of the movement’s internal power relationship struggles which are reflected in the contemporary trafficking literature – feminism and moral reform. My objective is to put into perspective the international anti-trafficking social movement’s thematic focus that has guided the international anti-trafficking social movement’s interactions with various governments, including Canada’s.

Richard Terdiman, “Translator’s Introduction - The Force of Law: Toward a Sociology of the Juridical Field” (1987) 38 *Hastings L.J.* 805;
Patricia Thomson, “Field”, in Michael Grenfell, ed, *Pierre Bourdieu Key Concepts* (Stocksfield: Acumen Publishing Limited, 2008) Chapter 5;
Cheleen Mahar, Richard Harker, and Chris Wilkes, “The Basic Theoretical Position”, in Richard Harker, Cheleen Mahar and Chris Wilkes, eds, *Introduction to the Work of Pierre Bourdieu*, (London: The MacMillan Press Ltd, 1990) 1.

3.2 Field Theory in Practice

Many scholars have engaged with the works of Pierre Bourdieu, especially in terms of the application of his field theory to their respective research projects. But Peter Houtzager's study of a social movement in Brazil, in many respects, mirrors the application of Bourdieu's theory within this project. He argued that the agrarian reform social movement in Brazil (MST) was a 'social field' consistent with Bourdieu's field theory because the Brazilian movement contained many of the elements that Bourdieu ascribed to social fields such as the concept of shifting power relationships within a hierarchical structure and the varying degrees of dynamic interaction and influence that the movement can exercise within society based on the power relationships it exercises relative to the other social fields. Relying on the experience of the Brazilian land reform movement, Houtzager explored how fields of social movements can produce change within a country through their interaction with the country's 'juridical field'.²

Houtzager posited that the autonomy of the juridical field is relative and varies over time. He argued that social movements, in this case the Brazilian agrarian reform movement, can alter juridical practices even though, as Bourdieu theorized, the juridical field has its own forms of structure, dominance, and rules that would normally be resistant to the practices identified with social movements. Houtzager suggested that the ability of the agrarian movement to convert the movement's energy into juridical energy was central to achieving its objectives. He believed that this held true for all social movements. Houtzager concluded that juridical expertise that either exists within a social movement or can be engaged by the social movement, coupled with

² Houtzager, *supra* note 1.
Additional examples of 'field' theory application:
Carol A. Mutch, "Adapting Bourdieu's Field Theory to Explain Decision-Making Processes in Educational Policy", in Vincent A. Anfara and Norma T. Mertz, eds, *Theoretical Frameworks in Qualitative Research* (Thousand Oaks, California: Sage Publications, Inc., 2006) 155; and,
Rodney Benson and Erik Neveu, *Bourdieu and the Journalistic Field*, (Cambridge: Polity Press, 2005).

the fluctuating dynamics within the juridical field, could lead to the movement's success in entering the juridical field and thereby affecting change relative to the movement's objectives.³

Houtzager noted that the success of the Brazilian agrarian reform social movement to achieve legislative and policy changes was directly dependent upon the movement's ability to engage, direct and concentrate the energies of highly qualified legal experts towards the pressing issues that epitomized the movement as the first step in the process of gaining access to the juridical field. Through this access by legal experts, the agrarian social movement was then able to successfully mobilize the forces of the various power relationships within the juridical field creating a focus on the prevailing legal issues the movement confronted that led to such solutions as appropriate legislation to support agrarian reform. This enhanced influence by the social movement into the Brazilian juridical field resulted in shifting power relationships within the juridical field, and between the agrarian movement and other social movements giving it a commanding presence within Brazilian society.⁴

Similar to Houtzager's study, this study has been guided by the view that a social movement is a 'social field' as envisaged by Bourdieu. And, in this study, I have found that the international anti-trafficking social movement has achieved success similar to the Brazilian land reform movement by accessing and influencing Canada's juridical field. This interactive power relationship has resulted not only in new legislation that supports the issues imbedded within the anti-trafficking movement but has also permitted the international anti-trafficking movement to reach deeply into the Canadian government structure and influence the country's international anti-trafficking policies and strategies. Understanding that there has been an interaction between

³ Ibid – Houtzager at 238.

⁴ Ibid.

these two social fields does not, in and of itself, explain why there has been a lack of international anti-trafficking prosecutions in Canada. However, through an appreciation of the existence and dynamics of this relationship, and the subsequent analysis of the movement's influence over the Canadian government's response to human trafficking which I detail later in Chapter 5, one should gain an understanding that the lack of successful international trafficking prosecutions in Canada is related to how the international anti-human trafficking social movement has influenced the Canadian government's understanding of international human trafficking.

3.3 Social Movements

Sociologists D. Stanley Eitzen and Kenneth Stewart defined "... a social movement as the collective attempt to promote, resist, or reverse change".⁵ This definition, for the most part, is echoed by many other sociologists, some of whom have introduced additional analytical criteria for social movements such as: there must be clearly defined goals; there should be an *antagonist*; and there is a need to action their concerns through an organized effort.⁶ However, it is important for this study to understand that social movements are largely considered to be the counter to the established order with a collective objective achieved through collective action either to initiate change or to resist change relative to societal norms and values.⁷

I have limited this discussion to a short exploration of three perspectives which are commonly accepted under the umbrella of social movement theory: resource mobilization,

⁵ D. Staley Eitzen and Kenneth Stewart, *Solutions to Social Problems from the Bottom Up: Successful Social Movements* (Boston: Allyn & Bacon, Inc, 2007) at 3.

⁶ Diane Dentice, "Chapter 1 – Introduction", in Dianne Dentice and James L. Williams, eds, *Social Movements: Contemporary Perspectives* (Newcastle, UK: Cambridge Scholars Publishing, 2008) at 1 – 5; Karl-Dieter Opp, *Theories of Political Protest and Social Movements: A multidisciplinary introduction, critique, and synthesis* (New York: Routledge, 2009) at 36 - 37.

⁷ Charles J. Stewart, Craig Smith and Robert E. Denton, Jr, *Persuasion and Social Movements* (Prospect Heights, Illinois: Waveland Press, Inc., 1984) at 14.

collective identity, and political opportunities. This will assist the reader by spelling out the dynamics at play in society with respect to social movements and this study's analysis of the international anti-trafficking social movement in particular. As indicated by their titles, each perspective focuses on what is suggested as a primary catalyst by which social movements can be theoretically explained in terms of their emergence, function and operation. The first concept, 'resource mobilization', was developed by John D. McCarthy and Mayer N. Zald in 1977 and holds that social movements emerge and function based on "the interaction between resource availability, the pre-existing organization of preference structures, and the entrepreneurial attempts to meet preference demand."⁸ J. Craig Jenkins summarized that mobilization "... is the process by which a group secures collective control over the resources needed for collective action."⁹ Thus, the emergence, growth and the inevitable decline of social movements is interdependent upon the ability of the movement through a hierarchal organizational structure to attract, control and mobilize critical resources in order to advance collective action.

The second perspective, 'collective identity', is founded upon "... the individual's cognitive, moral, and emotional connection with a broader community...[of like minded individuals]."¹⁰ It is a combination of personal or individual perceptions in conjunction with the pre-existing bonds of interest as suggested by the features of resource mobilization. As argued by Polleta and Jasper, collective identity "... is fluid and relational, emerging out of interactions with a number of different audiences (bystanders, allies, opponents, news media, state

⁸ John D. McCarthy and Mayer N. Zald, "Resource Mobilization and Social Movements: A Partial Theory" (1977) 82 *American Journal of Sociology* 1212 at 1236.

⁹ J. Craig Jenkins, "Resource Mobilization Theory and The Study of Social Movements" (1983) 9 *Annual Review of Sociology* 527 at 532.

¹⁰ Francesca Polleta and James M. Jasper, "Collective Identity and Social Movements" (2001) 27 *Annual Review of Sociology* 283 at 285.

authorities), rather than fixed.”¹¹ However, both Polleta and Jasper acknowledge that much research still remains to be done with respect to the relationship between identity and self-interest and how those issues influence social movements. For example, do individuals choose or align with a social identity (movement) based on the potential of return as a motivating factor?¹² And, the third concept, ‘political opportunities’, is premised on the view that “... the [political] context in which a social movement emerges influences its development and potential impact.”¹³ It is argued that there is a direct correlation between the success or failure of a social movement in terms of the degree of the effective management of the political opportunities presented within society’s political environment relative to the mobilization of resources (individual and organizational) and the creation of accepted strategies for collective action. This perspective highlights the relationship between social movements and governmental (political) responses to those movements.¹⁴

The international anti-human trafficking movement reflects the primary elements that have been identified by these three perspectives of social movement theory. This international movement has successfully mobilized available individuals and organizations to work collectively for a singular visible objective - the abolishment of a contemporary form of human slavery. As evidenced by the literature review in the previous chapter, there are moral and emotional connections within the movement that reflect the pre-existing bonds from across a broad community of like minded individuals and organizations – most specifically moral reform and radical feminism. And, the movement has succeeded in managing the political opportunities

¹¹ Ibid at 298.

¹² Ibid at 299.

¹³ David S. Meyer, “Protest and Political Opportunities” (2004) 30 Annual Review of Sociology 125.

¹⁴ Ibid.

Opp, *supra* note 6 at 161 - 203;

J. Craig Jenkins, David Jacobs and Jon Agnone, “Political Opportunities and African-American Protest, 1948-1997” (2003) 109:2 The American Journal of Sociology 277.

with which it has been presented such that the international community has collectively embraced the objective of anti-human trafficking as demonstrated by international and national legislative initiatives and enforcement strategies.

Academics such as Aaron Pollack have claimed that there has been a shift in the functional dynamics of social movements which has resulted in their expanded presence on the international stage. Pollack believes that during the 1980s and 1990's social movements gravitated towards the international arena in order to move beyond the constraints created by national boundaries which he suggested were historically limiting their actions, and in turn their effectiveness. In particular, he argued that contemporary social movements, recognizing the value of cross-border operations, and in response to the economic globalization taking place, have aggressively pursued collective action through international lobbying.¹⁵ Jackie Smith, like Pollack, has also maintained that social movements have had to adapt their national strategies and structures to reflect the global reality of the shifting of economic and political policy authority from the national domain to the international arena brought about by globalization. As a result, Smith contends that we now see the creation of transnational social movements and related organizations designed to shape and influence global processes that support and complement the movement's respective goals.¹⁶ Smith believes that these transnational social movements "... reflect the key conflicts at work in the global political economy, as most groups

¹⁵ Aaron Pollack, "Cross-Border, Cross-Movement Alliances in the late 1990s", in Pierre Hamel, Henri Lustiger-Thaler, Jan Nederveen Pieterse, and Sasha Roseneil, eds, *Globalization and Social Movements* (London: Palgrave MacMillan, 2001) 183.

See also:

Catherine Eschle, "Globalizing Civil Society? Social Movements and the Challenge of Global Politics from Below", in Pierre Hamel Henri Lustiger-Thaler, Jan Nederveen Pieterse, and Sasha Roseneil, eds, *Globalization and Social Movements*, (New York: Palgrave, 2001) 61.

¹⁶ Jackie Smith, "Globalization and Transnational Social Movement Organizations", in Gerald F. Davis, ed, *Social Movements and Organizational Theory* (Cambridge: Cambridge University Press, 2005) 226.

focus on issues of human rights, environmental preservation, and economic empowerment/justice.”¹⁷

Although I agree with the arguments of Smith and Pollack, I am suggesting that the contemporary international anti-trafficking social movement did not recently emerge onto the international stage as a result of a number of independent national movements, scattered across the international community, that eventually recognized their common interests and goals and opted to merge together internationally in order to form a more effective global transnational movement. Rather, the evidence suggests that today’s international anti-human trafficking social movement already existed on the international stage by virtue of its direct and strong lineage with the historic international movement against human trafficking in the form of white slavery, by its connection to historic international anti-trafficking organizations such as the Salvation Army which underpinned the anti-white slavery movement and which now participates in the contemporary anti-trafficking movement, and because of its linkages to international organizations such as the International Labour Organization (ILO) with which it shares fundamental concerns regarding international human rights, migration and gender equality.¹⁸

3.4 The International Anti-human Trafficking Social Movement

The international anti-human trafficking social movement is the re-emergence of an existing international social movement that was created during the late 19th century to combat international human trafficking in the form of white slavery that resulted in 5 international anti-trafficking agreements. Today’s version of this social movement is largely comprised of

¹⁷ Ibid at 247.

¹⁸ Other NGO and IGO examples: Anti Slavery International, International Organization for Migration, Human Rights Watch, Amnesty International, UNICEF, Women’s International League for Peace and Freedom, International Council of Women, Woman’s Christian Temperance Movement.

international NGOs and IGOs, some that were involved in the original movement against white slavery, others that pre-existed the emergence of the contemporary issue of human trafficking, and others that have been newly created specifically to combat today's human trafficking. Similar to Pollack and Smith, scholar Kevin Bales believes that NGOs are no longer restricted to state boundaries and have not been for decades, unless by choice, with their intellectual paradigms now centred on moral concepts that are capable of being generalizable to all people.¹⁹ He has argued that there has been a shift by NGOs away from state-centred politics to operate as global social movements at the international political level. And, Bales has suggested that this is particularly evident in the international anti-human trafficking social movement, where international NGOs have been pursuing goals for some time that transcend national boundaries such as the rescue and protection of women trafficked for the international sex trade.²⁰

Shamima Ahmed and David Potter have recognized the transnational scope of today's effective international social movements. They suggest that this is partly due to international NGOs having established strong partnerships with IGOs in order to advance shared international social issues. They intimate that there exists a strong interdependence between the international NGOs and IGOs on a number of fronts, with international NGOs able to influence global policy through their participation in global policy networks such as the United Nations that is being facilitated by IGOs, while IGOs gain more direct access to the ordinary person for whom the NGO advocates.²¹ It is because of this strong interactive partnership and the important role that I believe that IGOs play within the international anti-trafficking social movement that I have

¹⁹ Kevin Bales, *Understanding Global Slavery, A Reader* (Los Angeles: University of California Press, 2005) at 78 - 79.

²⁰ Ibid at 69 - 86 and 126 - 153.

²¹ Shamima Ahmed and David M. Potter, *NGOs in International Politics* (Bloomfield, CT: Kumarian Press, Inc., 2006) at 93 - 94.

included them in the analysis of the organizations that comprise the international anti-trafficking social movement.

I have created three categories in which I have grouped selected organizations for analysis that I believe are representative of the main composition of the international anti-trafficking social movement:

- Historical International Organizations - international organizations that link together the international issues of white slavery and contemporary human trafficking;
- Pre-existing International Organizations - international organizations that existed prior to the re-emergence of human trafficking which share common concerns with the international anti-trafficking movement regarding such issues as human rights violations and irregular migration,
- Contemporary International Organizations – international anti-human trafficking organizations that emerged in the 1980's and 1990's that have provided focus and direction for the international anti-human trafficking social movement and discourse.

I have chosen these organizations based on the belief that they represent the current dominant voices and dynamics within the international anti-trafficking social movement. Each organization has played and/or is playing a lead role in defining the movement's objectives and thematic focus. My analysis of these organizations is confined to exploring each organization's relationship with the issues of white slavery and contemporary human trafficking, and their views regarding these issues which I suggest form the major themes of the contemporary international anti-human trafficking social movement. Trafficking may not be the only substantive issue of concern for the organizations I have selected but I do suggest that each organization has played and continues to play a major role in furthering a particular

understanding of human trafficking that has influenced the anti-trafficking responses of various governments around the world. I acknowledge that there are numerous organizations that have either a direct or indirect affiliation with the international human trafficking social movement and it is because of the proliferation of these interest groups that I have approached presenting my analysis by focusing on a limited number of representative entities. While I am not detailing all of these organizational affiliations, I have provided an alphabetical listing of organizations in the appendices (Appendix ‘A’) that I believe substantively comprise the core of the international anti-trafficking social movement. This listing was based on the simple criteria that each organization identified has made a claim, either directly or indirectly, within their respective web-sites and trafficking literature to being international in scope in relation to its active efforts to combating international human trafficking.²² I begin each of the three groupings with a brief preamble to situate the organization within the category.

3.4.1 Historical International Organizations

The white slavery panic that spread across western nations towards the end of the 19th century and resulted in the creation of a series of international agreements against human trafficking in the 20th century was grounded by a fear that women, in particular white women, were being forced into the sex trade by unscrupulous human traffickers through the use of deceit, threats, and/or violence. Brian Donovan indicates that the term, white slavery, emerged in England as early as 1839 as a slogan of protest against class exploitation. However, by the 1880’s, the term had come to refer to both class and sexual exploitation.²³ According to

²² I do not pretend to claim that this is an exhaustive list as I am certain there are web-sites that I have yet to uncover, however, I do believe that it captures the majority of organizations that are involved in the human trafficking movement and discourse from an international perspective.

²³ Brian Donovan, *White Slave Crusades: Race, Gender, and Anti-Vice Activism, 1887-1917* (Chicago: University of Illinois Press, 2006) at 19.

Donovan, British social purity organizations had successfully focused attention on the issue of prostitution in an attempt to have the British government raise the age of consent for sex as a part of the social purity objectives of the moral reform movement of the day. Donovan suggests that this initial anti-prostitution success by British purity organizations was quickly incorporated by like organizations around the globe into the anti-white slavery campaign, with moral reform organizations emerging as the dominant voice within the global anti-white slavery discourse and social movement.²⁴

The empirical validity of the white slavery panic, the underlying issues of morality, immigration, and prostitution that existed and were reflected in the panic, and how they relate to contemporary human trafficking were explored in the previous chapter. It is only important to emphasize at this time that the white slavery panic was an international issue about human trafficking, demonstrated by several international anti-trafficking agreements, with the focus largely constrained to the trafficking of white women for the international sex trade. And, that the composition of the anti-white slavery social movement was primarily comprised of moral reform, purity, and suffragist organizations that were emerging onto the international stage as international NGOs, sharing a common concern over the issue of women and prostitution. The anti-white slavery campaign would enjoy considerable attention and success for several decades. But, the last associated anti-white slavery agreement, the 1949 UN Convention, signalled that the campaign had run its course and would fade from international attention. The 1949 Convention was characterized as an ‘abolitionist’ approach to prostitution because it was more so an anti-prostitution agreement versus a realistic attempt to combat human trafficking. And, according to Elaine Pearson, the Convention clearly reflected the shifting debates percolating around the

²⁴ Ibid at 19.

issues of morality and prostitution imbedded within the history of the anti-white slavery movement. The agreement proved to be ineffective, in large part, because so few countries ratified the convention and of those who ratified the agreement, few actually translated the agreement into any concrete national action.²⁵ By 1949, many countries were socially and legally ambivalent towards the issue of prostitution and as a result, were not inclined to ratify nor engage in anti-prostitution efforts.²⁶

The 1949 Convention reflected the apparent demise of the anti-white slavery movement due to the inability of the dominant moral reform component of the movement to retain and monopolize international interest in social purity objectives. Much of the movement's momentum had been disrupted by two World Wars. And, as the social movement concepts of McCarthy and Zald indicate, it would appear that by 1949, this movement could no longer control the necessary resources to attract, maintain, and motivate collective action beyond this period of time. Thus, following the creation of the 1949 Convention, the white slavery issue and anti-trafficking movement quickly faded from international attention to lie dormant until the 1980's, while other international issues emerged to take its place.

The following three organizations were chosen because they were very active and prominent participants during the anti-white slavery movement and these same organizations continue to be influential voices within the repackaged international anti-human trafficking movement of today. I am suggesting that their participation reflects the strong historical connections between white slavery and human trafficking and the continued existence of a social

²⁵ Elaine Pearson, "Historical development of Trafficking – The Legal Framework of Anti-Trafficking Interventions", in Sector Project against Trafficking in Women, eds, *Challenging Trafficking in Persons: Theoretical Debate & Practical Approaches* (Baden-Baden: Nomos Verlagsgesellschaft, 2005) 20 at 21.

²⁶ Bales, *supra* note 19 at 126 - 127.

movement dominated by moral reform and feminist interests that began with the anti-white slavery campaign and continues today with the international anti-human trafficking social movement:

International Council of Women

During the mid 19th century, rapid industrialization significantly impacted western society and elevated social tensions. In particular, it encouraged changes to the traditional role for women in a male dominant society by creating an environment that induced women to seek non-traditional employment opportunities, thereby creating a level of social independence for women not previously enjoyed – the right to participate in civil society as a gender equal. As a result, a number of national women’s societies quickly emerged to help women cope with these changes by focusing on issues which they felt were in need of attention within an industrialized society: temperance, social purity, and the rescue of ‘fallen’ women (prostitutes). The International Council of Women (ICW) was first established in 1888 as an umbrella organization to shepherd the activities of the numerous nationally organized Councils of Women societies, including the National Council of Women of Canada that had emerged in response to the perceived need to help and protect women.²⁷

According to John McLaren, feminist moral reform groups like the National Council of Women (affiliated member of the ICW) and the Women’s Christian Temperance Union used the issues of white slavery and prostitution as a means of advancing their agenda to increase the recognition of women’s political and social rights in Canada.²⁸ Marianna Valverde reinforces

²⁷ The International Council of Women, *Women in a Changing World – The dynamic story of the International Council of Women since 1888* (London: Routledge & Kegan Paul, 1966) at 10.

²⁸ John McLaren, “The Canadian Magistracy and The Anti-White Slavery Campaign”, in W. Wesley Pue & Barry Wright, eds, *Canadian Perspectives on Law & Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988) 329 at 329 - 331.

McLaren's view by indicating that prostitution as 'the' problem, 'the social evil', a major moral issue that needed addressing within Canada as a part of the white slavery panic became an attractive concept to many feminist moral reform groups such as the NCW (ICW) because it permitted various interest groups (feminist and moral reform groups alike), not necessarily in philosophical agreement in many areas, to achieve their respective objectives by means of a shared common purpose.²⁹ In 1909, the ICW held its fourth quinquennial meeting at Toronto which included the holding of 'a special evening session of the White Slave Traffic Committee designed to encourage 'respectable' women everywhere to actively advocate for global social purity.'³⁰ It was felt that without this collective effort on the part of women to seek global moral reform, the victims of white slavery would continue to suffer. And, to reflect their renewed commitment against white slavery, the White Slavery Committee proposed to rename itself during the session and became the Equal Moral Standard and Traffic in Women Committee.³¹ An American delegation at the Toronto meeting strongly suggested to the participants that only through the securing of universal suffrage for women, could the ICW ever hope to suppress the evils of prostitution.³²

The issue of universal suffrage for women, as a means of achieving the objective of social purity, especially in relation to the perceived problem of prostitution, was an important aspect of the international moral reform feminist movement.³³ Cynthia Little wrote in her study focused on leading feminist Paulina Luisi (1875 – 1950) of Uruguay, former president of the ICW from 1924 to 1935, that by 1916, the work for women's suffrage, along with efforts to

²⁹ Mariana Valverde, *Age of Light, Soap and Water: Moral Reform in English Canada 1885-1925* (Toronto: McClelland & Stewart Inc., 1991) at 89 - 95.

³⁰ ICW, *supra* note 27 at 33.

³¹ *Ibid* at 34.

³² *Ibid* at 33.

³³ Cynthia Little, "Moral Reform and Feminism" (1975) 17:4 *Journal of Interamerican Studies and World Affairs* 368 at 386 - 397.

combat white slavery through the ideal of sustaining one moral global standard, had become entrenched goals of the ICW.³⁴ In 1921, the influence of moral reform feminist organizations internationally took a major step forward when Avril de Sainte-Croix, Vice-President of the ICW, was invited to join the League of Nations Committee for the Prevention of Traffic in Women and Children as the representative of accredited women's international organizations.³⁵

Mary Kinnear noted that the ICW is considered to be an extremely conservative group among the cadre of international women's organizations, although she indicates that it has made a concerted effort to be inclusive and non-political. Kinnear attributes this reality in part to its history during which for the first 60 years of its existence, most of the organization's management was white, middle class or upper class, and Christian. However, she notes that the ICW has moved away from its historical leanings and has moved towards being a more multicultural organization in structure and approach following the election of Mary McGeachy as president in 1963.³⁶ And throughout its evolution, the ICW has had a long history of fruitful interaction with numerous IGOs. For example, the ICW has participated as an active member on the International Labour Organization (ILO) panel of experts on migration; it was one of the first organizations to achieve Consultative Status at the newly formed United Nations (1946); and the ICW has attached a permanent consultant to the Office of the UN High Commissioner for Refugees.³⁷

Today, the ICW is firmly established in many countries around the world strongly advocating for the emancipation of women, with attention to opposing the victimization of women through violence, discrimination, and poverty, as well as their victimization through

³⁴ Ibid.

³⁵ ICW , *supra* note 27 at 142.

³⁶ Ibid at 210.

³⁷ Ibid at 210 - 233.

human trafficking.³⁸ The website for the organization expresses the overarching objective of working with other like minded organizations in order to achieve equality, justice and peace by improving the overall status of women and the well being of society in general. It accomplishes this goal by promoting equal rights, human rights, and the participation of women in decision making positions to ensure international peace and cooperation.³⁹

Salvation Army

Founded as an evangelical religious organization by William and Catherine Booth under the banner of the East London Christian Mission in 1865, it adopted the name of the Salvation Army (SA) in 1878. The Booths, infused with a sense of Victorian morality, holiness and revivalism, believed that a staid formal approach to the saving of souls, as exhibited by other formal religious organizations, would only lead to defeat. As a result, free from the restrictions of the governing bodies of settled religions, the Booths introduced a unique approach to converting people to Christianity by incorporating music in the style heard in music halls, by creating an expansive system of active uniformed street preachers (many of whom were women), and by conducting ecstatic evangelical services that enthusiastically embraced conversion.⁴⁰ In 1885, the Booths entered into a partnership with journalist, W.T. Stead of the London newspaper, Pall Mall Gazette, with the intent of drawing attention to the emerging issue of innocent white girls being trafficked for the purposes of prostitution.⁴¹ At the time, the age of

³⁸ The International Council of Women, "ICW Historical Information" (2010) online: ICW <<http://www.icw-cif.org/History.htm>>.

³⁹ Ibid.

⁴⁰ Pamela J. Walker, *Pulling the Devil's Kingdom Down: The Salvation Army in Victorian Britain* (Los Angeles: University of California Press, 2001) at 1 - 40.

⁴¹ Ibid at 137 - 139.

See also:

Roger J. Green, *The Life & Ministry of William Booth – Founder of the Salvation Army*, (Nashville: Abindon Press, 2005) at 151 - 157.

consent for girls in Britain was set at 13 years of age but it was alleged that girls, as young as 12, were unwilling victims being trafficked into prostitution, sometimes by their families. Thus, the Booths and the SA, in partnership with Stead, collaborated on a series of exposés for the newspaper that revealed this unseemly evil trade that existed in British society.⁴²

The series of newspaper articles were deemed both a success and failure. A success because of the sensationalist tone of the articles (a precursor to the approach of contemporary journalism) that stirred people's consciences to such an extent that it resulted in a ground swell of public clamour for government action against white slavery.⁴³ This coincided with the Purity Crusade, a 17 day long series of protests and marches during which the SA gathered approximately 400,000 signatures to successfully petition the British government to raise the age of consent for girls.⁴⁴ However, there was also some backlash against Stead and his sensational journalism because it was determined that his story of a young girl by the name of Eliza Armstrong being trafficked into the world of prostitution was partly based on some real events but it was also determined that several of the claimed events within the story were found to be fictional, and other events were deemed to have actually been staged by Stead and his associates.⁴⁵

During the subsequent decades, the SA expanded its operations internationally to campaign against white slavery and to become a leading global organization advocating for social-purity through its integration of various aspects of Victorian feminism and evangelical

⁴² Ibid – Green at 151 - 157.

⁴³ Walker, *supra* note 40 at 137 - 139.

⁴⁴ Green, *supra* note 41 at 155 - 156.

See also:

Henry Garipey, *Christianity in Action – The International History of The Salvation Army* (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2009) at 42.

⁴⁵ Walker, *supra* note 40 at 137 - 139.

Christianity.⁴⁶ Today, the SA is perceived as an international religious organization with a strong social service function having shed much of the sensational, revivalist approach that was evident during its formative years.⁴⁷ The SA has recognized the intricate historical connections between white slavery and contemporary trafficking by viewing it as an ongoing war against human trafficking. SA member and historian, Henry Gariepy, recently emphasized this connection between the SA's work against white slavery and its efforts today to combat human trafficking in a newly published history of the SA: "Now, more than a century after the Army's first victorious battle with human trafficking, it once again is at war against this evil and is rescuing girls from what has been termed the mother of all women's issues."⁴⁸ And, this viewpoint regarding the linkage between white slavery and human trafficking is also reflected in the 'history section' on the SA's website.⁴⁹

Among the myriad of programs in which it is involved, the Salvation Army indicates that it currently has several special international anti-human trafficking projects underway in India, Tanzania, Switzerland, the Netherlands, the UK, Bangladesh, Ghana, Canada, and the United States.⁵⁰ Its anti-trafficking efforts are focused primarily on women and prostitution and it defines sexual trafficking as "the movement of women and children, usually from one country to another but sometimes within a country, for the purposes of prostitution or some other form of

⁴⁶ Ibid at 235 - 244.

See also:

Gariepy, *supra* note 44 at 42.

⁴⁷ Walker, *supra* note 40 at 242 - 243.

⁴⁸ Gariepy, *supra* note 44 at 44.

⁴⁹ The Salvation Army, "The Army's History in Fighting Sexual Trafficking" (2010) online: <http://www.salvationarmy.org/ihq/www_sa.nsf/vwsuublinks/0E27816C599D728580256E550016A130?openDocument>.

⁵⁰ Ibid.

sexual slavery.”⁵¹ The SA indicates that sexual trafficking can be forced or coerced but they also infer that from their perspective this is not an essential element in order to meet their definition of trafficking.⁵² Similar to the radical feminist viewpoint, the SA opposes any form of prostitution but for slightly different reasons - a moral/religious objection grounded within a perception that prostitution threatens society’s standard of morality versus the radical feminist concept that all prostitution is a male manufactured exploitation of women in which no woman would voluntarily consent to participate. However, as both groups strongly oppose prostitution, although for distinctively different reasons, it is easy to understand the attraction for both radical feminist organizations and moral reform organizations such as the SA to work collaboratively in a social movement that is focused on anti-prostitution efforts.

Woman’s Christian Temperance Union

The Woman’s Christian Temperance Union (WCTU) was first formed in 1874 as a result of the growing unrest among American Protestant women towards the consumption of alcohol in American society which was perceived as having a destructive influence on the then male dominated society. Emerging in concert with the social purity crusade that had begun to take shape in the early 1870’s, the WCTU, grounded by a traditional conflation of women and morality and by a doctrine of shared female benevolence, embraced political activism as a means of achieving temperance guided political reforms. It was considered one of the largest female organizations of the 19th century and quickly expanded its activities from a primary goal of

⁵¹ The Salvation Army, “Opposing and Preventing Global Sexual Trafficking” (2010) online: <http://www.salvationarmy.org/ihq/www_sa.nsf/vw-dynamicrrays/B5DD72A243A1150B80256E49006C621E?opendocument>.

⁵² Ibid.

temperance to activities that would achieve a society based on social purity through political social reform.⁵³

By the mid 1880's, the WCTU had begun to enlarge its area of operations beyond the confines of the US and onto the international stage. Francis Willard and Mary Clement Leavitt, early leaders of the WCTU, along with numerous other members, worked diligently to establish branches of the WCTU in other countries such as Britain and France, while solidifying partnerships with existing foreign temperance and social purity organizations.⁵⁴ The success of the ability of the WCTU to spread its influence was demonstrated by the first World Woman's Christian Temperance Union convention that was held in 1891 at Boston which hosted WCTU representatives from around the world, including Australia, Britain, Canada, China, India, and Japan.⁵⁵

Ian Tyrrell suggests that in spite of the inherent implications of its name, the goal of social purity was of greater prominence and concern within the activities of the members of the WCTU than the issue of temperance. And, he suggests that this was especially true on the international stage where the focus of the WCTU activities were on the 'fallen woman' in terms of the organization's opposition to regulated prostitution and its concern regarding the international issue of white slavery. The WCTU considered prostitution as totally unacceptable, a social evil, often tied to the loss of control by men brought about by the consumption of

⁵³ Lori Ginzberg, *Women and the Work of Benevolence* (New Haven: Yale University Press, 1990) at 202 – 206;

Ian Tyrrell, *Woman's World/Woman's Empire – The Woman's Christian Temperance Union in International Perspective, 1880 – 1930* (Chapel Hill, N.C.: The University of North Carolina Press, 1991) at 191 – 220;

Joseph Gusfield, "Social Structure and Moral Reform: A Study of The Woman's Christian Temperance Union" (1955) *American Journal of Sociology* 221.

⁵⁴ Ibid - Tyrrell at 16.

⁵⁵ Ibid at 35 – 61.

alcohol.⁵⁶ According to David Pivar, William T. Stead, using a similar tactic that he had used in partnership with the Salvation Army in Britain, wrote another series of articles for the Pall Mall Gazette in 1886 that focused on the outrages, sexual exploitation, perpetrated by the tea planters of India upon the ‘coolie’ women that they employed, many of whom were underage. These newspaper articles again generated considerable expressions of outrage across India and led to Indian reformers lobbying the government to raise the ‘age of consent’ as had occurred in Britain. By 1895, the WCTU had firmly established a branch in India and began working aggressively against the trafficking of women and children in partnership with other Indian reform organizations.⁵⁷

The WCTU’s concern over white slavery grew during the last decades of the 19th century and into the beginning of the 20th century. Much of the organization’s understanding of trafficking was derived from its reliance on the published reports and speeches of journalists and political figures such as William Stead, George Turner of McClure’s Magazine, Clifford Roe, a Chicago prosecutor and O. Edward Janney, president of the then recently created National Vigilance Committee. Janney was invited to speak at the World WCTU Convention that was held in 1909 about the evils of white slavery. During his speech, Janney spoke passionately about how pervasive white slavery was in society warning ... “that no girl was safe in America ... [due to white slavery and] ... your daughter or little sister may be next.”⁵⁸ As a consequence of the anti-white slavery campaign, the WCTU became very active politically around the world, using “... the apparatus of government to “protect” women from male excess.”⁵⁹ And, although their efforts abroad met with mixed success, the WCTU did exert strong political influence

⁵⁶ Ibid at 35 – 61 and 191 – 192.

⁵⁷ David Pivar, *Purity and Hygiene – Women, Prostitution, and the “American Plan,” 1900 – 1930* (Westport, Connecticut: Greenwood Press, 2002) at 11 – 14.

⁵⁸ Ibid at 79 - 80.

⁵⁹ Ginzberg, *supra* note 53 at 205.

during the beginning of the 20th Century. For example, in the US, the WCTU pressured the government of President Theodore Roosevelt into approving the hiring of five female immigration inspectors to assist in the fight against white slavery. This action resulted in the first US government report on the issue of human trafficking which was created by the US Commissioner of Immigration in 1907.⁶⁰

The longevity of the WCTU, especially after the repeal of prohibition in the US in 1933 has been attributed to the WCTU's ability to quickly adapt to changing circumstances. Brian Donovan has maintained that the WCTU was a spontaneous ground swell movement that was based on a structure of flexibility and egalitarianism rather than as an organization that is regimented and bureaucratic. As a result, he has suggested that the WCTU, using a social movement strategy of *consensus or collective identity mobilization*, adapted as circumstances and challenges dictated. According to Donovan, the organization's focus was on the moral failing or weakness of the individual such that the WCTU approached the issue of temperance through the need to morally sway individuals in conjunction with supportive wide ranging moral reforms to achieve its goals. The problem of alcohol became presented in the context of the broader issue of the moral decline of society, with members spurred on to action through religious imagery. Thus, the repeal of prohibition in the US, certainly a blow to the WCTU's objectives, did not negate nor undermine their desire to save the individual and in turn society, from moral decay.⁶¹

Today, its influence somewhat weakened over time, the WCTU continues to provide a broad platform from which women can voice their concerns, not only about liquor consumption

⁶⁰ Pivar, *supra* note 57 at 81 – 82.

⁶¹ Brian L. Donovan, "Framing and Strategy: Explaining Differential Longevity in the Woman's Christian Temperance Union and the Anti-Saloon League" (1995) 65 Sociological Inquiry 143.

and morality but also about violence against women, prostitution, and gender inequities that exist within society. It has also widened its lobbying efforts beyond those concerned with alcohol abuse to include other forms of substance or social abuse such as drugs, tobacco and gambling, all of which are perceived as socially debilitating, negatively impacting the nuclear family.⁶² The WCTU proudly indicates that during its history, it has been opposed to white slavery, prostitution, and brothels.⁶³ And, currently, the WCTU has identified the fight against the trafficking of women and girls for the sex trade as a priority, recently passing an international anti-human trafficking resolution at the 2010 World WCTU Convention held in Norway.⁶⁴

3.4.2 Pre-Existing International Organizations

In 2010, the Union of International Associations estimated that the number of existing international NGOs to be approximately 54,977 of which approximately 21,991 are considered active.⁶⁵ John Boli and George Thomas, in their research of NGOs, concluded that there has been a steady increase of international NGOs over the past 150 years with a significant upturn following World War II.⁶⁶ According to Ahmed and Potter, the upsurge in international NGOs is a reflection of the increased development of social movements onto the international stage as a means of achieving broader social change.⁶⁷ And, as I have argued earlier, the move to the international stage by NGOs has been facilitated and guided by IGOs such as the United Nations

⁶² Woman's Christian Temperance Union Programs identified on WCTU web-site as of 2010, online: <<http://www.wctu.org/issues.html>>.

⁶³ Woman's Christian Temperance Union History - Information retrieved from the WCTU web-site history section – online: <<http://www.wctu.org/earlyhistory.html>> and <<http://www.wctu.com/pages/history3.html>>.

⁶⁴ Woman's Christian Temperance Union - Information retrieved from the World WCTU web-site, online:: <http://www.wctu.com/resources_pdf/2010_resolutions.pdf>.

⁶⁵ Union of International Associations, *Yearbook of International Organizations: Guide to Global Civil Society Networks, 2009 – 2010*, Volume 2 (Munich: K.G. Saur Verlag, 2010).

⁶⁶ John Boli and George Thomas, *Constructing World Culture: International Nongovernmental Organizations since 1875* (Stanford, CA: Stanford University Press, 1999).

⁶⁷ See *supra* note 21 at 21 - 22.

which have provided the necessary forum for communicating and advancing shared concerns across a spectrum of social issues, including human trafficking.⁶⁸

Although IGOs are far fewer in number, estimated at approximately 101 active as of 2006, their influence has been far greater at the international level than most NGOs. In essence, they act as a conduit that facilitates ongoing interaction between the international community and international NGOs on a variety of issues. Most IGOs are subject to a governing body and funding support that includes both state representation and non-government organizational representation which ensures a certain level of autonomy for the IGO while being mandated by the international community to address specific social areas of continuing common concern.⁶⁹ I have chosen two particular IGOs as representative of the organizations that comprise this category of pre-existing social movement organizations that are active within the international anti-trafficking movement. These two IGOs were created for very specific inter-governmental objectives and functions but both share an ongoing commonality of purpose with respect to the protection of human rights, the fight against labour exploitation, and the shared concerns over irregular migration, all of which are central issues within the human trafficking debates. And, both organizations have a governing body that comprises both state and international NGO oversight. Each of these IGOs, because of the shared commonality of purpose, has also had some level of interaction with the majority of pre-existing international NGOs that are now focused on the issue of human trafficking such that these two IGOs, I suggest, reflect the majority of voices that have been raised against human trafficking by pre-existing social movement organizations.

⁶⁸ Ibid.
⁶⁹ Ibid at 75 - 96.

International Labour Organization

Created on April 11th, 1919 as a part of the peace treaty process following World War 1, the International Labour Organization (ILO) represents the culmination of a shared commitment by the international community (predominantly influenced by the winning Allied countries of France and Britain) to address growing labour issues, including the protection of migrant workers, that were gaining prominence as a result of the rapidly changing work environment brought about by the Industrial Revolution of the 19th Century, in conjunction with the debilitating effects that World War 1 had inflicted on labour. Victor-Yves Ghebali suggests that the ILO was the logical outcome of the growing ideological and political labour turmoil that had grown during the 19th century relative to the increasing human costs faced by workers with respect to the technological changes taking place in the work environment. The ILO was to be guided by the principles of humanity, social justice in labour conditions, and the pursuit of universal world peace.⁷⁰ As a special funded agency of the then newly created League of Nations, and now the United Nations, the ILO has a governing body comprised of government, employer and worker representatives, with 50 percent of the representation being appointed government representatives selected by the UN on the one side and the other 50 percent equally divided between international non-government employer/worker organizational representation.⁷¹

In its early days, the ILO succeeded in having 16 labour Conventions and 18 associated recommendations that dealt directly with conditions of work adopted by the international community. Their zeal for change was suppressed to some extent by world politics as it was felt that these successes by the ILO were resulting in too much change in the work place too rapidly.

⁷⁰ Victor-Yves Ghebali, *The International Labour Organization: A Case Study of the Evolution of U.N. Specialised Agencies* (Norwell, MA: Kluwer Academic Publishers, 1989) at 1 - 24.

⁷¹ Ibid at 143.

As a consequence, the world community, in 1926, with the intention of regulating the organization's political progress in order that countries could adapt to the changing international labour agreements in a more timely fashion, created the 'Committee of Experts'. This committee provides independent reports on international labour issues to the ILO which focuses the ILO's activities and fulfills a supervisory component for ILO operations.⁷²

The ILO continued to grow in prominence during the inter-war years but faced considerable challenges in terms of its continued existence as the end of World War II approached. In particular, the international community recognized that unemployment and migration would be the greatest issues they would face following World War II and the question arose as to what role the ILO was to going play, if any, in addressing these issues. Additionally, new organizations such as the United Nations Relief and Rehabilitation Administration (UNRRA) were emerging within the newly created UN and appeared to be usurping the ILO role, heightening the feeling of uncertainty within the ILO. However, the ILO successfully weathered this period of challenge and became a 'Specialized Agency' of the UN in May of 1946 with the same governing structure and mandate as existed with the League of Nations.⁷³

In 1946, the ILO took the opportunity to revise its constitution in response to becoming an agency of the UN. One of the most significant constitutional amendments dealt with the inclusion of the need for the ILO to advance the international protection of human rights at every opportunity, a principle that the ILO first declared at the ILO Philadelphia Conference of 1944,

⁷² International Labour Organization, "Origins and History" (2010) online: ILO <http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang--en/index.htm>;
See also:

International Labour Organization, "Governing Body" (2010) online: ILO <<http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/governing-body/lang--en/index.htm>>.

⁷³ Anthony Alcock, *History of the International Labor Organization* (New York: Octagon Books, 1971) at 171 - 205.

one of the first times in which the issue of international human rights had been formally raised onto the international stage.⁷⁴ It is this overarching principle of human rights that I suggest has connected the ILO to all other IGOs and international NGOs that share a similar concern. It is also this principle, in conjunction with the equal concern over labour exploitation as a result of migration that has ensured that the ILO has become an active member of the anti-human trafficking social movement.

Today, the ILO continues its efforts to seek social justice and labour rights around the globe. It summarizes those efforts on their website as follows:

“The International Labour Organization (ILO) is devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues.

In promoting social justice and internationally recognized human and labour rights, the organization continues to pursue its founding mission that labour peace is essential to prosperity. Today, the ILO helps advance the creation of decent jobs and the kinds of economic and working conditions that give working people and business people a stake in lasting peace, prosperity and progress.”⁷⁵

Through its affiliation with the United Nations since 1946, the ILO has been responsible for the creation and the monitoring of international labour standards, with particular focus upon gender equity within developing countries where poverty, a contributing factor that affects the implementation and maintenance of labour standards, remains deeply entrenched.⁷⁶ The ILO has a long history of combating all forms of forced labour which is reflected by such achievements

⁷⁴ Ghebali, *supra* note 70 at 61- 63.

⁷⁵ International Labour Organization, “About the ILO” (2010) online: ILO <http://www.ilo.org/global/About_the_ILO/lang--en/index.htm>. Please note that the web page has been modified slightly since 2010 and the direct quote has been expanded under the ‘Mission and Objective’ portion of the web-site. However, the message is the same.

⁷⁶ Ibid.

Funding for the ILO is provided by the member states, with some limited voluntary contributions from various international NGOs - International Labour Organization, “How the ILO Works” (2010) online: <http://www.ilo.org/global/About_the_ILO/Structure/lang--en/index.htm>.

as the 1930 *Forced Labour Convention* and the *Abolition of Forced Labour Convention* of 1957.⁷⁷ In addition, the ILO frequently publishes reports in order to increase public awareness and further public discussion on the issue of labour exploitation as a result of migration and human trafficking.⁷⁸ In 2009, for example, the ILO worked collaboratively with the European Commission to develop universal operational indicators for the data collection of human trafficking incidents using the Delphi methodology.⁷⁹ This methodology has since been deployed across Europe in order to provide some consistency in the reporting of human trafficking investigations for data analysis purposes.

In keeping with its role within the international governance of labour issues, all of the general material on the ILO's website is relatively gender neutral and lacks any moralistic/religious based conviction other than to express the organization's desire to achieve social justice by ensuring that the internationally agreed to standards of working conditions in all countries are upheld. With respect to how it treats and documents human trafficking on its website, the ILO site does not provide an inordinate focus on women and the sex trade, but indirectly does focus attention through a number of ILO publications on the urgent need to

⁷⁷ Alcock, *supra* note 73.

⁷⁸ See e.g.:

International Labour Organization, *Forced Labour: Coercion and Exploitation in the private economy*, Beate Andrees and Patrick Belser, eds, (International Labour Office Publication, 2009); and International Labour Organization, "The Cost of Coercion" (2009) online: ILO <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf>.

⁷⁹ The Delphi methodology was developed in the 1950s and is premised upon an expert consensus based methodology for research data collection.

See the following for more details: International Labour Organization, "Operational Indicators of Trafficking in Human Beings" (2009) online: ILO <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf>.

protect the rights of women who are vulnerable to exploitation through various types of sexual trafficking.⁸⁰

International Organization of Migration

Created in 1951 by European governments as a result of the aftermath of World War II, the IOM, initially known as the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME), was first mandated to assist European governments with identifying appropriate resettlement countries for the millions of displaced persons (migrants) following World War II. It then proceeded through a succession of name changes over the coming decades as its mandate and responsibilities shifted and expanded, and by 1989, it had become known as the International Organization of Migration.⁸¹ Progressing from a European centred organization concerned with relocation of displaced persons, the IOM is now entrusted to work with governments and civil society across the international spectrum for the advancement of migration issues, including social and economic development through migration, while working to protect the human rights and dignity of migrants.⁸² Kathleen Newland suggests that “the IOM has the broadest mandate for migration issues of any international institution.”⁸³ It is considered a unique organization in that the IOM is a state sponsored and directed international

⁸⁰ See e.g.:
International Labour Organization, “Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers – An Information Guide – Booklet 6, Trafficking of Women and Girls” (Gender Promotion Programme, Geneva: International Labour Organization, 2003).

⁸¹ Marianne Ducasse-Rogier, *The International Organization for Migration, 1951 – 2001* (Geneva: International Organization for Migration, 2001) at 9 - 21 and 88 - 91.

⁸² International Organization for Migration, “About the IOM” (2010) online: IOM <<http://www.iom.int/jahia/Jahia/about-iom/lang/en>>.

⁸³ Kathleen Newland, “The Governance of International Migration: Mechanisms, Processes, and Institutions” (2010) 16 *Global Governance* 331 at 338.

organization but the member states only provide a small percentage of the funding while voluntary contributions comprise its largest sources of funding for operations.⁸⁴

In 1989, the IOM, in response to considerable changes in migration patterns and trends that had occurred since the organization's inception, produced the report, *Continued Effectiveness of the Organization in View of New Challenges*. This report outlined two primary goals for the IOM to the international community: to strengthen its relevance in relation to changing migration trends; and to strengthen its role to assist migrants, refugees and displaced persons globally.⁸⁵ Of particular concern was the issue of human trafficking as a part of the growing pattern of irregular migration. As a result, since 1990, the IOM has been working collaboratively with numerous governments and international NGOs to promote the prevention of human trafficking while offering assistance and protection to trafficking victims.⁸⁶

On its website as of 2010, the IOM claims to take "... a comprehensive approach to trafficking in persons within the wider context of managing migration."⁸⁷ It indicates that it works in partnership with state government, non-government and other international organizations in order to combat trafficking and the forced migration of people, underpinned by

⁸⁴ International Organization for Migration, "Organizational Structure" (2010) online: IOM <<http://www.iom.int/jahia/Jahia/about-iom/organizational-structure/lang/en>>. The management structure consists of a Council as well as an Executive Committee. Member states (127 as of 2010) have at least one representative on the Council and there are 33 member states that comprise the Executive Committee who are elected for a 2 year term. The member states only fund approximately 3 percent of IOM's annual budget to cover administrative costs while all other activities, predominantly projects, are funded through voluntarily contributions. Expenditures for 2009 exceeded \$1 billion.

⁸⁵ Ducasse-Rogier, *supra* note 81 at 101.

⁸⁶ *Ibid* at 162 -181.

⁸⁷ International Organization for Migration, "Counter Trafficking" (2010) online: IOM <<http://www.iom.int/jahia/Jahia/counter-trafficking>>. As Jerome Elie noted in his 2010 article: "The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration" (2010) 16 *Global Governance* 345, and as I myself have experienced during the course of my research, although the IOM has generated a considerable number of publications, there has actually been little academic research published regarding the IOM.

the gender neutral objective of protecting human rights. The IOM believes that trafficking is an exploitation of migrants that includes severe forms of human rights violations. The web-site indicates that they have been actively involved in the fight against human trafficking since 1994, implementing 500 related projects in 85 countries, and have directly assisted 15,000 trafficked persons through the provision of such aid as safe shelters, medical support, skill training, and reintegration into their home countries.⁸⁸

Like the ILO, the IOM has published a considerable amount of information regarding the phenomenon of human trafficking, including routes and trends, causes and consequences within and to society, and the analysis of the structure and operations of criminal organizations that facilitate human trafficking.⁸⁹ It too has contributed to the development of research tools such as the electronic counter trafficking data management tool known as the Counter Trafficking Module (CTM). Similar to the tool developed by the ILO, this data collection tool purportedly not only captures information about human trafficking investigations in a consistent manner across national boundaries, but also assists through a centrally managed system with the direct

⁸⁸ Ibid.

⁸⁹ See publications:

International Organization for Migration, "Trafficking in women to Japan for sexual exploitation: a survey on the case of Filipino women" (Geneva: IOM, 1997);

International Organization for Migration, "Perspectives on Trafficking of Migrants" (2000) 38:3 Special Issue 1/2000 International Migration (Geneva: IOM);

International Organization for Migration, "Journey of jeopardy: a review of research on trafficking in women and children in Europe" (2002) IOM Migration Research Series, No. 11;

International Organization for Migration, *Kosovo, Situation Report: Feb 2000-April 2002, Return and Reintegration Project* (Counter Trafficking Unit, Geneva: IOM, 2002);

International Organization for Migration, "IOM's strategy for counter-trafficking activities in Southern Africa" (Pretoria: IOM, 2003);

International Organization for Migration, *Data and Research on Human Trafficking: A Global Survey* (Geneva: IOM, 2005);

International Organization for Migration, *Legal Review on Trafficking in Persons in the Caribbean: the Bahamas, Barbados, Guyana, Jamaica, the Netherlands Antilles, St Lucia and Suriname* (Geneva: IOM, 2005);

International Organization for Migration, *Caring for Trafficked Persons: Guidance for Health Providers – Chinese* (Geneva: IOM, 2009).

support to the victim, and the movement and re-integration process of the victim. No validation of this research tool/methodology has yet taken place.⁹⁰

The IOM has been active in carrying out information campaigns in source and destination countries, including the development and distribution of various guides such as the *Direct Assistance for Victims of Trafficking*, and has been recently involved in a number of anti-trafficking special projects in Ghana, Moldova, Argentina, Viet Nam, Serbia, and Germany.⁹¹ Similar to the ILO website, the general material on the IOM site is presented in a relatively gender neutral format, treating the issue of trafficking as a broad issue that involves all forms of forced labour exploitation that has leads to human rights violations. However, the IOM website also provides specific information and publications relative to the trafficking of women and girls for the sex trade which the IOM characterizes as one of ‘the’ major forms of abuse involving migrating women.⁹²

3.4.3 Contemporary International Organizations

The two organizations that I have selected for examination in this component of the chapter emerged in concert with the re-birth of human trafficking as an international issue during the 1980s and 1990s. As noted in the literature review of Chapter 2, both organizations reflect the strong feminist influence that exists within the international anti-trafficking movement albeit from a contested position involving the debate over prostitution and a woman’s ‘agency’. The

⁹⁰ IOM, *supra* note 87.

⁹¹ Ibid.

⁹² See e.g.:

Rebecca Wynn, “Time to Act to Stop Modern Slave Trade” (2007) online: International Organization of Migration, Africa and Middle East <<http://www.iom.int/jahia/Jahia/media/feature-stories/featureArticleAF/cache/offonce/lang/en?entryId=13526>>;

International Organization for Migration. “Who Is the Next Victim? Vulnerability of Young Romanian Women to Trafficking in Human Beings” (IOM Publication, reference number 92-9068-191-8, 2004);

International Organization for Migration. “Breaking the Cycle of Vulnerability: Responding to the Health Needs of Trafficked Women in East and Southern Africa” (IOM Publication, reference number 12684, 2006).

first organization, the Coalition Against Trafficking in Women (CATW), reflects the strong radical feminist view that all prostitutes are victims of human trafficking because prostitution is a system of gender based domination that encompasses various forms of violence against women. While the other organization examined, the Global Alliance Against the Traffic in Women (GAATW), represents the more moderate and opposing feminist viewpoint that most prostitutes have chosen prostitution as a legitimate profession but recognize that women who have been forced into the profession by traffickers are in need of government action to secure their rescue and protection. Regardless, both organizations in concert with similar feminist organizations, by virtue of their shared philosophical origins and because they command and exert control within the international anti-trafficking movement, have ensured that the movement is focused on the issue of the trafficking of women for the sex trade. However, as discussed in the literature review, it is important to note that radical feminism is presented as the more vocal and influential feminist voice within the international anti-trafficking social movement.

McCarthy and Zald argued that the mobilization of resources for a social movement is predicated on the idea that the movement's successful emergence and continuance depends upon resource availability and the availability of pre-existing organizations of preference structures.⁹³ I am suggesting that the organizations such as those covered in the 'historical' and 'pre-existing' components of this paper do meet the criteria for resource availability as suggested by McCarthy and Zald. And, I am suggesting that the contemporary international anti-trafficking organizations that emerged during the latter part of the 20th century such as the CATW and the GAATW, in concert with existing international moral reform groups, successfully mobilized the international resources available that span a broad spectrum of interests - social morality, human

⁹³ McCarthy and Zald, *supra* note 8 at 1236.

rights, and migration - into re-establishing the international anti-human trafficking social movement.

In line with Myers concept of ‘political opportunity’ for social movement theory, I am also of the view that there is a direct correlation between the success of today’s anti-trafficking movement and its ability to effectively manage the international political opportunities presented within the human trafficking issue relative to the mobilization of resources (individual and organizational).⁹⁴ This is evidenced by the success that the international anti-trafficking movement has achieved at a number of high profile conferences such as the Fourth World Conference on Women held in Beijing in 1995 in which the movement successfully focused world attention on the issue of women and trafficking.⁹⁵ At this particular conference, world governments committed to implementing measures to protect women from “.... violence related to exploitation.”⁹⁶ It is because of the international anti-trafficking social movement’s success at this type of high profile public and political event that I am suggesting it eventually influenced and encouraged the international community to extending the invitation to a number of international anti-trafficking NGOs to directly participate in the UN Committee forum established for the creation of the *United Nation Convention against transnational organized crime* (2000) and the annexed Trafficking Protocol as outlined in Chapter 2. And, in terms of Bourdieu’s field theory, the 2000 UN Convention demonstrates the result of the interaction and interplay between a social movement, in the form of a social field, and the juridical field, that has occurred at the international level.

⁹⁴ Jenkins, *supra* note 9 at 532.

⁹⁵ Claire Ribando Seelke and Alison Siskin. *Trafficking in People* (New York: Novinka Books, 2008) at 23.

⁹⁶ United Nations, “Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995” (New York: United Nations Publication, 1995) at para 113 (a).

Coalition Against Trafficking in Women

The feminization of migration that began during the large scale movement of peoples during the 1980's and into the 1990's, in response to global economic and political conditions, is suggested as one of the principle catalysts for the renewed interest in human trafficking beyond the faded memory of white slavery. This global migration coincided with the collapse of the former Soviet Union that resulted in the additional movement of people transnationally, especially women, away from eastern European countries towards western democracies in the pursuit of new opportunities.⁹⁷ According to Jo Doezema, the trigger for the emergence of the international anti-trafficking social movement was the growing awareness by feminist NGOs to the increasing migration of women during a time of globalization and social upheaval, with particular attention to the related social taboo of prostitution.⁹⁸

Formed in 1988 through the efforts of influential feminist Kathleen Barry, the Coalition Against Trafficking in Women (CATW) was one of the first international feminist NGOs created and designed specifically to combat contemporary human trafficking. According to Doezema and Sullivan, the CATW was established in order to concentrate the efforts of a variety of like minded feminist organizations and individuals that had become interested in the re-emerging issue of women being trafficked transnationally for the purposes of prostitution. One year later, the CATW had firmly established itself as one of the leading influential anti-trafficking NGOs

⁹⁷ Jo Doezema, "Loose Women or Lost Women? The re-emergence of the myth of 'white slavery' in contemporary discourses of 'trafficking in women'" (1999) 1 at 20 – 25, online: Walnet <<http://www.walnet.org/csis/papers/doezema-loose.html>>; Zdenek Uherek, Klara Skrivankova and Renata Weinerova, "Women Asylum Seekers and Trafficking" (2001) online: United Nations High Commissioner for Refugees <http://www.unhcr.ca/dokumenty/study_women.doc>.

⁹⁸ Ibid – Doezema at 20 - 28.

on the international stage by achieving Consultative Status with the United Nations Economic and Social Council.⁹⁹

Sullivan has contended that the CATW's philosophy and principles that guide its operations is premised on radical feminism which she attributes to the founding director of the CATW, Kathleen Barry. According to Sullivan, the radical feminist doctrine that guides the CATW activities is premised on the belief that sexuality is a patriarchal political construct used to dominate and oppress women; that sexual exploitation is fundamentally based upon, and linked to, the objective of the subordination of women by men; and, that the crime of prostitution represents one of the cornerstone forms of the exploitation of women by men.¹⁰⁰ To the CATW, prostitution is a clear example of the exploitation of women by men and thus, all prostitutes should be considered and treated as victims of human trafficking.¹⁰¹ The CATW's beliefs and philosophy regarding prostitution that are linked to its approach to human trafficking reveal one of the deep divisions that exist today within the feminist movement - the issue of a woman's agency. Can a woman voluntarily choose to be a prostitute? Much of the controversy within the prevailing social construction of human trafficking turns on this question and generates the conflicting opinions among feminists that are played out in the trafficking debates - is prostitution an exploitation of women by men as argued by the CATW or is it a legitimate form

⁹⁹ Ibid at 20 - 28;
Barbara Sullivan, "Trafficking in Women – Feminism and New International Law" (2003) 5:1 International Feminist Journal of Politics 67 at 71;
Coalition Against Trafficking in Women, "An Introduction to the CATW" (2010) online: CATW <<http://www.catwinternational.org/about/index.php>>;
Maruga M.B. Asis, "Human Trafficking in East and South-East Asia: Searching for structural factors", in Sally Cameron and Edward Newman, eds, *Trafficking in humans: social, cultural and political dimensions* (New York: United Nations Press, 2008) 181 at 198.

¹⁰⁰ Ibid – Sullivan at 69 - 72.

¹⁰¹ Angela Miles, "Prostitution, trafficking and the global sex industry: a conversation with Janice Raymond" (2003) 22 Canadian Woman Studies 26.

of employment if entered into voluntarily as suggested by the Global Alliance Against Traffic in Women (GAATW)?

It was this problematizing of trafficking in terms of women and prostitution, an historical inheritance of the ‘white slavery panic’ that the CATW carried forward into the committee meetings that preceded the creation of the 2000 UN Trafficking Protocol. At the committee meeting level, the CATW represented a number of international feminist NGOs that argued that no woman would ever freely choose to be a prostitute, creating a philosophical rift with other participating international feminist organizations who did not necessarily share that same viewpoint. An active and vocal participant in the drafting committee meetings for the Convention, the CATW argued that not only should prostitution be defined as a form of human trafficking but that also any type of recruitment or transportation of women for the purposes of prostitution should also be deemed to constitute human trafficking.¹⁰²

The CATW has indicated that it has actively campaigned against trafficking since the inception of the organization, working tirelessly in various countries to encourage the reform of prostitution laws.¹⁰³ The organization believes strongly that “... it is a fundamental human right to be free of sexual exploitation in all its forms ... women and girls have the right to sexual integrity and autonomy ... [and that] all prostitution exploits women, regardless of consent.”¹⁰⁴ The CATW has participated in numerous awareness campaigns and conferences around the

¹⁰² Claudia Aradau, *Rethinking Trafficking in Women: Politics out of Security* (New York: Palgrave MacMillan, 2008) at 29 - 30.

¹⁰³ Coalition Against Trafficking in Women, *supra* note 99.

¹⁰⁴ *Ibid.*

globe, principally to advocate against prostitution, and has published a wide variety of anti-trafficking literature.¹⁰⁵

Global Alliance Against Traffic in Women

The Global Alliance Against Traffic in Women (GAATW), an umbrella international organization that advocates on the part of a number of community based feminist organizations, was established as a result of concerns raised at the 1994 International Workshop on Migration and Traffic in Women that was held in Chiang Mai, Thailand with respect to the direction of the then current human trafficking discourse.¹⁰⁶ It was “... born of a collective decision to understand the elements of trafficking from a human rights perspective, in order to improve the lives of trafficked women.”¹⁰⁷ Both Sullivan and Doezema contend that the GAATW is the direct result, and the opposing response by a group of moderate feminists, to the radical feminist views and actions infused within the CATW which has had a significant impact on the direction of the trafficking discourse.¹⁰⁸

Contrary to the CATW, the GAATW defines prostitution in terms of either forced or voluntary and as a result, it maintains that only forced prostitution should be considered a form of human trafficking. To that end, the GAATW has approached the issue of human trafficking

¹⁰⁵ See e.g.:
Norma Ramos, “Ontario to Traffickers: We’re Open for Business”, (2010) online: CATW <http://action.web.ca/home/catw/attach/PR%20Ontario%20To%20Traffickers%20-%20We're%20Open%20For%20Business_10.04.10.pdf>;
Monica O’Connor and Grainne Healy, *The Links Between Prostitution and Sex Trafficking: A Briefing Handbook*, (2006) online: Coalition Against Trafficking of Women and European Women’s Lobby <http://action.web.ca/home/catw/readingroom.shtml?x=89931&AA_EX_Session=5f95e4daed5c3dbcc2a78841a6cb7244>.

¹⁰⁶ Global Alliance Against Traffic in Women, “History” (2010) online: GAATW <http://www.gaatw.org/index.php?option=com_content&view=article&id=96&Itemid=48>.

¹⁰⁷ Ibid.

¹⁰⁸ Jo Doezema, “Now You See Her, Now You Don’t: Sex Workers At The UN Trafficking Protocol Negotiations” (2005) 14 *Social & Legal Studies* 61 at 66 - 68;
Sullivan, *supra* note 99 at 71 - 73.

from a different perspective than that of the CATW by encouraging the international community to focus its attention on measures to protect the human rights of women who are migrating and/or have been trafficked rather than focusing their collective efforts on the issue of forced prostitution because they believe that such a focus will inevitably digress into becoming an anti-prostitution campaign. The GAATW sees the phenomenon of human trafficking embedded within the context of migration for the purpose of labour and should not be problematized as an issue of women and prostitution.¹⁰⁹ Like the CATW, in 2006, the GAATW also acquired special Consultative Status to the UN Economic and Social Council (ECOSOC). This status provides the organization a platform from which to advocate internationally on women's issues related to human trafficking and to influence change on the international stage for the protection of migrant rights.¹¹⁰ The GAATW has been very active over the past 15 years, working in partnership with many human rights organizations to advance the protection of trafficking victim rights. More recently, it has called upon the UN to establish a review mechanism in order to assess the effectiveness and accomplishments of the UN Convention on Transnational Organized Crime and the associated Trafficking Protocol, something that has yet to be addressed.¹¹¹

¹⁰⁹ Aradau, *supra* note 102 at 29 - 30;
Sally Cameron and Edward Newman, "Trafficking in Humans: Structural Factors" in Sally Cameron and Edward Newman, eds, *Trafficking in humans: Social, cultural and political dimensions* (New York: United Nations Press, 2008) 30.

¹¹⁰ Global Alliance Against Traffic in Women, "Advocacy" (2010) online: GAATW <http://www.gaatw.org/index.php?option=com_content&view=article&id=450:advocacy&catid=157:what-we-do&Itemid=12>.

Examples of publications:

Global Alliance Against Traffic in Women, "Beyond Borders: Exploring Trafficking's Links to Gender, Migration, Labour, Globalization and Security" (GAATW Working Paper Series, 2010);

Global Alliance Against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (Bangkok: GAATW, 2007).

¹¹¹ Global Alliance Against Traffic in Women, "Victim Centred Mechanism" (2010) online: GAATW <<http://www.victimcenteredmechanism.com/>>.

The need for the establishment of a review mechanism, which has yet to materialize, is echoed by the UN itself in the document: United Nations Office on Drugs and Crime, *Human Trafficking, A Crime that Shames Us All : Human Trafficking - An Overview* (2008) online: UNODC <<http://www.unodc.org/unodc/en/about-unodc/speeches/2008-02-13.html>>.

It is interesting to note that there appears to be virtually no direct comment made regarding women and the sex trade on the GAATW website. The history, mission statement, various linked publications and documented campaigns all centre on GAATW's advocacy for the protection of women's human rights, especially with respect to the migration of women for the purposes of labour. However, when reviewing the listing of affiliated and subsidiary member organizations of the GAATW linked to the site, it becomes evident that the GAATW does recognize prostitution as a legitimate form of employment, and not a male exploitation of women.¹¹²

3.5 Anti-Human Trafficking Social Movement – Canada

Human trafficking has been and continues to be presented as a global issue in Canada requiring a collective global response as reflected by the creation of the 2000 UN Convention. Often referred to as a global crime, a crime against humanity, human trafficking has also been characterized as a form of violence against women in relation to the sex trade, a violation of basic human rights, and an evil that will undermine the very social fabric of our society.¹¹³ These basic premises that underpin the trafficking discourse have flowed from the international arena and have helped guide and shape Canada's associated anti-trafficking movement but with one additional feature. In 2005, Canada, in response to effective international and national lobbying, supplemented its immigration legislation with amendments to its domestic criminal legislation,

¹¹² Examples: Organizations such as The Sex Workers Project (SWP) and Supporting Women's Alternative Network (SWAN), both of which support the recognition of prostitution as a legitimate form of employment, are noted as active members of the GAATW.

¹¹³ This type of characterization of human trafficking is common within the information provided on existing websites for international anti-trafficking NGOs such as those listed in Appendix 'A' for this chapter, and is commonly used within the contemporary trafficking literature as covered in Chapter 2.

the *Criminal Code of Canada* such that domestic human trafficking has been established as an offence in Canada.¹¹⁴

Similar to the approach that I have used for the international component for the anti-human trafficking social movement, I have selected three organizations that I feel represent the Canadian anti-trafficking movement. I recognize that there are numerous NGOs that dot the landscape of the Canadian anti-trafficking social movement that are connected and/or affiliated with parent international anti-trafficking organizations. As a consequence, these three entities were chosen because of their unique status as Canadian ‘home grown’ anti-trafficking organizations and not branches of the larger international consortium. However, although these three organizations are decidedly Canadian in perspective and design, they also reflect the major themes inherent within the larger international anti-human trafficking discourse which I contend has been mirrored across the spectrum of Canadian anti-trafficking NGOs. I have included a listing of the Canadian anti-trafficking organizations in Appendix ‘B’. It should be noted that virtually no published academic research exists with respect to evaluating or chronicling these three organizations, two of which have only come into existence since 2000. As a result, the information and claims that are provided in the following pages has been directly taken from the organizations’ respective websites but the accuracy of that information has not been validated.

Canadian Council of Refugees

Created in 1978, the Canadian Council of Refugees (CCR) is an umbrella human rights organization that specifically advocates for refugee and migrant rights, both from within Canada and around the world. It is currently comprised of over 180 member organizations stretched across Canada that are concerned about human rights and various migration issues. It is a non-

¹¹⁴ *Criminal Code* R.S.C. 1985, c. C-46, s 279.01 through 279.04, inclusive.

profit organization that has direct access to government representatives by virtue of the twice yearly meetings with the departments of Citizenship & Immigration Canada and Canada Border Services Agency. This affords CCR the opportunity to lobby the Canadian government directly regarding their concerns over refugee and migrant rights and treatment, nationally and internationally.¹¹⁵ As a part of its primary mandate to advocate for the protection of the human rights of migrants, the CCR has also been very active in the anti-human trafficking movement in both Canada and internationally. Like the ILO and IOM, the CCR is focused on the issue of human rights abuses as one of the driving forces behind its views about human trafficking and is currently campaigning to seek greater protection for victims of trafficking. More specifically, the CCR wants to ensure that the treatment of trafficking victims within Canada will not result in the possibility of the government re-victimizing these vulnerable persons through an application of arbitrary immigration processes/policies that could lead to their deportation. They are currently lobbying for the creation of legislative protections that would enable victims to remain permanently in Canada as a part of the recognition of their special immigration status.¹¹⁶

Of note, the CCR defines trafficking broadly as “the exploitation of people, often through forced labour”.¹¹⁷ Yet, within its proposal for legislative changes to protect victims, the CCR advocates for human trafficking to be defined as it has been in the 2000 UN Convention. It also urges other changes to Canadian legislation and immigration policy that would secure temporary

¹¹⁵ Canadian Council for Refugees, “About the Canadian Council for Refugees (CCR)” (2010) online: CCR <http://www.ccrweb.ca/eng/about/aboutccr.html>. This information is duplicated on a number of websites such as: The UNHCR (The UN Refugee Agency), online: <<http://www.unhcr.org/refworld/publisher/CCR.html>>; and, Life Stories of Montrealers Displaced by War, Genocide and other Human Rights Violations, online: <<http://www.lifestoriesmontreal.ca/experiences-of-refugee-youth>>. The CCR has published a number of articles in relation to the organizations activities and is referenced in a number of publications by other NGOs but no in-depth study could be found regarding the organization itself.

¹¹⁶ Canadian Council of Refugees, “Rights for trafficked persons in Canada” (2010) online: CCR <http://www.ccrweb.ca/trafficking/home.htm>.

¹¹⁷ Ibid.

and permanent protections for trafficking victims such as an extended temporary resident permit.¹¹⁸ The CCR has also identified a need to address the specific protection provisions unique to female victims of trafficking as a part of the organization's current 15 major concerns.¹¹⁹ In one section of its website, the CCR notes that the wide variance in human trafficking statistics is significant and is often dependent upon what a person accepts as constituting human trafficking. In this regard, the site references the debate between radical feminists and other feminists over the issue of women and prostitution as one of the major factors that can cause a major shift in human trafficking statistics.¹²⁰ The CCR appears to have prioritized their activities to protect women and girls on the basis that women and girls form the greatest number of trafficking victims in Canada due to their inherent vulnerability as a result of their gender.¹²¹

The Future Group

The Future Group is a “non-governmental organization dedicated to combating human trafficking and the child sex trade.”¹²² Created in 2000, the organization initially focused on combating the trafficking of women and child exploitation within the sex trade situated in Southeast Asia. Since its inception, this NGO has expanded its operations to include the concern of human trafficking within North America and Europe. The website emphasizes the organization's independence by stressing the point that it is a non-religious and non-partisan affiliated body. It also distances itself from being categorized as simply another large

¹¹⁸ Canadian Council of Refugees, “Proposal for Legislative Amendment to Protect Trafficked Persons” (2010) online: CCR <<http://www.ccrweb.ca/documents/traffickingproposal07.pdf>>.

¹¹⁹ Canadian Council for Refugees, “About the Canadian Council for Refugees (CCR)” (2010) online: CCR <<http://www.ccrweb.ca/eng/about/aboutccr.html>>.

¹²⁰ Canadian Council of Refugees, “Trafficking in Persons” (2010) online: CCR <http://www.ccrweb.ca/trafficking/learn.htm>.

¹²¹ Canadian Council of Refugees, *supra* note 115.

¹²² The Future Group, “The Future Group – Who We Are” (2010) online: <<http://www.thefuturegroup.org/id13.html>>.

organization with the primary focus of promoting human trafficking awareness by emphasizing that this NGO was formed on the basis of being action and results oriented.¹²³

The Future Group indicates that its emergence has been due to the failure on the part of the international community to take action to address a myriad of global crises such as the war against HIV/AIDS, the war in the Middle East, and the millions of sex slaves that exist around the globe.¹²⁴ The Future Group believes that individual governments, and the international community as a whole, have only paid lip service to these critical global issues. It boldly declares that “we [The Future Group] are driven towards building a freer and safer future by protecting individual freedom, promoting justice, and advancing democracy. Ours is a relentless pursuit of a just society.”¹²⁵

The Future Group website provides an overview of its primary concern towards human trafficking and supports its anti-trafficking position by referencing statistical information obtained from the United Nations. It argues that human trafficking, in particular the trafficking of women and girls for the sex trade, is the third largest profitable global criminal enterprise currently being undertaken by organized crime involving millions of women and children. The website suggests that the human trafficking of women and girls is a growth industry due not only to the potential for significant profits but also because of the low investigation and prosecution rates around the world.¹²⁶ Although created as a Canadian organization, this NGO presents itself as an international organization. The Future Group takes on the mantle of being a protector of moral social justice at an international level but does not clearly define its perception of what

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ The Future Group, “Human Trafficking: A Human Security Crisis of Global Proportions” (2010) online: <<http://www.thefuturegroup.org/id20.html>>.

morality and whose morality it is striving to protect. The site also refers to the need to combat human trafficking in order to ensure Canada's national security without a detailed explanation as to why Canadian national security is threatened by international human trafficking other than a reference to transnational organized crime might possibly use the profits from trafficking to fund terrorism.¹²⁷

There is a strong theme within The Future Group website which appears to speak to the need to protect the human rights of victims. But, at the same time, the site makes repeated references to the exploitation of women in the sex trade from a moralistic perspective. As a result, I believe that it is reasonable, given these types of statements, to conclude that The Future Group's sense of morality aligns to some degree with that of the moral reform component of the international anti-trafficking movement, and reflects a very strong anti-prostitution stance.

Canada Fights Human Trafficking

This organization typifies a small scale grass roots anti-trafficking operation that is uniquely Canadian in origin with no pretence to being international in scope or application. The website does not provide a date upon which the organization was founded nor does it identify any individual and/or internal structure responsible for the management of its operations. The Canada Fights Human Trafficking (CFHT) site indicates the organization's vision as: "Our united desire to bring freedom to victims, awareness to our fellow Canadians and fear to traffickers, perpetrators and pedophiles. Canada will not tolerate such oppression, regardless of nationality."¹²⁸ It puts forward the mission: "To unite Canadians in protecting our children, our

¹²⁷ The Future Group, *supra* note 122.

¹²⁸ Canada Fights Human Trafficking, "About Us – Vision/Mission" (2010) online: CFHT <<http://www.canadafightshumantrafficking.com/about.html>>. Please note – As of February 25th, 2012, the website is no longer active.

integrity and our future as a country of mercy.”¹²⁹ There is no identified strong affiliation with any international NGO but the CFHT website does provide a soft linkage to other Canadian organizations such as the morally grounded organizations of The Future Group and the Salvation Army which is in keeping with the sentiments expressed within the organization’s vision. The website also directs the reader to international human rights organizations influenced by Christian values such as the International Justice Mission and the Pearl Alliance. And, the site offers links to research reports developed by law enforcement such as the Royal Canadian Mounted Police (RCMP) and that of Canadian Crime Stoppers.¹³⁰

The website identifies three main objectives for the CFHT: to assist in the recovery of victims through the provision of medical care, education and rehabilitation; to enhance public awareness by providing statistics and updates of government progress; and the ‘surcease’ of those involved in trafficking by supporting government efforts against trafficking. There is no reference to the issue of prostitution being an exploitation of women.¹³¹ In comparison to international NGO websites, the information pages of this site are limited in content but it is presumed that this will change over time. Yet, given the mission and vision statements, coupled with linkages to organizations such as the Salvation Army, it would suggest that this NGO’s approach to human trafficking is in keeping with a philosophy that pursues a morally just society and views prostitution of women as constituting the largest form of human trafficking.

¹²⁹

Ibid.

¹³⁰

Canada Fights Human Trafficking, “Articles” (2010) online: CFHT <<http://www.canadafightshumantrafficking.com/articles.html>>.

Please note – As of February 25th, 2012, the website is no longer active.

¹³¹

Canada Fights Human Trafficking , *supra* note 128.

3.6 Thematic focus of the International Anti-Trafficking Social Movement

It has been my argument in this chapter that the global effort to combat contemporary international human trafficking has been undertaken by historic, pre-existing and newly formed international NGOs that have coalesced together into a renewed international anti-trafficking social movement, an international social movement that first emerged during the white slavery campaign at the turn of the 20th century. In keeping with Eitzen and Stewart's definition of social movements, the international anti-trafficking social movement does exhibit a collective purpose to promote change within the international community – to encourage a response to human trafficking among governments that will lead to the enactment of international and national legislation in concert with the implementation of cooperative international anti-trafficking enforcement strategies as evidenced by the 2000 UN Convention. This social movement has successfully mobilized a broad spectrum of resources, as outlined in the preceding pages that promote collective action for a common purpose. And, it incorporates the collective identity concept identified by Polleta and Jasper because this movement does reflect moral and emotional connections across a broad community of like minded organizations (moral reform and feminist). The success of the international anti-trafficking movement can be measured by its effective management of the political opportunities with which it has been presented such that this social movement has captured the political attention of the international community and has generated a variety of government responses around the globe that meet the movement's objectives.

From my analysis of the various organizations that comprise the international anti-trafficking movement, I have identified three major themes that have dominated the movement's focus in relation to its collective efforts to influence the international community. The first

theme relates to the movement's overarching objective. Allowing for some variance of emphasis of this theme among the social movement's participants, most of the organizations of the movement have drawn attention to the priority need for global action to save and protect women from violent traffickers. This governing theme resonates among and is threaded throughout each of the organizational websites and the related human trafficking literature. With the possible exception of the analysis of the ILO and IOM, international anti-trafficking NGOs have generally inferred that women form the bulk of the victims of human trafficking. This is the message that permeates the trafficking discourse and regardless of the validity of the claim, has become generally accepted as fact in the numerous publications that have been made about contemporary international human trafficking. Within the confines of the global human trafficking discourse, international NGOs that comprise this social movement, mainly moral reform and feminist, have strongly encouraged national governments to develop and deploy anti-trafficking strategies that will rescue and protect women from the violent abuse of international traffickers because of the promoted belief that women represent the most vulnerable and greatest number of victims of international human trafficking.¹³²

Secondly, most of the references to female international trafficking victims on any of the websites for each of the examined organizations, including the IGOs, has been done mainly within the context of a woman's involvement in the sex trade due to forced migration – women are constructed as victims of exploitation through forced or consensual prostitution.¹³³ This

¹³² See literature review of Chapter 2.

Additional examples:

The Salvation Army, "Salvation Army to help deter Olympics Sex Traffickers " (2009) online: <<http://www.salvationarmy.ca/2009/07/31/salvation-army-to-help-deter-olympics-sex-traffickers/#more-3585>>.

¹³³ See literature review of Chapter 2.

Additional examples:

theme does not settle the inherent conflicting voices among feminist organizations for or against the issue of forced or voluntary prostitution that is clearly reflected within the trafficking discourse by the CATW and the GAATW, but it does focus everyone's attention on the relationship between women and the sex trade as being synonymous with the overall crime of human trafficking – when you think of human trafficking, you should think of women and prostitution. And thirdly, when you think of women and prostitution in terms of international trafficking, one should also recognize that the trafficking of women is an extreme violation of a woman's basic human rights. Each organization within the movement, to varying degrees either directly or indirectly, discusses international trafficking in relation to the struggle endured by women to achieve true gender equality while pursuing the overarching objective of securing fundamental human rights. This portrayal of rights by the organizations of this social movement highlights the issues of gender inequity internationally and the subsequent issue of the exploitation of woman in the sex trade, framed within the contested context of traditional male domination and female subordination.¹³⁴

Authors Ron Weitzer and Kara Abramson, in their respective assessments of the trafficking discourse identified similar themes in relation to my analysis of the international anti-trafficking social movement: that trafficking is seen predominantly as a violent crime against women; that the trafficking debates centre on women and the exploitive sex trade; and, that trafficking is an issue of human rights violations, especially in relation to gender equity

International Organization of Migration, "Preventing Trafficking and Protecting Victims in Moldova" (2010) online: IOM <<http://www.iom.int/jahia/Jahia/activities/by-theme/regulating-migration/preventing-trafficking-and-protecting-victims-moldova/cache/offonce/>>;

The Future Group, "Updates and Alerts" (2010) online: <<http://www.thefuturegroup.org/>>.

¹³⁴

See e.g.:

International Labour Organization, *supra* note 78, "The Cost of Coercion";

Global Alliance Against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (Bangkok: GAATW, 2007).

concerns.¹³⁵ Abramson suggested that the focus on women and girls for the sex trade is understandable given the number of estimates that indicate women represent the greatest number of trafficking victims. But at the same time, she also indicated that this emphasis on women and prostitution has resulted in the narrowing of any meaningful discourse on trafficking.¹³⁶ I agree with Abramson in as much as the understanding of international trafficking that has been presented in the discourse, and by the social movement, fails to address the larger community of trafficking victims. And as a consequence, this focus has restricted the understanding of trafficking such that it has impacted the effectiveness of the strategies that have been implemented by governments to combat the crime, including Canada's. As noted by Weitzer, because so much attention has been given to what he terms 'a moral crusade' involving women and the sex trade, the trafficking discourse, and in turn the limited anti-trafficking policies and enforcement strategies that have been implemented based on this narrow understanding of trafficking, have failed to address the larger social issues that are at play in terms of labour exploitation, global migration, the associated root causes of poverty, and the gendered barriers to women's employment.¹³⁷

3.7 Conclusion

This chapter has been about exploring the complexities of the international anti-human trafficking social movement, a social field, in order to identify the movement's history, composition, dominant voices, and thematic focus. The intent has been to establish that the groups involved in anti-trafficking activities can be usefully understood as a social movement.

¹³⁵ Ronald Weitzer, "The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade" (2007) 35:3 *Politics & Society* 447;
Kara Abramson, "Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol" (2003) 44 *Harv.Int'l L.J.* 473 at 473 - 476.

¹³⁶ Ibid - Kara Abramson at 474.

¹³⁷ Ibid - Weitzer.

The examination of this movement, in keeping with the findings of the literature review, has confirmed: that international moral reform and feminist NGOs are the largest active segment of the movement; that these organizations are the leading and driving force behind the international anti-trafficking social movement; that these organizations, given their pre-existing concerns regarding women and prostitution, have ensured that the thematic focus of the movement is centred upon an understanding of international human trafficking in terms of women, girls and the sex trade; and that there are strong connections in relation to structure, composition and thematic focus between the anti-white slavery movement and today's international anti-trafficking movement that support the argument that today's movement in many respects is simply the re-emergence of the past international anti-trafficking white slavery movement.

Bourdieu suggested that there are internal struggles within a social field that are based upon existing and emerging power relationship struggles specific to the social field but are also the result of the power relationship struggles that the movement's organizations and individuals may hold within other social fields. Ultimately, these interactions, within and across social fields, create the movement's 'habitus', the patterned ways of understanding and acting within the field that guides and influences the social field's power relationships and strategies that it attempts to deploy in relation to influencing other social fields based on a collective understanding of objectives.¹³⁸

The international anti-trafficking social movement is a social field in which the power relationship struggles have established an informal hierarchal structure that is reflected in the field's thematic focus, framed by the issue of women and the sex trade. I believe that it has been this focus that has guided the strategies deployed by the field in its attempt to influence other

¹³⁸ Bourdieu at 814 – 819, Terdiman at 811 – 812, and Thomson at 67 – 77, *supra* note 1.

social fields, especially juridical fields. In other words, moral reform and radical feminist organizations, as a result of their effective management of the power relationship struggles within the anti-trafficking social field and with other related social fields (e.g.: the moral reform movement and the feminist movement) have come to dominate the international anti-trafficking social field and promote their perception of international human trafficking from the context that trafficking is largely an issue involving women and the sex trade. The next chapter investigates the human trafficking victim in relation to this promoted understanding of international human trafficking. It is my belief that how the trafficking victim has been constructed plays a critical role in facilitating the interplay that has taken place between the international anti-trafficking social field and the Canadian juridical field.

4. The Trafficking Victim

4.1 Introduction

Portrayed by the international anti-trafficking social movement as a vulnerable woman or girl forced into the sex trade,¹ the international human trafficking victim provides a unity of purpose for both the juridical actors and social anti-trafficking activists by evoking their mutual desire to rescue and protect the young, vulnerable, often desperate, female trafficking victim from sexual abuse. This vision of the trafficking victim acts as a ‘signpost’ within and outside of the juridical field that unites and influences the actions of the diverse anti-trafficking participants. The preceding chapters established that the international sex trafficking of women and girls has dominated the trafficking literature and is the primary thematic focus of the international anti-trafficking social movement. My intent within this chapter is to explore how this particular trafficking victim formation has been used by the international anti-trafficking social movement to influence the Canadian juridical field’s acceptance of the promoted understanding of international human trafficking.

I begin with a brief examination of the process of defining social problems in relation to social constructions in order to situate the role of the trafficking victim with respect to her contribution to the prevailing understanding of international human trafficking. I then revisit the evolution of the construction of today’s generally understood trafficking victim as outlined in the literature review of Chapter 2, but from a more analytical perspective. My objective is to highlight the historic role that morality has played in defining the trafficking victim in order to support the analysis later in this chapter regarding the acceptance of the trafficking victim construction by the actors of the Canadian juridical field. This will encompass re-examining

¹ See Chapter 2, Literature Review at 49 - 56.

how the moral reform social movement of the Victorian era traditionally cast prostitution as a societal problem of morality that spoke to the larger social issues of the changing role of women in western society and the perceived threats to the ‘imagined community’, represented by large scale migration due to industrialization, held by various interest groups. It will include a brief examination of the transformation of the image of the prostitute who originally grounded the moral reform anti-prostitution movement from that of a wanton immoral sexual female, a social outcast, into a vulnerable, sexually abused victim of human trafficking who I argue, now forms the basis of the social construction of contemporary international human trafficking.

In addition to the issue of morality, this exploration of the construction of the trafficking victim incorporates an examination of the debate over a woman’s capacity to exercise ‘agency’ in relation to prostitution and trafficking. I believe that this issue, in conjunction with social morality, is central to the formation of the international trafficking victim. Specifically, it is my assertion that although the debate regarding agency reflects opposing feminist viewpoints, it has ensured that international trafficking remains seen in the public arena as an issue involving the sexual exploitation of women. To underscore the influence that this debate has had upon juridical actors, I recount a practical example of the role that the issue of agency played in the development of the RCMP’s initial anti-international human trafficking enforcement strategy.

I believe it important to focus on these two aspects of the international human trafficking victim construction in order to convey the significance that both gender and morality have played in defining the general understanding of international human trafficking. Not only has the constructed victim influenced the juridical actors understanding of trafficking, but I am also suggesting that the debate over agency in relation to the unique victim formation that has been promoted further refined the social construction of trafficking and unexpectedly proved

challenging to the juridical actors when attempting to incorporate the victim conceptualization into a cohesive anti-trafficking policy and enforcement strategy for Canada. The remainder of the chapter analyzes how this particular trafficking victim formation, based on issues of gender and morality that are framed by prostitution, has mobilized the combined energies of the juridical actors. This entails examining: the discourse of government officials (conferences, press releases, and testimony before government committees) in relation to their perceptions of the international trafficking victim; personal recollections as the former Director of the RCMP's immigration enforcement program; a discussion concerning the ethical use of actors to portray vulnerable female trafficking victims in government publications intended to influence the public's understanding of international trafficking; and the results of interviews with key actors within the Canadian juridical field that confirmed that the government's approach to combating international human trafficking has been as a crime that victimizes women through forced prostitution.

4.2 A Social Problem

John R. Searle wrote that "... there are things that exist only because we believe them to exist."² In his book, *The Construction of Social Reality*, Searle investigated the interrelationship between subjective and objective constructions that comprise the complex structure of social reality. He took the philosophical stance that objective constructions are the product of a cultural ontological process in which people come to take certain aspects of life for granted. For example, as a result of our cultural experiences and assumptions, pieces of paper have come to represent 'money' because people accept, without question, that the concept of money concretely exists, a factual objective construction of our social reality that has been long established through

² John R. Searle, *The Construction of Social Reality* (New York: Simon & Schuster Inc., 1995) at 1.

collective agreement. Conversely, Searle argued that subjective constructions are the product of influential subjective judgments that are dependent upon attitudes, feelings, and the opinions of those who make and hear the judgments.³

In the case of international human trafficking, Searle's framework provides two key insights. First, the creation of the crime of human trafficking, although the result of international social movement agitation, is an objective construction of reality, an existing fact, collectively recognized by the public in the concrete form of international agreements and related national legislation. But, secondly, the essence and understanding of international human trafficking, how it has become understood and accepted within society is a social (subjective) construction, anchored by a particular victim conceptualization that has been framed and reaffirmed by public collective agreement and dependent upon the specifically defined 'social problem' of prostitution.

Prostitution is generally considered a type of social problem that transcends all levels of cultural interest within society. As Valverde has suggested, it is a social issue that visibly takes place in the public domain and as a result, it has been subject to public scrutiny.⁴ The success by which the international anti-trafficking movement has been able to capture the public interest into combating human trafficking is directly related to the movement's ability to redefine and transform the complex social problem of prostitution from an historic crime committed by women that are perceived as a threat to social morality into a social issue within the crime of

³ Ibid at 1 - 9.
For further information on social problems and social problem constructions see:
Herbert Blumer, "Social Problems as Collective Behaviour" (1971) 18 *Social Problems* 298;
Stephen Hilgartner and Charles L. Bosk, "The Rise and Fall of Social Problems: A Public Arenas Model" (1998) 94 *American Journal of Sociology* 53.

⁴ Mariana Valverde, *Age of Light, Soap and Water: Moral Reform in English Canada 1885-1925* (Toronto: McClelland & Stewart Inc., 1991) at 77 - 79.

human trafficking in which prostitutes have become the victims of unscrupulous immoral traffickers and as a result are in need of rescue.⁵

Noah Fritz and David Altheide concentrated their research on the affect that mass media communication may have upon the social construction of social problems that transcend the social strata, like prostitution. Using a case study approach involving the issue of missing children, Fritz and Altheide first determined that the images used by the mass media to visually portray a social problem as a component of news reports, entertainment shows and docudramas are critical to the contemporary formulation of the social problem. They concluded that the media does in fact apply a selection process with regards to the images used to define the social problem, in this case the crime of missing or abducted children, which is dependent upon the degree of sensationalism that the selected images might generate in the public arena.⁶ Fritz and Altheide suggested that: “The manner in which a social problem is conceptualized and presented [by the media] will affect the creation and proliferation of the phenomenon and is crucial to how the public perceive it.”⁷

They raised the concern that the media can appreciably transform the public understanding of a social problem through its edited and focused sensational approach such that the focus on a particular component of the problem such as ‘the victim’ actually comes to define the problem. Their research found that the media often focuses on the tragedy and suffering of the victims and that the narrow focus inevitably leads to unsubstantiated and exaggerated claims

⁵ Jo Doezema, “Loose Women or Lost Women? The re-emergence of the myth of ‘white slavery’ in contemporary discourses of ‘trafficking in women’” (1999) online: Walnut <<http://www.walnet.org/csis/papers/doezema-loose.html>>;

Janie A. Chuang, “Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy” (2010) 158 U.Pa.L.Rev. 1655.

⁶ Noah J. Fritz and David L. Altheide, “The Mass Media and The Social Construction of the Missing Children Problem” (1987) 28 The Sociological Quarterly 473.

⁷ Ibid at 476.

regarding the magnitude of the problem. Barraged by news reports and other forms of mass media that highlight specific aspects of the social problem as a crisis, as did happen with respect to the crime of missing children, they suggested that governments frequently have succumbed to the pressure from the media and accede to sweeping policy changes to address a social problem notwithstanding the fact that those policies are based on unsubstantiated, unverified and often exaggerated claims.⁸

As I outlined in Chapter 2, there has been no credible research conducted to date that would support any of the claims that have been reported by the media regarding the scope and nature of international human trafficking in Canada.⁹ I believe that what Fritz and Altheide concluded regarding the influence the media can exert upon government through the use of sensational narratives supported by unverified claims has taken place here in Canada. The media's portrayal of international human trafficking as a crime involving foreign women and girls forced into the sex trade in Canada by violent international sex traffickers demonstrates the media's role in furthering a limited understanding of the issue through their selective stories that focus on the tragedy and suffering of these women and girls. In this regard, Jeff Gulati analyzed how six major newspapers in Canada, the US and Great Britain, between 2000 and 2005, presented the issue of international human trafficking to their respective readers. He determined that the newspapers rather than presenting the diverse voices that exist within the human trafficking discourse that frame the range of debate regarding this social issue chose to mainly echo the views of the government (juridical field), supplemented by the dominant voices from within the international human trafficking movement (social field), while marginalizing any

⁸ Ibid at 476 - 479.

⁹ See Chapter 2 at 57 - 61.

alternative perspectives.¹⁰ He noted that of the individuals associated with NGOs cited as sources, they had “... a good working relationship with Western governments and the U.N. and support an abolitionist position on prostitution.”¹¹ In addition, he determined that NGOs and activists that support alternative views such as those that have a pro-sex worker position were not cited in these major newspapers during the 5 year period of the study.¹² Gulati concluded that the media in Canada, the US and Great Britain did very little to question the validity of the depiction of international human trafficking and the associated victimization beyond what was being advanced by the government and by the dominant voices of the trafficking discourse and as a result, the respective media narratives that recounted specific aspects of international human trafficking were mostly focused on human trafficking from the context of abused and violated women and girls forced into prostitution, with transnational organized crime portrayed as one of the primary orchestrators of this horrendous crime.¹³ Gulati suggested that this practice by the media of focusing primarily on the viewpoints expressed by government representatives, and by the main voices of the trafficking discourse has played a role in the development of government anti-trafficking policy in all three countries by inadvertently limiting the competing views of international trafficking that could have been discussed in the public domain and the resultant range of policy alternatives that might have been considered.¹⁴

¹⁰ Girish L. “Jeff” Gulati, “Media Representation of Human Trafficking in the United States, Great Britain, and Canada” (2010) at 16 and 22, online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633574>. It is my position in this dissertation that the government’s understanding of international human trafficking has been influenced by the international anti-trafficking social movement led by moral reform and radical feminist organizations such that it results in the government echoing the views of the movement. This viewpoint is shared by such authors as Janie Chuang and Ronald Weitzer.

¹¹ Ibid at 16.

¹² Ibid.

¹³ Ibid at 15 - 20.

¹⁴ Ibid at 21 - 22.

A similar analysis of media narratives, from solely a Canadian perspective¹⁵ between 1994 and 2002 was conducted by Christine Bruckert and Colette Parent of the University of Ottawa. Their research examined how the Canadian media have presented the issue of international human trafficking to the public, especially in relation to organized crime's involvement. They determined that during the initial years under review, organized crime was slowly becoming linked to international human trafficking but the Canadian media narrative presented trafficking only from a broad global context. It was not until 1998 that the Canadian media began to depict the issue of international human trafficking, linked to organized crime, as a North American problem. Their research revealed that beginning in 1999, the Canadian media largely presented international trafficking as the trafficking of women for prostitution that was being orchestrated by organized crime with little attention being paid to alternative forms of human trafficking.¹⁶

I conducted a sampling of media news reports concerning international human trafficking that were published on the Internet covering a 31 day period from May 11th to June 10th, 2010. This period was chosen at random, a snapshot in time if you will, with the intent to determine how global news reports present the issue of international human trafficking given Gulati's findings. For the sample period, I implemented an automated Internet 'Google Alert' search using the broad criteria of 'Human Trafficking'. The search resulted in identifying 149 media news reports of specific occurrences of international human trafficking taking place around the globe. Many of the media outlets would be considered 'on-line' internet news sources but of the

¹⁵ Analysis included the following media sources for the study period: MacLeans, Chatelaine, Toronto Life, Globe and Mail, National Post, Toronto Star, Toronto Sun, Ottawa Citizen, Montreal Gazette, Edmonton Journal, Vancouver Province, Vancouver Sun, Calgary Herald, Halifax Daily News and the Hamilton Spectator.

¹⁶ Christine Bruckert and Colette Parent, *Trafficking in Human Beings and Organized Crime: A Literature Review* (Ottawa: Royal Canadian Mounted Police - Research and Evaluation Branch, 2002) at 20 - 21.

trafficking news reports identified well known newspaper (hardcopy) publications such as the Washington Post were also included. Of the total that were identified, 125 of the media narratives depicted vulnerable women and girls who had been forced into some form of prostitution with frequent reference to the involvement of organized crime. Many of the stories recounted the anti-trafficking enforcement efforts in various countries that identified the rescue of international trafficking victims from the sex trade and the prosecution of international sex traffickers. They also included anecdotal stories involving international sex trafficking victimization. The remaining 24 news stories identified pertained to cases of labour exploitation involving women, children or men often involving ‘sweatshop’ work in the production of clothing under horrific conditions.¹⁷

The results of this sampling appear to coincide with the findings of Gulati’s five year study regarding the reporting of international human trafficking by major newspapers in Canada, the US and Great Britain. As noted above, most media reports presented international trafficking from the context of women and girls forced into the sex trade. Of the 125 media narratives that referenced women trafficked for prostitution, 2 were from Canadian sources. The first was The Hill Times Online newspaper, a weekly newspaper focused on Canadian federal politics that published an article on May 24th, 2010, that was written by Navdeep Bains, Progressive Conservative Member of Parliament. Bains recounted his commitment to combating the trafficking of vulnerable women and girls for the sex trade by lobbying the government to take

¹⁷ In total, there were 435 news accounts regarding trafficking, with 286 of them being what I have classified as the ‘general’ category – news accounts that do not recount any specific instance of trafficking but rather, provide general information about trafficking such as the announcement by a specific government of a new enforcement strategy or legislation, stories concerning trafficking conferences, and narratives regarding new protection provisions for victims. Examples of news sources identified by Google are: Malaysia Star, People's Daily Online, Washington Post, Washington Examiner, Magazine of Santa Clarita, Christian Today, Kansas City Star, The Canadian Press, Press Trust of India, Hurryjet Daily News, The Catholic Spirit, Iceland Review and Manila Bulletin.

action against this insidious crime.¹⁸ And the second was the June 2010 Reader's Digest Canada publication which published an article written by Susan McClelland regarding Benjamin Perrin's efforts in Canada towards freeing vulnerable women and girls that have been forced by international and national sex traffickers into the sex trade.¹⁹

Given Gulati's study, the research conducted by Bruckert and Parent, and my own limited sampling, I believe that the media has acted as the vehicle through which the international anti-trafficking social movement has been able to focus public attention on international human trafficking in terms of a tragic vulnerable female victim forced into prostitution because this particular victim conceptualization generates the desired sense of crisis and sensationalism that attracts public interest of which Fritz and Altheide spoke. The media, relying on unsubstantiated claims regarding the degree of international human trafficking for the sex trade that exists in Canada have ensured that the social problem of prostitution has become central to defining the understanding of international human trafficking and trafficking victimization.²⁰

¹⁸ Navdeep Bains, "Stop epidemic of human trafficking", in *The Hill Time (online)*, Ottawa, May 24, 2010, online: The Hill Time <www.thehilltimes.ca>.

¹⁹ Susan McClelland, "Freeing the Sex Slaves", (2010) *Reader's Digest Canada*, online: <<http://www.law.ubc.ca/files/pdf/faculty/perrin/pdf/Readers%20Digest%20-%20June%202010%20-%20Perrin.pdf>>.

²⁰ See *supra* note 9 – no reliable study has been conducted to date that has credibly established the scope and nature of international human trafficking in Canada. Examples of Canadian media stories that reflect a reliance on unsubstantiated claims about trafficking and that furthers a central understanding of international trafficking in terms of sex trafficking are: CTV National News Staff, "Canada must do more to curb human trafficking" (June 17, 2009) online: CTV National News Report <http://www.ctv.ca/CTVNews/TopStories/20090617/trafficking_report_090617/>; Donna E. Stewart and Olga Gajic-Veljanoski, "Human Trafficking – Trafficking in Women, The Canadian Perspective" (2005) online: CMAJ Media Inc. <<http://www.cmaj.ca/cgi/content/full/173/1/25>>; Pauline Kosalka, "Human Trafficking in Canada: an uncomfortable truth" (October 4th, 2010), in *The Interim – Canada's Life and Family Newspaper*, online: <<http://www.theinterim.com/issues/society-culture/human-trafficking-an-uncomfortable-truth-in-canada/>>; Daphne Bramham, "Canada still has much to do when it comes to human trafficking" (June 19, 2010) *Vancouver Sun Newspaper*, Vancouver, Canada at B4;

4.3 From Fallen Woman to International Trafficking Victim

Many who have critiqued the contemporary trafficking narratives that have promoted the trafficking victim as a vulnerable woman or girl forced into the sex trade have questioned the claims made by moral reform and radical feminists that this particular understanding of the trafficking victim is the dominant form of victimization that is taking place within international human trafficking. Authors such as Sullivan and Doezema indicate that the trafficking discourse and literature has often depicted the victim as having originated from less developed or third world countries in the context of a village girl (helpless and childlike) who has been lured to the city or to the west with false promises of well paid work.²¹ These trafficking accounts which Doezema and her colleagues have critiqued have emphasized the simplicity of the victim by stressing her youth, virginity (sexual purity), and her poverty, all of which various authors such as Victor Malarek contend make the victim very susceptible to international human traffickers.²² The problem with presenting a one dimensional theoretical victim construction which is touched upon later in this chapter is that in many instances, the potential victim may not, in reality, closely adhere to the constructed trafficking victimization. And as a result, many potential victims may not be considered a victim as they are seen to exist beyond the criteria necessary for recognition as a trafficking victim which may result in them becoming further marginalized and victimized.

Carol Sanders, "Criminals Capitalizing on lack of cooperation: UBC Professor" (October 14, 2010) *Vancouver Sun Newspaper*, Vancouver, Canada;

Jane Taber, "A 'Family Affair' to Counter Human Trafficking", in *The Globe and Mail*, (September 7, 2010) on line: <<http://www.theglobeandmail.com/news/politics/ottawa-notebook/a-family-affair-to-counter-human-trafficking/article1698171/>>.

²¹ Doezema, *supra* note 5 at 10 - 18;

Barbara Sullivan, "Trafficking in Women – Feminism and New International Law" (2003) 5:1 *International Feminist Journal of Politics* 67 at 73 - 79.

²² See e.g.:

Victor Malarek, *The Natashas: Inside the Global Sex Trade* (Toronto: Viking Canada, 2003);

Donna Hughes, "The "Natasha" Trade – The Transnational Shadow Market of Trafficking in Women" (2000) online: University of Rhode Island < http://www.uri.edu/artsci/wms/hughes/natasha_trade.pdf >.

Authors such as Doezema and Chuang have suggested that the origins of our understanding of today's vulnerable violated trafficking victim are deeply rooted within the moral reform social movement that began to flourish during the 19th century.²³ In order to appreciate this aspect of the social construction of the trafficking victim and how it supports the social construction of international human trafficking and affects the juridical field, it is useful to review the evolution of the trafficking victim from the first perceptions by Victorian society as a 'fallen woman' to her transformation into a trafficking victim who has suffered horrendous abuse. It is this transformation from criminal to victim that I argue anchors the social construction of international trafficking today and appeals to the sensitivities of many juridical actors.

Western society underwent rapid social change during the 18th century as a result of industrialization. The social relationships that had anchored the previously existing agrarian based society were challenged by the newly evolving social dynamics that were a result of increasing migration and urbanization. In essence, industrialization was redefining the historic understanding of civil society – the public activities/associations (public sphere) that reflected the public expression of the private individual. No longer existing as a thin wedge of public social interaction situated between the historic authority of the state (King, Lord) and the private world of the individual, civil society was being transformed into comprising numerous emerging public associations and institutions that would eventually come to define and influence the social, moral and political ordering of society.²⁴

²³ Doezema and Chuang, *supra* note 5.

²⁴ Richard Price, *British Society 1680 – 1880 - Dynamism, Containment and Change* (Cambridge: Cambridge University Press, 1999) at 192 - 233.
Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (Cambridge: Cambridge University Press, 1999) at 28 - 76.

One area of particular importance that was transformed by industrialization was the boundary between civil society (public sphere) and family (private sphere) in which gender denoted the frontier. Previous to industrialization, men dominated the world of civil society while women were culturally constrained to the private world of family. Industrialization changed the dynamics of this social relationship by offering women the possibility of independence from male dominance and from a social structure that anchored western culture – the belief that women were subordinate to men. Thus, the changing role of women in an industrialized western society, sometimes brought about by economic necessity, threatened the stability of these long held social views and relationships. It is into this environment of social upheaval and expanding civil society that moral reform organizations and associated issues began to take prominence.²⁵

Central to the emergence of voluntary associations (non-government organizations) within civil society from the 17th century onwards through the 19th century was the understanding that these organizations were the publically organized voluntary expressions of the private individual. And, as touched upon in Chapter 3, these organizations constituted a social movement for social reform by attracting and mobilizing resources to act with this common objective in mind. In many respects, these organizations symbolized the new ability of civil society to intrude into areas that were previously the sole responsibility of government. Thus, as urban growth expanded in conjunction with industrialization, so too did the role of civil society through a proliferation of voluntary social reform organizations.²⁶

²⁵ Ibid.

²⁶ Ibid.

The primary objective of the voluntary organizations comprised mainly of philanthropic middle and upper classes was to regulate social behaviour within the public domain through social reform activities. These efforts began in the late 17th century with the creation of organizations that attracted like minded individuals that promoted religious piety and called for the ‘reformation of manners’ by focusing on what was considered unacceptable behaviour on the part of the lower classes, with the upper class representing the model to which everyone should aspire. In other words, initial calls for social reform within civil society could be achieved through moral reform activities that targeted the lower classes whose acceptable behaviour had been disrupted by urbanization through large scale migration and industrialization. The societies created for the ‘reformation of manners’ did eventually lose momentum by the early 18th century but the interest within civil society with respect to morality, although abated, continued.²⁷

By the beginning of the 19th century, diverse factors such as the global reshaping of colonial influence and power due to internal and external wars (American Revolution, Napoleonic Wars), increasing demands for democratic reforms in western society, and a renewed preoccupation with the social conditions of the poor resulted in the establishment of a far more complex and ever expanding civil society.²⁸ Previously, “intrusion on the private sphere from the public sphere would come more typically from some voluntary society activity with authority deriving only from the force of convention and opinion.”²⁹ But, increasing social reform activities eventually led to these voluntary organizations (the precursor of contemporary NGOs) seeking state sanctioned legislative reform, a greater intrusion into the private world of the individual, in support of their activities, thereby resulting in a redefinition of the boundaries of

²⁷ Ibid.

²⁸ Ibid - Hunt at 57 - 76.

²⁹ Ibid - Price at 203.

civil society and changing the relationship between the government (the juridical field), civil society and the private individual. It was during this period of time that moral reform and social purity, the governing of the morals of the populace, became one of the leading issues for civil society and the focus of many of the emerging voluntary social reform organizations that coalesced into the moral reform movement of the 19th century.³⁰

Mariana Valverde has suggested that one of the most important social issues during this period, among the extensive list of issues that were undertaken by social purity/moral reform organizations, was the issue of prostitution which had been cast as ‘the’ social evil of society. As reasoned by Valverde and others, prostitution came to symbolize the greatest moral threat to society, including Canadian society, because it was a sexual activity that often took place in public places, challenging the divide between the private individual and civil society, while highlighting the evolving role of women in society relative to sexuality and commerce in an ever increasing industrialized and urbanized world.³¹ Valverde, Deborah Brock and John McLaren have indicated that the anti-prostitution legislation and policy established and/or enforced during the 19th century, especially in Canada, was a reflection of the moral reform movement’s fear of the shifting gender, class, sexuality and race dynamics as a result of industrialization that promoted increased immigration.³²

³⁰ Ibid - Price and Hunt.

³¹ Mariana Valverde, *Age of Light, Soap and Water: Moral Reform in English Canada 1885-1925* (Toronto: McClelland & Stewart Inc., 1991) at 77 - 79;
Janice Newton, “From Wage Slave To White Slave”, in Linda Kealey & Joan Sangster, eds, *Beyond the Vote: Canadian Women and Politics* (Toronto: University of Toronto Press, 1989) 217;
Judith R. Walkowitz, *Prostitution and Victorian Society – Women, class and the state* (New York: Cambridge University Press, 1980) at 32 - 33.

³² Ibid - Valverde at 79 – 89;
Deborah Brock, “Victim, Nuisance, Fallen Woman, Outlaw, Worker? Making the Identity ‘Prostitute’ in Canadian Criminal Law”, in Dorothy Chun and Dany Lacombe, eds, *Law as a Gendering Practice* (Toronto: Oxford University Press, 2000) 79 at 79 - 85;

The moral reform movement, comprised largely of Christian evangelical organizations was strongly unified against prostitution in pursuit of the goal of social purity.³³ Anti-prostitution activities by the moral reform movement represented a clear and visible defence of the family unit and the institution of marriage while reaffirming the acceptable standard of public and private sexual behaviour. Thus, the social and legal construction of the prostitute as a ‘fallen woman’ became a critical consideration in the advancement of public and government anti-prostitution activities in order to achieve the objective of social purity.³⁴ But, by the late 19th century, public interest in a focused anti-prostitution campaign by moral reform organizations had begun to wane.³⁵ At the same time, social purity organizations were elevating public concern over a related issue - the age of sexual consent for girls in Britain and the US – which represented the beginning of the anti-white slavery campaign.³⁶ And, as discussed in Chapter 2, many narratives of the day attracted public support for this issue by recounting the stories of vulnerable young white girls being abducted from the street and forcibly taken abroad for the sex trade.³⁷ The concern over white slavery based on this victim construction provided moral reform

John McLaren, “The Canadian Magistracy and The Anti-White Slavery Campaign”, in W. Wesley Pue & Barry Wright, eds, *Canadian Perspectives on Law & Society: Issues in Legal History* (Ottawa: Carleton University Press), 1988) 329 at 329 - 331.

33

Ibid;

Doezema and Chuang, *supra* note 5; and

Price and Hunt, *supra* note 24.

34

Brock at 79 – 85 and Valverde at 77 - 79, *supra* note 32.

35

Hunt, *supra* note 24.

36

Ibid.

37

Examples of white slavery narratives:

Clifford G. Roe, *Panders and Their White Slaves* (New York: Fleming H. Revell Company, 1910);

W. T. Stead, “The Maiden Tribute of Modern Babylon I: the Report of our Secret Commission” (July 6, 1885) *The Pall Mall Gazette*, online: YARMM Webcraft

<www.attackingthediabol.co.uk/pmg/tribute/mt1.php>.

the opportunity to renew and revitalize public sentiment against prostitution by transforming the prostitute from a ‘fallen woman’ into an innocent victim of international human trafficking.³⁸

Langum, Valverde and others have argued that the transformation of the image of the prostitute by moral reform from criminal to victim, a reflection of various societal anxieties, during the white slavery campaign ensured renewed public support against prostitution in order to rescue and protect the projected victim from human traffickers. Created at a time of considerable social upheaval, the new understanding of the prostitute reinvigorated public support for government action to rescue trafficking victims through anti-prostitution enforcement, and resulted in the creation of five major international anti-trafficking agreements between 1904 and 1949.³⁹

And, although public interest in human trafficking and prostitution eventually diminished following the 1949 anti-trafficking UN Convention, interest was again renewed in the 1980s with the emergence of a reconstituted international anti-trafficking social movement that advocated the urgent need for international action to rescue women who were being trafficked from Latin America and former Soviet Bloc countries for prostitution by transnational organized crime groups.⁴⁰ The contemporary trafficking victim shares much with her earlier antecedent, the white slavery victim, with the prototypical victim refined to form a much more inclusive persona

³⁸ Barbara Meil Hobson, *Uneasy Virtue: The Politics of Prostitution and the American Reform Tradition* (New York: Basic Books, Inc., Publishers, 1987) at 4 - 5 and 139 - 164; Valverde, *supra* note 31 at 89 – 99; Mark T. Connelly, *The Response to Prostitution in the Progressive Era* (Chapel Hill, NC: University of North Carolina Press, 1980).

³⁹ Chapter 1, p. 13 - 16 and, Valverde, *supra* note 31 at 77 - 103; David Langum, *Crossing Over The Line: Legislating Morality and the Mann Act* (Chicago: University of Chicago Press, 1994) at 15 - 47.

⁴⁰ Elaine Pearson, “Historical development of Trafficking – The Legal Framework of Anti-Trafficking Interventions”, in Sector Project against Trafficking in Women, eds, *Challenging Trafficking in Persons: Theoretical Debate & Practical Approaches* (Baden-Baden: Nomos Verlagsgesellschaft, 2005) 20 at 21 – 22.

and yet, the trafficking victim construction still retains the core aspect of female victimization through sexual exploitation.⁴¹ It is this renewed trafficking victim construction, the vulnerable female, now often originating from third world countries, victimized by transnational organized crime traffickers that I believe has been generally accepted by Canadian juridical actors. And although more recent indicators suggest that Canadian government agencies are attempting to broaden their approach to understanding trafficking victimization, this victim construction premised on the immoral violation of a desperate and trusting female, susceptible to unscrupulous traffickers, still dominates and occupies the existing strategies of the juridical field.⁴²

4.4 Victim Agency

Prostitution is a highly contested terrain within the feminist movement. The desire by some feminists to eliminate prostitution is not grounded by the moral reform discourse of the anti-trafficking movement but rather, is grounded by the view that prostitution is a social injustice framed within the historic subordination of women by men. Radical feminists such as Catharine Mackinnon assert that all prostitution is the oppression of women by men through their sexual subordination and that all prostitutes are unwilling victims of an oppressive patriarchal system.⁴³ However, other feminists such as Carol Smart often disagree with this limited characterization of all prostitutes as victims of male oppression and advocate for a recognition that many women can choose sex work as an occupation in deference to their ability to exercise

⁴¹ Doezeema, *supra* note 5 at 10;

Sullivan, *supra* note 21 at 73 - 74;

⁴² This is very evident in the first RCMP intelligence assessment of 2003 which was focused on presenting international trafficking in terms of women, prostitution and organized crime. The more recent intelligence analysis by the RCMP of 2010, although acknowledging that other forms of trafficking exist, continues to highlight women, prostitution and organized crime in relation to international human trafficking.

⁴³ See e.g.:

Catherine A. MacKinnon, *Are Women Human? And other international dialogues* (Cambridge: The Belknap Press of Harvard University Press, 2006).

‘agency’.⁴⁴ Regardless of which side of the debate one favours, the debate itself has ensured that the public continues to perceive the prevailing international trafficking victim as largely a trusting and vulnerable woman forced into prostitution.

It is important to highlight the issue of ‘agency’ and its relationship to the construction of the trafficking victim in order to demonstrate what has been the significant role that this issue has played in anchoring the understanding of international human trafficking and the development of anti-trafficking enforcement strategies by the Canadian juridical field. The feminist debate regarding a prostitute’s ability to exercise ‘agency’ was a critical and influencing factor during the 2000 UN Convention negotiations. Many scholars agree that the legal definition of trafficking that now forms part of the Trafficking Protocol represents a compromise between the opposing feminist viewpoints regarding ‘agency’ in order to solidify international efforts to combat human trafficking in the form of an international agreement.⁴⁵ It could be argued that this compromise regarding the trafficking definition within the UN Protocol reflected a set-back to radical feminist efforts against prostitution because the definition indicates that prostitution, by itself, is not necessarily an offence of human trafficking unless certain legal requirements such as the use of force, or coercion, or abduction, or fraud and or deception are present in order

⁴⁴ Carol Smart, “Unquestionably a Moral Issue: Rhetorical Devices and Regulatory Imperatives” in *Law, Crime and Sexuality* (London: Sage Publications Ltd., 1995) 88;
Dorothy E. Chunn and Dany Lacombe, *Law as a gendering practice*, (Don Mills, Ont.: Oxford University Press, 2000) at 2 - 18;
Jody Freeman, “The Feminist Debate Over Prostitution Reform: Prostitutes’ Rights Groups, Radical Feminists, and the (Im)possibility of Consent” (1990) 5 *Berkeley Women’s Law Journal* 75.

⁴⁵ Silvia Scarpa, *Trafficking in human beings: Modern Slavery* (Oxford: Oxford University Press, 2008) at 55 - 62;
Jo Doezema, “Now You See Her, Now You Don’t: Sex Workers At The UN Trafficking Protocol Negotiations” (2005) 14 *Social & Legal Studies* 61 at 79 - 83;
Ann Jordan, “Human Rights or Wrongs? The Struggle for a Rights-based Response to Trafficking in Human Beings” (2002) 10:1 *Gender and Development* 28 at 31 - 33.

to support the offence of trafficking for sexual exploitation.⁴⁶ I am suggesting however that this compromise between feminist voices did not appreciably affect the social construction of the international trafficking victim because radical feminism and moral reform continued to occupy ‘the’ dominant position within the trafficking discourse which has ensured that the issue of a woman’s ‘agency’ in relation to the debate over prostitution has been largely swept aside in the public trafficking narratives which they have influenced.⁴⁷

Although the international anti-trafficking movement has presented the social construction of a trafficking victim from the context of a vulnerable woman sexually exploited through prostitution, the constraints of the legal definition as derived from the Trafficking Protocol have obligated the juridical actors to move beyond this social construction and incorporate the additional complex issue of ‘agency’ into their consideration of policies and strategies respecting international human trafficking victims. As the former Director of the RCMP immigration enforcement program during the period when human trafficking first became an offence in Canada through the creation of Section 118 of the then new *Immigration and Refugee Protection Act* (IRPA) (2002), it was my experience that juridical actors in Canada, myself included, had generally embraced the social construction of the international trafficking victim as advanced by the international anti-trafficking movement – a vulnerable woman trafficked into prostitution.

Guided by Bourdieu’s concept of reflexivity, continuous conscious self-referencing, I believe it reasonable to conclude that the juridical field’s acceptance of the social construction of

⁴⁶ *United Nations Convention against Transnational Organized Crime (Annex II- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children)*, 15 November 2000, UNTS vol 2237 at 319, G.A. Res. 55/25, Article 3.

⁴⁷ Doezeema, *supra* note 45 at 79 - 83;
Chuang, *supra* note 5 at 1680 - 1705;
Gulati, *supra* note 10 at 16.

international trafficking was evident during the many conferences, meetings, emails and telephone conversations in which I participated both internally and externally to the RCMP, as the RCMP progressed forward with the development of enforcement strategies to address this new crime. I am also of the opinion that when government agencies attempted to translate the social construction of the victim into government action, the RCMP component of the juridical field recognized the conflict between the social and legal victim constructions with respect to the issue of 'agency' and its relationship to consent, one of the deciding factors in determining if trafficking victimization was taking place.

One example of how the issue of agency played out in the discussions during early policy and enforcement strategy development meetings involved that of a female prostitute living in a former Soviet Bloc country who agrees voluntarily to be smuggled into Canada to be a prostitute on the streets of Toronto because of the projected favourable increase in potential earnings. Shortly after arrival, the woman becomes aware that her Canadian colleagues involved in the same activity are earning considerably more money than herself and as a consequence, she seeks an increase in monetary compensation from those who had smuggled her into Canada. However, instead of them agreeing to her demands, she finds herself being threatened both physically and with the possibility of being reported to the Canadian immigration authorities and subsequently deported. When immigration enforcement investigators discover her during the course of their duties, she is found to be an unwilling participant in the scheme of prostitution that is being managed by the international smuggling organization. Thus, many investigators wanted to know, based on this fact pattern, whether or not the woman was in fact a 'victim' of international human trafficking.

The prevailing opinion of managers, investigators and in-house legal counsel to which I was privy was that the offence of international human trafficking had not taken place based on the fact pattern presented. In particular, the recognition of a potential international trafficking violation pivoted on whether or not the potential victim was a voluntary participant in the illegal smuggling scheme to cross the Canadian border and more specifically, and that she was aware that she would be participating in the sex trade after entering Canada. As long as no false representations, threats of violence or use of violence were made in order to coerce or induce the woman to cross the Canadian border, and her participation in prostitution after entering Canada was voluntary, it was surmised that no international human trafficking offence had taken place under Section 118 (1) of IRPA - “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.”⁴⁸ Given that she had been threatened some time after illegally entering Canada and after willingly partaking in the sex trade, there was no question that other offences within the *Criminal Code of Canada* could arise from this fact pattern, including offences for which the woman could herself also be charged, but it was accepted that no offence of international human trafficking, as then legislated in IRPA, had taken place.⁴⁹ This example demonstrates how the RCMP understood that the issue of agency, especially in relation to the issue of consenting to the illegal entry into Canada for the sex trade could appreciably affect the recognition of trafficking victimization within the confines of the legal construction versus the more liberal conceptualization of victimization presented within the social construction of international

⁴⁸ *Immigration and Refugee Protection Act*, SC 2001, c.27, s 118.

⁴⁹ Examples of possible offences: *Criminal Code (R.S.C., 1985, c. C-46)* - Section 210 – Bawdy Houses; Section 212 – Procuring; Section 213 – Offences Related to Prostitution; Section 264.1 – Uttering Threats; Section 266 – Assaults.

trafficking in which all prostitutes are victims of trafficking as recognized in the US, ignoring the issue of agency.⁵⁰

It should also be understood that when this type of hypothetical situation, grounded by past human smuggling enforcement experiences, was first being analyzed, the amendments to the *Criminal Code of Canada* in relation to domestic human trafficking were still 2 years away from being enacted. These discussions took place in 2003 when only the offence of international human trafficking in Canada was defined by IRPA. Given the potential interpretations through the application of the Criminal Code amendments of 2005 to this scenario, the offence of domestic human trafficking might well have been substantiated if it could be shown that the potential victim was forced by threat or other forms of coercion to continue participating in prostitution against her will subsequent to her complaint to the smugglers about fair compensation. This consideration was not available in 2003. And, it is important to understand that these discussions were confined to determining the legal requirements for enforcing the newly created Section 118 of IRPA premised on a victim formation that emphasized the vulnerable and desperate character of the victim and not an examination of the complex social issue of prostitution.

Alexis A. Aronowitz, in her study on international trafficking and smuggling in 2001, recognized a number of the challenges that governments will face during the development of anti-trafficking enforcement strategies. In her discussion, she indicated that a limited understanding of the trafficking victim such as a vulnerable woman forced into the sex trade could pose a challenge to authorities in the development of appropriate strategies to combat international trafficking because this victim construction fails to recognize the broader context of

⁵⁰ See *supra* note 1.

victimization that she argues is taking place within global sex trafficking.⁵¹ She suggested that international trafficking victimization should be seen to exist along a continuum of trafficking victimization that spans a broad spectrum beyond the narrow victim construction promoted within the trafficking literature. Aronowitz noted that there are at least four broad categories in which most types of international sex trafficking victimization could be grouped. The first group is based on the generally accepted social construction of international trafficking victims - the vulnerable female, abducted, coerced, threatened and/or physically forced, against her will, into the sex trade. This view of victimization reflects a victim that I have suggested the public can readily identify with and as a result, the anti-trafficking movement can mobilize support and energies focused on combating and preventing this type of trafficking victimization. The second group relates to the trafficking victim who is perceived as having been completely deceived regarding an offer of employment abroad only to be forced into the sex trade upon arrival at their destination. In both the first and second groupings, the victim is an unwilling participant in the sex trade, held in confinement in desperate need of rescue.⁵²

The third category Aronowitz identified concerns a victim duped by half-truths offered by her traffickers. In this case, Aronowitz uses the example of a trafficking victim who is led to believe that she will be working in the entertainment industry as an exotic dancer and/or stripper but finds herself forced into prostitution after arrival at her destination by her traffickers. The veil of moral innocence has been somewhat removed from the victim, she is understood as being a more worldly and knowledgeable person and not necessarily cloaked with the persona of total innocence or purity. But, the individual is still being forced into the sex trade against their will.

⁵¹ Alexis A. Aronowitz, "Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets That Drive It And The Organizations That Promote It" (2001) 9:2 *European Journal on Criminal Policy and Research*, 163.

⁵² *Ibid* at 166.

The final general category of trafficking victimization that Aronowitz noted pertains to the individual who voluntarily participates to their smuggling – the person willingly permits herself to be smuggled to another country for the purposes of prostitution but finds herself in an untenable exploitive situation after her arrival in the country of destination due to intimidation and/or violence exerted by her smugglers.⁵³ This category clearly raises the issue of victim agency/consent in regards to prostitution which, given the 2003 scenario discussed earlier, may impact this person’s consideration as a victim in regards to international human trafficking, although other charges against her smugglers would be warranted.

There are two aspects about this personal recollection concerning victim agency that I would like to emphasize. First, that the RCMP immigration enforcement program, as a part of the juridical field, had largely accepted the general understanding of trafficking victimization as involving women and prostitution in much the same manner as Aronowitz had identified in her first three groupings of international trafficking victimization - a vulnerable foreign women trafficked for prostitution through the use of force or deception. This understanding of the trafficking victim is borne out by both my work experience within the RCMP and as a result of interactions with other interested government parties. It was also reflected in the first internal intelligence report on human trafficking that was created in 2003 by the RCMP which is discussed in greater detail in Chapter 5.⁵⁴ It is important to appreciate that this feature of the victim construction, a blameless vulnerable participant forced into the sex trade, not only united the actions of the juridical actors in their pursuit of ‘her’ rescue and protection but also refined the accepted understanding of international trafficking in terms of vulnerable women and girls

⁵³ Ibid at 166.

⁵⁴ See: Royal Canadian Mounted Police, Criminal Intelligence Directorate, Criminal Analysis Branch, *Human Trafficking* (Ottawa: Royal Canadian Mounted Police, 2003).

forced into prostitution. Secondly, this victim scenario demonstrates a level of awareness by juridical actors of the unsettled issue of ‘agency’ in relation to the focus on women and prostitution contained in much of the trafficking discourse as was identified by Aronowitz in her fourth broad category of victimization. As a result, I am suggesting that the issue of agency created a significant challenge for the Canadian juridical field – to create effective anti-trafficking strategies and victim protection policies that straddled the divide between the legal and social constructions of trafficking victimization.

4.5 The Juridical Acceptance of the Trafficking Victim

In support of my argument that the constructed trafficking victim has influenced actions within the Canadian juridical field, I highlight and explore in the following pages various aspects of Canada’s juridical field’s acceptance of the constructed trafficking victim. My objective is to demonstrate the depth of influence that the generally understood construction of the international human trafficking victim has had on the Canadian juridical actors, especially with regards to solidifying a unified response among the actors to rescue and protect the constructed trafficking victim from the sex trade. As noted in Chapter 3, Peter Houtzager, in his study of the Brazilian agrarian reform social movement, argued that there exists a relationship between a social movement’s ability to achieve its objectives of legislative and policy changes and its ability to mobilize the forces of the various power relationships that exist within the juridical field, and to focus those energies and efforts on the prevailing issues that confront the social movement.⁵⁵ In this case, it is my view that the international anti-trafficking movement has sought to concentrate the government’s efforts and energies on the social issue of prostitution by focusing the attention

⁵⁵ Peter P. Houtzager, "The Movement of the Landless (MST) Juridical Field, and Legal Change in Brazil", in Boaventura de Sousa Santos and Cesar A. Rodrigues-Garavito, eds, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005) 218.

of the juridical actors on the need to rescue the vulnerable female trafficking victim from the sex trade.

I begin with examining the actions of one of the most influential juridical actors within the Canadian juridical field during the emergence of international human trafficking as a crime in Canada - Irwin Cotler, the Federal Minister of Justice and the Attorney General of Canada from late 2003 until early 2006. Through his political leadership, Cotler encouraged the acceptance of the social construction of the trafficking victim by the juridical actors within the Canadian government.⁵⁶ It is my belief that through his efforts, the understanding of the trafficking victim promoted by the international anti-trafficking movement cascaded downwards from the upper echelons of the hierarchy of government power to become entrenched within the bureaucracy of the government. I do not wish to imply that Cotler was solely responsible for the government's acceptance of the promoted victim formation. It was my experience that various juridical actors at various levels within the government came to the same conclusions as Cotler without any influence being exerted by him. But, I do believe that by virtue of his position, he did play a major role in advancing the promoted construction of human trafficking within the government bureaucracy which rested upon the vulnerable woman trafficked for the sex trade.

In March of 2004, Cotler, attended, as a guest speaker, one of the first conferences held in Canada regarding international human trafficking, the 'Forum on Human Trafficking'. Held in Ottawa, this anti-trafficking symposium, coordinated by a variety of NGOs such as the Canadian Ethnocultural Council, was intended to begin the process of encouraging a collective approach among NGOs in partnership with the government to combating international human trafficking

⁵⁶ Research interview with Irwin Cotler, former Minister of Justice, currently Liberal Member of Parliament, November 24th, 2009, Parliament Hill, Ottawa, Ontario.

in Canada. The forum also represented one of the first opportunities for the then new Minister of Justice to set out his particular position and views on the issue of international human trafficking. To that end, Cotler indicated that it was his belief that most of the victims of international human trafficking were young women and girls:

“Through the dedicated efforts of Professor Harold Koh (former Assistant Secretary of State for Human Rights, Democracy and Labor in the US State Department) and Radhika Coomataswamy (former United Nations Special Rapporteur with regards to violence against women), through their work and others, we now have a more comprehensive understanding of the scope of this global sex trade. We know that this grotesque trade in human life generates upwards of \$10 billion a year. We know that trafficking is so profitable that it is the world’s fastest growing international crime. We know that the majority of trafficking victims are girls and women under the age of 25.”⁵⁷

“For trans-border trafficking is a multi-billion dollar criminal industry that challenges law enforcement officials, flouts immigration laws, and threatens to spread global disease.”⁵⁸

Importantly, Cotler linked his understanding of human trafficking to the global issue of human rights:

“But the important point here is that behind each and all of these problems is a human face – is a human being – and trafficking constitutes an assault on our common humanity. Accordingly, it must be seen first and foremost as a human rights problem with a human face – as being the very antithesis of the Universal Declaration on Human Rights.”⁵⁹

These particular quotes taken from Cotler’s speech not only convey the idea that Cotler perceived international trafficking victimization in terms of women and prostitution but that he tied this type of victimization to the issue of universal human rights. It is this linkage that I argue was an important feature of Cotler’s understanding of international trafficking that grounded his motivation to entrench the perception of the international trafficking victim as a vulnerable

⁵⁷ Department of Justice Canada, “Speech by Irwin Cotler Minister of Justice and Attorney General of Canada, Forum on Human Trafficking, Ottawa, Ontario” (2004), online: Department of Justice Canada <http://www.justice.gc.ca/eng/news-nouv/spe-disc/2004/doc_31158.html>.

⁵⁸ Ibid.

⁵⁹ Ibid.

woman or girl within the various levels of the Canadian government in order to advance the generally promoted understanding of international trafficking – and, he was largely successful.

In November of 2009, I interviewed Cotler regarding his actions with respect to the anti-trafficking strategies of the government that were being developed during his tenure as the Minister of Justice. Beginning with the first open ended question that sought an overview from him of what he believed was the role of the Minister of Justice with regards to the issue of human trafficking during his tenure of office, and as continued throughout the interview, Cotler responded to questions about human trafficking solely in terms of women and children forced into the sex trade.⁶⁰ Cotler explained that from his perspective as the Minister, he needed to make the issue of human trafficking a priority within government, especially with regards to the trafficking of women, in order to advance the importance of women's rights.⁶¹ He recounted that in his first public speech as the then new Minister of Justice, it was his desire that the prevention of the trafficking of women would be recognized as a priority at all levels within the Canadian government and not simply as a crime to be addressed by various government departments:

“...that one of my major priorities will be the protection of the vulnerable and I said that the test of a just society is how does it treats its most vulnerable amongst them. I identified trafficked women as being a vulnerable disadvantage group. That was #1.”⁶²

Cotler went on to explain that in 1993 he had attended the international World Conference on Human Rights held in Vienna at which he was admittedly very much affected by the discussions concerning the violation of the rights of women and children. He came to realize that the rights of women and children were frequently being violated around the globe through rape, other forms of violence, and murder. As a consequence of this experience, when he

⁶⁰ Cotler interview, *supra* note 56.

⁶¹ Ibid.

⁶² Ibid.

became the Justice Minister for Canada, he explained that this represented an opportunity for him to advance the protection of the rights of women and children as the highest priority in government beyond simply being understood as another aspect of a ‘law and order’ agenda. For him, human trafficking became the centre piece of realizing his goal of the pursuit of justice for vulnerable women through the promotion and protection of their equality and their human rights.⁶³ Cotler recounted that he crafted an anti-trafficking approach within his department that incorporated what he coined as the ‘5 P Policy’. He explained that beyond prevention, protection, prosecution, and partnerships that were needed to combat international human trafficking, there was the need for the:

“...promotion of trafficking as a fundamental, almost generic human rights issue. I began to feel that we looked at trafficking in silos. We looked at it as a criminal law issue or as an immigration issue or an economic issue and so on ... that we need to have a comprehensive integrative approach to trafficking that was the reason for setting up the inter-agency [Federal Interdepartmental Working Group]”⁶⁴

To garner a better understanding of what was transpiring within Canada regarding human trafficking, Cotler traveled across the country and met with interested parties in order to understand the degree of human trafficking injustices that were taking place in our country. He noted that his first trip was to British Columbia (Vancouver and Victoria) where he attended meetings with NGOs and received a wealth of information about human trafficking, with particular attention to and emphasis on the victimization of women in the sex trade.

“... when you’re dealing with this issue [trafficking] you’ve got to get the most informed appreciation on the ground of what is being felt and heard and what is the best way to protect in fact the women themselves.... So, I was both partaking of but learning from the academic experts, the NGO experts, the various people that I could meet ... on the ... governmental level, Federal, Provincial, Territorial level and the like to try to just both

⁶³ Ibid.

⁶⁴ Ibid.

The Federal Interdepartmental Working Group – was initially established to include 14 federal departments involved in anti-trafficking. To date, it now comprises 17 different government departments.

learn as much as I could about the issue and sustain it not only as a justice priority but as a government priority.”⁶⁵

At a later conference, Cotler met with author, Victor Malarek, who apparently left an indelible impression upon Cotler regarding the victimization of women who had been trafficked for the sex trade. Cotler, in his speech at the Forum of Human Trafficking, acknowledged the influence that Malarek had had upon his understanding of international trafficking:

“I am delighted also to see Victor Malarek here. I’m one of the people who have been the beneficiary of his compelling work, *The Natashas*. It’s in my office, right on my desk, to serve as a reminder of what brings us here together today.”⁶⁶

As I referenced in Chapter 2, Malarek’s book, *The Natashas: Inside the Global Sex Trade*, is representative of contemporary trafficking narratives which underpin a singular understanding of international trafficking as sex trafficking, dependent upon vulnerable female victims who are violated through sexual exploitation.

“Every day, scores of young women throughout the former East Bloc are lured by job offers that lead to a hellish journey of sexual slavery and violence. Despite a barrage of warnings ... desperate women continue to line up with their naiveté and applications in hand, hoping that, this time, they might just be in luck.”⁶⁷

On October 17th, 2005, Cotler rose to speak in the House of Commons in support of the pending enactment of Bill C-49 which would amend the *Criminal Code of Canada* and create within it for the first time the offence of domestic human trafficking. During the course of his speech, Cotler made many references to women as the main victim of human trafficking, both international and domestic. On one particular occasion, he referenced an ILO report on forced labour in order to emphasize his concerns regarding the trafficking victimization of women:

“This report estimates that approximately 2.5 million persons are currently in situations of forced labour as a result of having been trafficked. Of these 2.5 million persons,

⁶⁵ Ibid.

⁶⁶ Department of Justice Canada, *supra* note 57 at 2.

⁶⁷ Victor Malarek, *The Natashas: Inside the Global Sex Trade* (Toronto: Viking Canada, 2003) at 9.

approximately one-third are estimated to have been trafficked into situations of forced labour and just under one-half are estimated to have been trafficked for commercial sexual exploitation purposes. This is the important point. Almost all of these victims, 98% of them, are the most vulnerable, women and children.”⁶⁸

It is evident from the research interview and his past public statements that Cotler understood international human trafficking as largely an issue involving the victimization of vulnerable women and children. He acknowledged that the construction of the victim and the government’s understanding of that construction did impact the provision of protection services to trafficking victims who had been sexually exploited. In response to the question as to whether or not the construction of the victim has impacted trafficking prosecutions because of how the government understands trafficking victimization, Cotler related: “I think that that was where we fell down in terms of the differentiation amongst victims or in the identity of the victim particularly in the second P [protection] that I mentioned earlier ...we [the government] didn’t get a sufficient appreciation of , if you want, a profile or identity of the victim and the different character, manner in which that victim may be trafficked and in the different manner in which that victim may be doubly victimized and so on.”⁶⁹ He related that part of the problem pertained to the challenge of providing victim protection services when victimization was not clearly understood by the government. For example, he spoke of “... the innocent [woman] coming ... from... let’s say, Hungary and then finding herself here ... trafficked into the sexual slave trade and then that person ends up getting, in part because of the same innocence, deported rather than protected”.⁷⁰ He noted that “... somebody else who is in the sex trade there and comes over to work in the sex trade here ... may have sufficient street smarts so as to not get deported but may nonetheless not have the protections in the ... if you will, sex trade itself [which] brings up the

⁶⁸ Irwin Cotler, “Irwin Cotler on Criminal Code, In the House of Commons” (2005) online: [openparliament.ca <http://openparliament.ca/hansards/1592/198/only/>](http://openparliament.ca/hansards/1592/198/only/).

⁶⁹ Cotler interview, *supra* note 56.

⁷⁰ *Ibid.*

whole debate about ... what kind of protections should there be or should there even be protection because they shouldn't be in the sex trade."⁷¹ Cotler appeared to recognize that the juridical field may not have had a solid appreciation of the complexities involved in relation to trafficking victimization that he suggested exists within the international trafficking discourse especially in relation to women and prostitution, which may have affected how the government responded to international human trafficking.

Cotler attempted to mobilize the Canadian juridical field into approaching anti-trafficking from an holistic perspective. He engaged, as the Minister of Justice, with the various levels of the government in order to try and establish a collective will among the juridical actors to recognize international trafficking as more than a crime, as an injustice, a clear immoral violation of the basic human rights of vulnerable women and girls that necessitated a coordinated response spanning across all levels of the government supported by an overriding political will to rescue and protect the victims. Although Cotler indicated in the interview that he did not believe that he had succeeded in having human trafficking recognized as a government priority, he did acknowledge that he was successful in advancing the issue as a justice priority. He had hoped to have equality and the rights of women, framed by the concerns surrounding international human trafficking, recognized and incorporated within the whole of government policy but his self assessment of his actions was to the effect that he had only achieved his objective at the "inter-agency operational level maybe but ... not on the overall level of developing a whole of government political will."⁷²

⁷¹ Ibid.
⁷² Ibid.

From my perspective as a former juridical actor within a Canadian government agency during this period of time, Cotler did in fact succeed in mobilizing and influencing the federal inter-departmental agencies (IWG) at the operation level. Based on my experience, he played an instrumental role in advancing the social construction of international trafficking based on a limited victim stereotype. It is my recollection that in many of the conversations and discussions that I had with juridical actors from the RCMP and other government departments, international trafficking was presented and mainly understood as the victimization of vulnerable women and girls for the sex trade. Although Cotler might think that he was unsuccessful in sustaining the political will necessary such that the issue of women's rights partnered with trafficking victimization were constantly a consideration of all government policy crafting, I would argue that he and other interested Members of Parliament⁷³ were successful in shaping the government's political will to the extent that it did lead to additional anti-trafficking legislation in the form of amendments to the *Criminal Code of Canada* in 2005 and two additional private member bills regarding human trafficking that are currently before the House of Commons. As noted by Houtzager, the success of a social movement's ability to influence the juridical field is dependent upon their ability to focus the energies of the juridical actors such that it results in achieving legislative and policy changes that confront the issues identified by the social movement. I believe that the international anti-trafficking movement, through the use of the vulnerable female trafficking victim persona, was able to focus the energies and efforts of Cotler and numerous other juridical actors towards translating the rescue and protection of this victim formation into the core objective of government anti-international trafficking enforcement strategies.

⁷³ See Chapter #1 – “The Story of Human Trafficking Legislation” – Members of Parliament such as Joy Smith (Bill C-268) and Marlene Jennings (Bill C-269) demonstrate the ongoing non-partisan political commitment to the issue of human trafficking.

As an important Cabinet Minister, Cotler set the tone for the Federal government with respect to trafficking victimization. And, the success of his efforts and that of other influential juridical actors to have this understanding of the constructed trafficking victim cascade downwards from the upper echelon of the government into the various areas of government enforcement agencies was evident during the course of a number of interviews conducted with key juridical actors for this study from such areas as the Department of Justice, Citizenship and Immigration Canada, Canada Border Services Agency and the RCMP. It should be noted that these participants have either held or do hold key positions in the government and as a result, each has requested anonymity. The majority of the other juridical actors interviewed (9 of 12) confirmed that much of the past approach by their respective government departments to combating international human trafficking since the creation of the first offence in Canada in 2002 has been premised upon the long held belief that most of the victims were vulnerable women involved in prostitution.⁷⁴

I provide in Chapter 5 greater detail of the responses of the juridical actors interviewed. But for now, I only wish to draw attention to the responses of two actors which I believe are reflective of many of those interviewed. They suggested that the reason for why their respective agencies had approached human trafficking as largely a crime involving the victimization of women was because the anti-trafficking social movement had been successful in influencing the public and government's understanding of international trafficking - a vulnerable woman or girl, subjected to violation by transnational organized crime sex traffickers. Interview respondent 2024 stated that "... special interest groups ... [who] ... definitely have an agenda ... have managed, I think, to take over in many respects the public discourse... The profile for human

⁷⁴ Interviews #2021, 2022, 2023, 2024, 2025, 2026, 2028, 2030, and 2035.

trafficking ... [in terms of sex trafficking] ... is obviously something that NGOs and other pressure lobby groups have been able to put on the agenda of politicians.”⁷⁵ And interview respondent 2028 stated that in the public discourse “...the sex trade is such a hot topic ... and [NGOs are] ... utilizing it as a platform to raise awareness about the sex trade ... but it is wrong that they forget about the other people [other victims of international trafficking].”⁷⁶ These two juridical actors believe that the politicians within Canada have responded to public pressure by ensuring that within the government many of the anti-trafficking strategies and protection provisions developed to combat international trafficking were not only focused on vulnerable women and girls trafficked for the sex trade but were seen from public perspective to be focused on the trafficking of vulnerable women and girls for the sex trade.⁷⁷

The trafficking victim construction as a vulnerable female forced into the sex trade reached into many aspects of the juridical field. For example, this view of the trafficking victim did dominate the testimony of witnesses before the Standing Parliamentary Committee of the Status of Women of Canada (SWC) and is referenced extensively in the subsequent report on human trafficking in Canada prepared by the Committee. Contrary to the definition of human trafficking contained in the Trafficking Protocol, the SWC report tabled in the House of Commons in 2007 sought to influence the legal framework within the country by clearly articulating to the Canadian government that “... prostitution is closely linked to trafficking in persons. We [SWC] believe that prostitution is a form of violence and a violation of human rights. The Committee feels that the prostitute’s consent is irrelevant, because you can never

⁷⁵ Interview #2024.

⁷⁶ Interview #2028.

⁷⁷ Interviews #2024 and 2028.

consent to sexual exploitation.”⁷⁸ This report contained a series of recommendations that sought government support for legislative and policy changes specifically focused on the social construction of the trafficking victim as a woman sexually exploited through prostitution.⁷⁹

In Committee meeting number 14 held on October 3rd, 2006 in advance of the report, there were two principal witnesses, Sgt. Lowe of the RCMP and Yvon Dandurand, a Professor from University of the Fraser Valley. Each gave an opening statement and then responded to various Committee member questions. Much of Sgt. Lowe’s testimony concerned responding to questions about the trafficking of women for prostitution which re-affirmed that the Committee Members, juridical actors in their own right as politicians, understood the substantive trafficking victim identity in terms of the social construction advanced by the international anti-trafficking social movement. Interestingly, in Dandurand’s testimony, he cautioned the Committee from drawing the conclusion that most trafficking victims were women destined for the sex trade stating “... that there is still disagreement about what trafficking is ... and ... [we need to] ...distinguish it from other very important problems such as sexual exploitation of sex trade workers and others, which may or may not involve human trafficking.”⁸⁰

During Committee meeting number 17, Richard Poulin, Professor of Sociology, University of Ottawa, endorsed and emphasized the belief that female sex trafficking victims

⁷⁸ Standing Committee on the Status of Women, *Turning Outrage Into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada* (2007) at 5, online:

⁷⁹ <<http://cmte.parl.gc.ca/Content/HOC/committee/391/fewo/reports/rp2738918/feworp12-e.pdf>>. Although the above noted SWC report is limited to the issue of trafficking for the purposes of sexual exploitation as the title indicates, the Committee originally undertook to study human trafficking from a broader context. However, as a result of testimony given before the Committee, the SWC limited the focus of its report to sex trafficking as the Committee concluded that women represent 92 percent of the victims of human trafficking – see page 1 of report.

⁸⁰ Standing Committee on the Status of Women, 39th Parliament, 1st Session, “Committee Meeting # 14” (October 3rd, 2006)” online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2382924&Language=E&Mode=1&Parl=39&Ses=1#Int-1677179>>.

form the largest contingent of trafficking victimization. Conversely, Leslie Jeffrey, Professor of History and Politics at the University of New Brunswick, like Dandurand, voiced her concern that caution is needed in approaching an understanding of trafficking victim conceptualization. She indicated that many factors such as migration barriers can contribute to instances of trafficking that have no relationship to sex trafficking or the belief that it is solely orchestrated by transnational criminal organizations.⁸¹ Regardless of the opposing and conflicting views, the Committee report prepared for Parliament tended to highlight the testimony of those witnesses that supported the belief that the predominant victim of human trafficking is a vulnerable female involved in prostitution while largely ignoring any alternative viewpoints of victimization.

The Standing Committee on the Status of Women renewed its interest in the issue of human trafficking just prior to the Winter Olympics that took place in Vancouver in 2010. The Committee held meetings for the purposes of receiving testimony with respect to the preparations by Canadian government departments to address the growing fear that the trafficking of women for the sex trade would increase as a result of the Olympics. I draw reference to two particular meetings in order to underline my belief that the victim, the vulnerable woman or girl trafficked for the sex trade, as referenced by Cotler in 2004, continued to be the most prevalent understanding of trafficking victimization within the juridical field as late as 2009.

Much of the testimony during the course of Committee Meetings #27 and #46, 2009, provided by Supt. M. Aubin, Director, Immigration and Passport, RCMP, Barry MacKillop, Director General, Law Enforcement and Border Strategies Directorate, Department of Public

⁸¹ Standing Committee on the Status of Women, 39th Parliament, 1st Session, “Committee Meeting # 17” (October 19th, 2006) online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2421555&Language=E&Mode=1&Parl=39&Ses=1>>.

Safety, Ken Lamontagne, Director, Intelligence Risk Assessment and Analysis Division, Enforcement Branch, Canada Border Services Agency (CBSA), and Inspector Usui of the Vancouver Police Department conveyed the apparent belief that women constitute the majority of victims of international human trafficking, especially with regards to the sex trade. None of the witnesses provided any research or statistics concerning the nature and degree of trafficking occurring in Canada to support their views. Each of these juridical actors appeared to accept the social construction of trafficking and trafficking victimization in terms of vulnerable women and girls forced into the sex trade. They claimed that their respective agencies have had a long history of implementing strategies to prevent the trafficking of women, had made significant progress in developing programs and partnerships with NGOs for victim protection, and had aggressively embarked upon the delivery of anti-trafficking training across a broad spectrum of law enforcement and public entities. With respect to the 2010 Olympics, they indicated that their respective agencies had instituted priority preventative measures to address the concern that organized crime may attempt to increase the trafficking of women for sex trade to Vancouver in order to meet the anticipated increased demands as a result of the Winter Olympics.⁸² Inspector Usui of the Vancouver Police Department, for example, in his opening address to the Committee regarding trafficking for the Vancouver Winter Olympics stated that: “so far we haven’t seen an increase in trafficking and we have no intelligence to indicate otherwise ... most of the [trafficking] we see right now in our bawdy house investigations are Asian-based, and they appear, through our investigation and through interviews with these women, to be there of their

⁸² Standing Committee on the Status of Women, 40th Parliament, 2nd Session, “Committee Meeting # 27” (June 11th, 2009) online:
<<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3984293&Language=E&Mode=1&Parl=40&Ses=2>>.

own free will and they are there to make money.”⁸³ A clear indication that some law enforcement, as of 2009, understood trafficking in terms of the social construction and were conducting trafficking investigations that largely targeted the sex trade, using the issue of agency to differentiate between victims and non-victims - involuntary versus willing participant in the sex trade.

The Committee Meetings and the report generated by the Status of Women Standing Parliamentary Committee are examples of the anti-trafficking movement’s ability to influence the Canadian juridical field’s acceptance of the social construction of international trafficking that has been anchored by a particular victim construction. The testimony of many of the juridical actors who appeared before the Committee, as referenced in the meetings of 2006 and again in 2009, without any credible supporting evidence, conveyed the belief that women form the greatest number of victims of international human trafficking and their victimization was mainly for the sex trade. Both the report of 2007 and the testimony of the juridical actors during 2006 and 2009 demonstrate the common acceptance of this view. Equally important, most of the juridical actors that gave testimony before the Committee indicated that their understanding of international trafficking was dependent on a particular understanding of the victim that has guided their responses to international trafficking, vulnerable women and girls brutalized in the sex trade.⁸⁴

In Cotler’s speech of 2004, he had remarked that his understanding of international human trafficking and the victims of trafficking had been swayed by the book penned by Victor Malarek, *The Natashas*. Interestingly, Malarek also gave testimony before the Standing

⁸³ Ibid - Testimony of Inspector Usui, Vancouver Police Department.

⁸⁴ See SWC Committee Meetings, *supra* notes 80, 81 and 82.

Committee of the Status of Women during Committee meeting #25 in November of 2006. I provided the following excerpt in order demonstrate that Malarek's perception of international trafficking reflected the social construction advanced by the anti-trafficking field:

“Over the past decade, alarm bells have been set off around the globe about a human rights disaster of epic proportions—that is, the wholesale trafficking of women and children into the worldwide sex trade. However, for the majority of nations on the planet, from the top echelons of political power all the way down to the cop on the beat, this issue has yet to register as a priority. With a wink and a nudge, these women, who walk the streets and who work in the brothels, are dismissed with the age-old hackneyed cliché that prostitution is the world's oldest profession.

What I want to do is get one thing perfectly straight about prostitution. It is not the world's oldest profession. It is the world's oldest oppression of women.”⁸⁵

It was this type of perception of international trafficking, immorality and gender inequity issues framed within the realities of women and prostitution that motivated Cotler and others within the field to unite in a common purpose to rescue and protect these vulnerable victims from their horrendous oppression and abuse as a result of their exploitation through prostitution.

In September of 2009, although from a less influential position within the juridical field but from a position that still commands attention, Cotler again publically advocated for an holistic government strategy to combat human trafficking. In an editorial that he wrote for the National Post newspaper ‘on-line’ edition for September 17th, 2009 concerning violence against women, Cotler again highlighted his projected understanding of trafficking victimization:

“In the matter of trafficking, we are confronted with the commodification of human beings. This grotesque global trade, intertwined as it is with the sex trade, generates over

⁸⁵ Standing Committee on the Status of Women, 39th Parliament, 1st Session, “Committee Meeting # 25” (November 23rd, 2006) online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2539479&Language=E&Mode=1&Parl=39&Ses=1>>.

\$12 billion a year – making it the world’s fastest growing international crime. But it is not strictly a legal concern.

It is above all, a human concern. The victims are primarily women and children. They are impoverished, and the exploitation of their desperation is at the core of the evil of trafficking. The victims are subjected to physical, sexual and emotional abuse. In short, trafficking is an assault on our common humanity. What can be done? I propose a comprehensive strategy organized around the five “P”s.”⁸⁶

As he did in the past when Justice Minister, Cotler again encouraged the government to see beyond trafficking as only a crime, to embrace the fight against trafficking as a moral obligation in the pursuit of justice that would result in the rescue of the vulnerable victim from the immoral sex trade and also from the oppression and violation of her basic human rights. From my perspective, Cotler blended the two major issues that have been advanced by the international anti-trafficking movement, morality and gender inequity, into one highly effective seamless conceptualization of the victim.

The examples of juridical responses that I have provided to this point have been centred at the national level and how the trafficking victim construction at that level has been influenced by the upper echelon of the hierarchy of the juridical field. But this approach may raise the question as to whether or not this victim construction has been similarly accepted in other areas and levels of the juridical field hierarchy. To provide some balance to the perception that the acceptance of the victim construction may only rest at the national level and not spread downwards or outwards across the juridical field to be implemented at the local or regional level, I offer the following. In January of 2010, I attended a ‘trafficking awareness’ training session that was delivered by the RCMP Pacific Region Human Trafficking Coordinator in Surrey, BC. The target audience was front line emergency fire fighter personnel in the metro Vancouver area.

⁸⁶ Irwin Cotler, “Stopping Violence Against Women” (September 17th, 2009) online: National Post online Edition <<http://network.nationalpost.com/np/blogs/fullcomment/archive/2009/09/17/irwin-cotler-stopping-violence-against-women.aspx>>.

As explained by the Coordinator, many emergency responders beyond the police encounter circumstances during the course of their duties that might be viewed as potential cases of human trafficking and thus, this nationally developed session was designed to provide emergency responders at a local level with sufficient knowledge such that they could recognize a potential trafficking situation if encountered, and whom to call for enforcement support.

The session was professionally delivered and informative using a combination of video, power point and anecdotal situations recounted by the Coordinator. However, the focus of the trafficking victimization presented at this session was almost fully occupied with the issue of women and prostitution. The instances of trafficking referenced often involved Asian or eastern European women duped into illegally migrating to Canada and then being subsequently held against their will to participate in the sex trade. The impression left with the audience, including myself, was that the most common form of international human trafficking victimization was that of the blameless and vulnerable woman who was forced into prostitution.

One final example of the juridical field's acceptance of the trafficking victim construction not only reinforces my argument that the vulnerable woman trafficked for the sex trade is the understood victim construction within the Canadian juridical field but, it also raises a question of ethics with respect to how the trafficking message is being conveyed. As noted earlier in the chapter, Fritz and Althiede determined that the manner in which a social problem is conceptualized through the use of victim images is critical to how the public comes to understand the problem and the victim.⁸⁷ During the course of testimony on December 8th, 2009, at Parliamentary SWC Committee Meeting number 46, juridical actors such as Ken Lamontagne for CBSA and Marie-Claude Arsenault for the RCMP gave evidence that one of the main anti-

⁸⁷ Fritz and Althiede, *supra* note 6 at 473 - 492.

trafficking posters that had been developed by the Federal Inter-departmental Working Group was often displayed in public places across Canada and abroad in order to bring attention and awareness to the fact that human trafficking is a serious crime in Canada.⁸⁸

This poster depicts a young woman, ‘Sonia’, partially in shadow, with a tear running down her right cheek. It prominently states: “People for sale in Canada? The answer will shock you.” And, in smaller print, the poster advises the public that every year girls like Sonia are sold into the sex trade, locked up in sweatshops, and made to work for little or no pay. It is this image of a vulnerable young woman, innocence arguably implied in the photograph, destined to be trafficked for the sex trade or for labour exploitation that is being conveyed to the public by the government, appealing to their sensitivities and emotions. Based on my experience as the former RCMP Director of immigration enforcement, this poster symbolizes acceptance by the Canadian government of the advanced social construction of the trafficking victim because it has been this image of trafficking victimization that has often informed the basis of much of the government’s anti-human trafficking enforcement effort and its training awareness program.⁸⁹ However, the ‘Sonia’ in this poster pictured as a trafficking victim does not exist. It is an effective dramatization but the person portrayed in the poster is not a victim but an actor hired to convey a message of vulnerability, innocence and helplessness.⁹⁰

Catherine Dauvergne noted that in the 2004 US Trafficking in Persons Report, the US State Department used photographs of non-trafficking victims on several occasions in the report

⁸⁸ Standing Committee on the Status of Women, 40th Parliament, 2nd Session, “Committee Meeting #46” (December 8th, 2009) online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4306833&Language=E&Mode=1&Parl=40&Ses=2>>.

⁸⁹ See the Department of Justice web-site: <<http://www.justice.gc.ca/eng/index.html>>.

⁹⁰ Interview # 35 confirmed that the woman in the poster was an employed actor. This particular picture was chosen from among several considered.

to portray and emphasize the helplessness of trafficking victims.⁹¹ Dauvergne concluded that several of these non-victim photos in the report were staged or posed in order to underscore and convey the inhumanity of the crime of human trafficking, especially in terms of the sexual enslavement of women and girls. She struggled with the moral implications of using staged photos, especially those that involved young children, to convey a serious message but did note that both the posed and legitimate photographs did have the apparent desired effect - “the photos help[ed] convey the message that trafficking is such a hideous blight that all measures should be used to stop it.”⁹² Dauvergne expressed a number of concerns about the use of ‘staged’ photographs that may obscure the complexities of trafficking victimization. “They may negate what is best about the “true” photos, without offering anything of unproblematic value in return”⁹³

I share her concerns in as much as ‘staged’ posters used by the Canadian government conveys and reinforces a singular understanding of international human trafficking that in many respects I now realize marginalizes the victims of other forms of human trafficking. It continues to depict women as passive stereotypical victims, objects of violence, which reinforces the conventional trafficking rhetoric. I am concerned about the ethical use of these posters which are designed to appeal to public sensitivities and shape their understanding of trafficking without incorporating some form of disclaimer into the photograph that the person or persons in the picture are not victims but actors.

⁹¹ Catherine Dauvergne, *Making People Illegal – What Globalization Means for Migration and Law* (New York: Cambridge University Press, 2008) at 79 – 83.

⁹² Ibid at 82.

⁹³ Ibid.

4.6 Conclusion

I view the trafficking victim as the most critical component of the social construction of international human trafficking. This chapter examined how the trafficking victim formation that has been advanced by the international anti-trafficking social movement influenced Canadian juridical actors in relation to their understanding of international trafficking. The victim image provided juridical actors with a persuasive symbol of victimization that generated a collective sense of purpose – to rescue and protect the vulnerable woman and girl trafficked for the sex trade. As one juridical actor commented during a research interview: “Who is going to say no to [helping] women and children [that are] being abused”.⁹⁴ Through an analysis of research interviews and the government discourse, I have presented my argument that this victim conceptualization has been used effectively by the international anti-trafficking social movement to influence the juridical field’s acceptance of the social construction of international trafficking.

The international anti-trafficking movement has successfully influenced the direction of the trafficking discourse. This has permitted the movement to advance a particular message through the effective use of imagery involving a vulnerable tragic victim – that is the reason for the movement’s existence – to achieve legislative and policy changes within the international community in relation to the trafficking victim that they have constructed. The issue of human trafficking arose at a time when governments were receptive to a particular understanding of trafficking victimization. And, given the dominance of moral reform and feminist organizations within the movement, it is understandable, as discussed in Chapter 3, that women sexually exploited for the sex trade would form much of the discussion with respect to international human trafficking. The movement, led by moral reform and radical feminism, capitalized on the

⁹⁴ Interview #2024.

political opportunity that was presented and advanced a particular understanding of international trafficking to the international community through the use of effective imagery to unite and engage the interests of disparate juridical actors by conveying the belief that the trafficking of vulnerable women and girls for the sex trade is the largest form of international trafficking taking place and ‘the’ issue that is most pressing within society.

There is considerable value in portraying international trafficking in terms of vulnerable women and girls forced into the sex trade. This victim formation resonates well with the public such that it has captured public attention and their support that has led to demands for government action against human trafficking. The media, as noted in Gulati’s study, has ensured that the public understand international human trafficking as a lead issue within society and that there is an urgent need to for the government to act within the context that vulnerable women and girls are continually being abused and violated through their trafficking for prostitution. The acceptance of this form of victimization by Canadian juridical actors as the dominant form of international trafficking in Canada reflects the success of the international anti-trafficking social field to control the power relationship struggles that Bourdieu theorized exists within and between social fields. The outcome of these struggles has resulted in encouraging the Canadian government into developing and implementing anti-international trafficking enforcement strategies and policies. However, although this has spurred the government to act against international trafficking, it has done so from a limited understanding of international trafficking which has raised the question – while focused on international sex trafficking to rescue the vulnerable victim, what other aspects of international human trafficking are being neglected? Chapters 5 and 6 speak to the consequences and potential harm that can arise as a result of the

government concentrating its anti-trafficking efforts on such a narrow social construction of international human trafficking that has been predicated upon a particular victim formation.

5 International Human Trafficking in Canada

5.1 Introduction

The preceding chapters established that moral reform and radical feminism have dominated the trafficking discourse such that international trafficking is generally perceived as vulnerable women and girls trafficked for the global sex trade. These chapters traced the evolution of the international anti-trafficking social movement and explored the effective use of victim imagery by the social movement in order to advance the acceptance of their conceptualization of international trafficking among juridical actors. To further advance our understanding of why there have been so few international trafficking prosecutions, this chapter examines the power relationship struggles¹ that have taken place between the Canadian juridical field and the international anti-trafficking social field that have resulted in an anti-trafficking enforcement strategy that until recently produced only one international trafficking prosecution.

The chapter is divided into three major sections. In each section, I provide some degree of personal insight and/or recollection, either from the perspective of a police officer or from that of a former Director of the RCMP immigration enforcement program. But, in so doing, Bourdieu's process of reflexivity, conscious self-referencing, has been a constant presence during my analysis. The first component examines a series of documents that reflect the power relationship struggles that have taken place between the Canadian juridical field and the international anti-trafficking social field. My objective is to illustrate that as a result of the struggles/interaction between the two fields, the Canadian juridical field adopted the social construction of international trafficking that was being advanced by the international anti-

¹ See Chapter 1 for further detail of Bourdieu's field theory and the related issue of power relationship struggles that take place between social fields.

trafficking movement. The second portion of the chapter explores a number of juridical field responses to the government's acceptance of the singular understanding of international trafficking. My intent is to demonstrate that as a result of accepting a specific conceptualization of international trafficking, the government concentrated its anti-trafficking enforcement efforts on an area of trafficking exploitation believed to contain most of the victims of international trafficking - the sex trade. The final section of the chapter entails an examination of several of the popular explanations that have been offered to account for why there have been so few international trafficking prosecutions in Canada comparatively to the results that have been achieved through Canada's focused anti-international trafficking strategy.

5.2 Shaping The Juridical Field

Janie Chuang, Ronald Weitzer and Kara Abramson, have suggested that the international anti-trafficking social movement has been able to influence domestic governments such as the US government into understanding international trafficking as largely a crime in which women and girls are trafficked for prostitution.² As a result, although domestic legislation may have been created and designed to protect all victims of human trafficking, Chuang and Weitzer believe that the acceptance of this particular social construction of international trafficking by the US government has resulted in an uneven application of domestic anti-trafficking enforcement that has focused scarce law enforcement resources on the issues of sex trafficking and prostitution to the detriment of the other victims of international human trafficking.³ I argue that Canada is a case in point - that the international anti-trafficking movement has interacted with

² Janie A. Chuang, "Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy" (2010) 158 U.Pa.L.Rev. 1655 at 1655 – 1658; Ronald Weitzer, "The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade" (2007) 35:3 Politics & Society 447 at 447 – 450 and 467 – 468; Kara Abramson, "Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol" (2003) 44 Harv. Int'l L. J. 473 at 473 - 475.

³ Ibid - Chuang at 1656 - 1658, and Weitzer at 447 – 450 and 467 - 475.

and influenced the Canadian government into generally perceiving international trafficking as an issue involving women trafficked for prostitution which has resulted in a limited application of Canada's anti-human trafficking legislation because of an anti-trafficking enforcement strategy that has been primarily focused on the sex trade.

I begin with an examination of four key documents that I believe are representative of the interaction that Bourdieu suggests takes place between the juridical field and the other social fields that comprise society – the power relationship struggles that result in influencing the juridical field's conception of the law's relationship to society as evidenced through its application.⁴ These struggles should not be viewed from the context of one field exercising overt power and influence over another but rather should be seen as the product of the ongoing dynamic and complex power interrelationships, sometimes very subtle, that exist among actors and also among organizations within and between the two fields such that their interaction resulted in influencing the Canadian juridical field's understanding of international human trafficking which subsequently guided its anti –trafficking enforcement.

The first document, frequently cited by various government publications, Canada's trafficking literature, the US State Department, and the Canadian media, is the 2003 RCMP intelligence analysis of human trafficking in Canada.⁵ It is this document that has often been used by various anti-trafficking advocates in Canada to justify the need for urgent action on the

⁴ Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" (1987) 38 *Hastings L.J.* 814;
Richard Terdiman, "Translator's Introduction - The Force of Law: Toward a Sociology of the Juridical Field" (1987) 38 *Hastings L.J.* 805.

⁵ Royal Canadian Mounted Police, Criminal Intelligence Directorate, Criminal Analysis Branch, *Human Trafficking* (Ottawa: Royal Canadian Mounted Police, 2003).
It should be noted that the report being referenced is a vetted copy of the original RCMP report produced for public consumption and not the more in-depth intelligence report that identifies sensitive information in relation to individuals, criminal organizations, and ongoing investigations that is not accessible by the public.

part of the Canadian government to protect the victims of international human trafficking – vulnerable women and girls trafficked for the sex trade.⁶ It is a unique internal government document because the report played an important role in shaping the Canadian government’s understanding of international trafficking and represents a particular type of interaction between the two fields - a subtle interaction that largely involved the juridical field reaching out into the international anti-trafficking social field in relation to reviewing the trafficking literature and discourse in order to acquire a more complete understanding of international human trafficking that would assist in informing Canadian anti-trafficking strategies as a result of this new legislated enforcement responsibility.⁷

In Chapter 4, I examined how former Justice Minister Irwin Cotler, exerted influence within the juridical field such that it resulted in the acceptance of a particular social construction of international human trafficking. But this intelligence report concerning the state of international trafficking in Canada prepared by the RCMP predates Cotler as the Minister of Justice. It was created for the immigration enforcement program of the RCMP for which I was

⁶ Sampling of research reports, newspaper articles and websites that have referenced the RCMP report: Jacqueline Oxman-Martinez, Marie Lacroix and Jill Hanley, “Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector” (2005) online: Research and Statistics Division, Department of Justice Canada <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_3/toc-tdm.html>; Lorraine Chan, “Reforming Canada’s Record on Human Trafficking” (2007) 53:9 UBC Reports, online: University of British Columbia <<http://www.publicaffairs.ubc.ca/ubcreports/2007/07sep06/reform.html>>; United States of America, Department of State, *Trafficking in Persons Report* (2004, 2005, 2006) online: US State Department <<http://www.state.gov/documents/organization/>>; Daphne Bramham, “Canada still has much to do when it comes to human trafficking”, (June 19, 2010) *Vancouver Sun Newspaper*, Vancouver, Canada; Canada Fights Human Trafficking, “The Problem” (2010) online: CFHT <<http://www.canadafightshumantrafficking.com/canada.html>> (Please note that web-site is no longer active); Benjamin Perrin, “Trafficking in Persons & Transit Countries: A Canada-US Case Study in Global Perspective” (2010) at 9, online: Metropolis British Columbia, Working Paper Series, 10-05 <<http://riim.metropolis.net/assets/uploads/files/wp/2010/WP10-05.pdf>>.

⁷ During my tenure as the Director of the RCMP immigration enforcement program, the RCMP 2003 report was often referenced in strategy meetings and discussions within the RCMP as well as during external meetings with other government departments that had an anti-trafficking responsibility. The content and conclusions within the report appeared to be generally accepted during these meetings.

then responsible. And, although I will later in this chapter question the validity of the analysis provided in the report, at this time, I am simply drawing attention to the existence of the report and the frequent reliance by many authors upon its content. This report, from a credible government organization, was in hindsight inadvertently instrumental in perpetuating the social construction of international human trafficking within the government that was being promoted by the international anti-trafficking movement. The report reflects the acceptance of the prevailing understanding of international trafficking in the literature and fostered the belief that international sex trafficking was ‘the’ major form of international trafficking taking place around the globe and within Canada.⁸ It reinforced this belief by providing unverified estimates of women and girls trafficked into Canada for the sex trade that have often been referenced by subsequent government reports, academic studies, and media narratives.⁹ This report played a critical role in influencing the government’s initial understanding and approach to combating international trafficking. The report is a tangible example of field interaction/power relationship struggle that has taken place between the international anti-trafficking social field and the juridical field beyond that which took place at the juridical field’s political level as represented by Cotler.

As I have noted earlier in this dissertation, many of the statements and projected estimates of trafficking within the RCMP assessment were dependent upon ‘open source’ material that was derived from the RCMP’s review of the international trafficking literature and discourse. And, as a result of the analysis of the literature, in conjunction with an assessment of past Canadian anti-trafficking investigations, the report concluded that international trafficking within Canada is largely seen as a crime involving women and prostitution. In keeping with this

⁸ RCMP, *supra* note 5 at 3 and 7-11.

⁹ Ibid at 10

perception, the scope of international trafficking in Canada noted in the report estimated that approximately seventy-five percent of the persons trafficked into Canada have been women and girls destined for the sex trade.¹⁰ More specifically, this intelligence report drew the conclusion that approximately 800 persons are trafficked annually into Canada of which 600 victims are women and girls forced to work in prostitution. And after further analysis, the RCMP study then estimated that approximately 1200 additional women and girls are being trafficked each year into Canada who transit across the country and then illegally enter into the United States, again destined for the sex trade.¹¹ As noted in the report, most of the international trafficking investigations undertaken by Canadian law enforcement during the 5 year period of analysis (1999 – 2003) targeted prostitution and “... may be reflective of the widely held attitude that trafficking is an activity that primarily affects women and children”¹² – a recognition that the prevailing understanding of international human trafficking in Canada has been in relation to women and the sex trade and thus, this existing perception of trafficking may explain why the Canadian enforcement strategies that had been deployed for the 5 year period under examination were so focused on crimes involving prostitution.

Even though the report cautions that the projections provided are based on incomplete data, and the analysis has relied upon anecdotal trafficking stories from the trafficking literature, unverified claims contained in open source documents, and a subjective interpretation of information contained in law enforcement criminal data banks, these estimates of the international trafficking of women and girls for prostitution have often been presented as fact throughout many related studies and media narratives concerning the scope of international

¹⁰ Ibid.
¹¹ Ibid.
¹² Ibid at 8.

human trafficking in Canada.¹³ The report was one of the first international trafficking assessments ever conducted by a Canadian government organization and its findings informed a number of related studies, many of which have encouraged government action based on the projected nature of international trafficking (sex trafficking) and the trafficking estimates contained in the report.¹⁴ Often relied upon by other government departments, politicians, the media and external non-government publications, this report, more than any other report, has influenced the players within Canada's juridical field into understanding international trafficking as an issue involving women and girls trafficked for the sex trade who are in urgent need of rescue and protection.

The next document demonstrates a power relationship interaction/influence that takes place between the two fields that again originates with the juridical field but with an added dimension. This study was conducted externally to the government by academic researchers but at the request of the government. And, it is also an example of studies external to the

¹³

Ibid at 5 - 11.

See *supra* note 6.

Additional examples:

CTV National News Staff, "Canada must do more to curb human trafficking" (June 17, 2009) online: CTV National News Report <http://www.ctv.ca/CTVNews/TopStories/20090617/trafficking_report_090617/>;

CBC News, "Human Trafficking a growing problem in Canada, BC expert says" (October 28th, 2008)

online: CBC News <<http://www.cbc.ca/news/canada/story/2008/10/28/bc-human-trafficking-number.html>>;

Donna E. Stewart and Olga Gajic-Veljanoski, "Human Trafficking – Trafficking in Women, The Canadian Perspective" (2005) online: CMAJ Media Inc. <<http://www.cmaj.ca/cgi/content/full/173/1/25>>;

Pauline Kosalka, "Human Trafficking in Canada: an uncomfortable truth" (October 4th, 2010), in *The Interim – Canada's Life and Family Newspaper*, online: <<http://www.theinterim.com/issues/society-culture/human-trafficking-an-uncomfortable-truth-in-canada/>> - note: Relies upon RCMP estimate as reported by the US State Department Trafficking in Persons Report;

The Evangelical Fellowship of Canada (EFC), "Human Trafficking" (2010) online: EFC <<http://www.evangelicalfellowship.ca/page.aspx?pid=1213>>.

¹⁴

See e.g.:

Laura Barnet, "Human Trafficking" (2006) online: Library of Parliament, Law and Government Division <http://dsp-psd.pwgsc.gc.ca/collection_2007/lop-bdp/prb/PRB0624-1e.pdf>;

Monica Boyd, "Gender Aspects of International Migration to Canada and the United States" (2006) online: International Symposium on International Migration and Development, United Nations Secretariat <http://www.update.un.org/esa/population/migration/turin/Symposium_Turin_files/P08_Boyd.pdf>.

government that have relied upon the 2003 RCMP intelligence report in order to support their own conclusions regarding international trafficking in Canada. This project was conducted by Jacqueline Oxman-Martinez, Marie Lacroix and Jill Hanley, who were commissioned by the Department of Justice Canada in 2005 to examine human trafficking in Canada, both international and domestic.¹⁵ It attempted to validate trafficking perceptions by interviewing representatives of a number of Canadian NGOs that furnish protection services to victims of both domestic and international human trafficking. The study investigated trafficking from a human rights and gender perspective, with the expressed desire that the report make a meaningful contribution to long-term government policy development in the area of the protection of trafficking victim rights and related gender issues.¹⁶

Oxman-Martinez and her colleagues acknowledged that it was difficult to determine the extent of international trafficking due to “the clandestine nature of the activity and the relative lack of research in this area”.¹⁷ But, in spite of this expressed concern, they then relied upon the 2003 RCMP intelligence report to outline the scope and nature of international trafficking in Canada, echoing many of the RCMP study findings which then served to assist in supporting their own findings that trafficking, domestic and international, should be seen as a serious human rights violation mainly involving women and children.¹⁸ In keeping with the project’s objectives of gaining a deeper understanding of the characteristics and the needs of victims of trafficking, those interviewed for this research project from 40 non-government agencies that provide trafficking victim protection services indicated that most of the trafficking victims that they

¹⁵ Oxman-Martinez, Marie Lacroix, and Jill Hanley, *supra* note 6 at iii.

¹⁶ *Ibid.*

¹⁷ *Ibid* at 2.

¹⁸ *Ibid* at iv and 2.

encountered were women and children exploited for the sex trade.¹⁹ The report indicated that much of the domestic human trafficking that is taking place relates to women and young girls induced to leave aboriginal reserves and who are then subsequently victimized and forced to work in prostitution. It is unclear in the report as to the number of NGO representatives interviewed in relation to international versus domestic human trafficking. Although there is some separation of the two issues, it appears that most persons interviewed were focused on the provision of protection services for domestic human trafficking which tends to obscure the information and conclusions that were derived with respect to international trafficking.²⁰

However, the general perception that is threaded throughout the report projects both international trafficking and domestic trafficking as largely crimes involving the sexual exploitation of women and girls, mainly through the illicit sex trade but can also occur in other aspects of international trafficking such as the government's immigration 'care-giver' program.²¹ As a result, I believe, this type of report, shaped by the interviews with NGOs involved to some degree in trafficking victim protection services, many of which are focused on the provision of services for female victims, reinforced the social construction of international trafficking that had already begun to germinate within the juridical field - a self-fulfilling confirmation of the initial understanding of international human trafficking that was first noted by the 2003 RCMP intelligence report.

Importantly, the Oxman-Martinez study confirmed that most of the representatives interviewed from the participating NGOs believe that they had been engaged either directly or indirectly at some point in contributing to the development of the then government policy-making and

¹⁹ Ibid at 4/5 and 9 - 10.

²⁰ Ibid at 3 - 28.

²¹ Ibid at 1 - 33.

legislative initiatives regarding human trafficking, a reflection of another type of ongoing interaction between the two fields.²²

The third documented example of field interaction that is important to this study relates to the influence that has been exerted upon the Canadian juridical field that originated from an external source. In this instance, I am referring to the annual human trafficking report created each year since 2001 by the United States (US). The ‘Trafficking in Persons Report’ (TIP) prepared by the US State Department assesses the anti-trafficking efforts of the members of the international community, incorporated into 3 categories of performance: “Tier 1 – Fully compliant with minimum standards to combat international trafficking – Tier 2 – Not meeting minimal standards but making an effort to combat international trafficking - and Tier 3 – Not meeting minimal standards and making no effort.”²³ This publicized US global assessment of international anti-trafficking efforts is designed to encourage compliance with the 2000 UN Convention. As noted in the 2003 TIP report and continued in subsequent annual versions: “This report is a diplomatic tool for the U.S. Government as an instrument for continued dialogue, encouragement for the current work of some governments, and a guide to help focus resources on prosecution, protection, and prevention programs and policies.”²⁴ Like the other reports, the 2007 report implies that trafficking is a significant threat to international stability, with a particular emphasis on sex trafficking.²⁵ The TIP reports also indicate that the US is authorized by virtue of Section 110 of the US *Trafficking Victims Protection Act of 2000* (TVPA) to impose

²² Ibid at 27.

²³ United States of America, Department of State (2001 - 2011), *supra* note 6.

²⁴ Ibid - (2003) at ‘Country Narratives.

²⁵ Ibid - (2007) at ‘Introduction’.

penalties upon those countries that the US government has determined are not meeting a minimum standard of effort against international trafficking as defined by the US government.²⁶

The report, up until the 2009 version, has claimed that the most prolific form of international trafficking globally involved women and girls trafficked for prostitution.²⁷ With respect to the assessment of international trafficking in Canada, all the TIP reports, with the exception of the most recent 2011 report which appears to have relied heavily on the 2010 RCMP intelligence assessment of trafficking in Canada for its assessment, indicate that international trafficking into Canada has generally involved women and girls trafficked for prostitution.²⁸ The three annual TIP reports of 2004, 2005 and 2006 specifically referenced the 2003 RCMP intelligence study on human trafficking which forms the basis of the US assessment of international trafficking in Canada. For example, the 2004 report states:

“Canada is primarily a destination and transit country for women trafficked for the purposes of sexual exploitation from China, South Korea, Thailand, Cambodia, the Philippines, Latin America, Russia, and Eastern Europe. To a lesser extent, men, women and children are trafficked for forced labor, and Canadian citizens are trafficked internally for the sex trade. Most transiting victims are bound for the U.S. In a recent criminal intelligence assessment, the Royal Canadian Mounted Police (RCMP) estimates that 800 persons are trafficked into Canada annually and that an additional 1,500-2,200 persons are trafficked through Canada into the U.S. Some observers believe these numbers significantly understate the problem.”²⁹

The specific reference to the 2003 RCMP intelligence report was eventually stopped in the 2007 TIP report but the subsequent reports, while acknowledging the existence of trafficking

²⁶ Ibid, and;
Trafficking Victims Protection Act of 2000 (TVPA) also known as the *Victims of Trafficking and Violence Protection Act of 2000*, Section 110, Pub. L. No. 106-386, 114 Stat, Pub. Law. No. 106-386, div. A, 114 Stat 1466 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).

²⁷ Ibid - (2001 - 2009).

²⁸ Ibid - (2001 - 2011).

²⁹ Ibid - (2004).

for labour exploitation, continued to confine much of their assessment of trafficking in Canada in relation to sex trafficking.³⁰ For example, the 2009 TIP report assessment states:

“Canada is a source, transit, and destination country for men, women, and children trafficked for the purposes of commercial sexual exploitation and forced labor. Canadian women and girls, many of whom are aboriginal, are trafficked internally for commercial sexual exploitation. Foreign women and children, primarily from Asia and Eastern Europe, are trafficked to Canada for commercial sexual exploitation, but victims from Africa, Latin America, and the Caribbean also have been identified. Many trafficking victims are from Thailand, Cambodia, Malaysia, Vietnam, China, South Korea, the Philippines, Russia, and Ukraine. Asian victims tend to be trafficked more frequently to Vancouver and Western Canada, while Eastern European and Latin American victims are trafficked to Toronto, Montreal, and Eastern Canada. NGOs report that Canada is a destination country for foreign victims trafficked for labor exploitation; some labor victims enter Canada legally but then are subjected to forced labor in agriculture, sweatshops, or as domestic servants. A significant number of victims, particularly South Korean females, transit Canada en route to the United States. Canada also is a source country for child sex tourists, who travel abroad to engage in sex acts with minors. Canada is reported to be a destination country for sex tourists, particularly from the United States.”³¹

I have drawn attention to this annual report for two reasons. First, this report is an example of field interaction/power relationship struggle that originates external to the Canadian juridical field but attempts to exert influence within the juridical field. As Bourdieu theorized, power relationship struggles take place on many levels within and between social fields dependent upon the specific social field’s composition and the power relationships that the members of that social field may have in relation to other social fields in which they participate. These struggles create complex power relationships and strategies that are exercised between social fields designed to influence and achieve various outcomes.³² In regards to the US TIP report, Chuang posited that the *Trafficking Victims’ Protection Act* (TVPA) which requires the

³⁰ Ibid - (2007, 2008, 2009, and 2010).

³¹ Ibid - (2009).

³² See *supra* notes 1 and 4.

production of the annual TIP report³³ reflects the success of ‘neo-abolitionists’ in the US that are affiliated with both the moral reform and radical feminist movements (social fields), in conflict with more moderate feminist organizations that support the sex worker rights movement (social field), into recalibrating US government anti-human trafficking policy into an renewed anti-prostitution policy by focusing anti-trafficking enforcement efforts in the US against the sex trade.³⁴ This power relationship struggle take on another added dimension of complexity when the interaction between these types of social fields are considered from the international perspective with multiple juridical fields also involved due to the economic sanctions that the US threatens to impose on nations that are identified in the report that do not incorporate an anti-trafficking approach, as defined by the US.

Secondly, I have referenced this report in order to situate a personal recollection as a former Director of the RCMP immigration enforcement program in regards to the influence that this report had upon actors within the Canadian juridical field. In particular, I refer to the 2003 TIP report because it is the only annual TIP report that directly criticized Canada for its lack of anti-trafficking efforts, downgrading Canada from the highest level of Tier 1 to the mid category of Tier 2, stating: “The Government of Canada does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so”³⁵ Published on June 11th, 2003, the report quickly became the subject of Canadian media

³³ *Trafficking Victims Protection Act of 2000 (TVPA)* also known as the *Victims of Trafficking and Violence Protection Act of 2000*, Section 110, Pub. L. No. 106-386, 114 Stat, Pub. Law. No. 106-386, div. A, 114 Stat 1466 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.).

Section 104 (d) and (f) – require an annual progress report with respect to human trafficking that assesses the anti-trafficking efforts of the US and the international community at large, online: <<http://www.state.gov/documents/organization/10492.pdf>>.

³⁴ Chuang, *supra* note 2 at 1680 - 1698.

³⁵ United States of America, Department of State (2003), *supra* note 6 at ‘Country Narratives’.

attention.³⁶ Shortly after its release, I was contacted by a number of senior government bureaucrats, not for the purpose of contesting the American conclusion that most of the international trafficking into Canada involved women and girls trafficked for the sex trade as that understanding appeared readily accepted by the callers but rather to determine the source of the information upon which the US had relied in order to base its criticism of Canada's anti-trafficking efforts. Many of the callers had presumed that the information cited in the TIP report had originated with the RCMP policy centre for human trafficking for which I was responsible. Once we clarified that neither myself nor any other employee of the policy centre had been contacted by the US researchers, the focus of the conversations between myself and these fellow juridical actors centred on developing a public response to the report's criticism. In other words, the government was not refuting the depiction of international trafficking into Canada as an issue that constitutes mainly the trafficking of vulnerable women and girls for prostitution but instead, felt that the US had neglected to obtain a full picture and understanding of Canada's significant effort to combat this type of international trafficking. These Canadian juridical actors, myself included, were mainly concerned with assuring the American government and the Canadian public that Canada was meeting its commitments and was actively engaged in combating international sex trafficking.

The fourth document, authored by Joy Smith, reflects a field interaction/struggle in which the principal actor, Smith, has been an active participant and leading representative of both the international anti-trafficking social field and the juridical field. Prior to and after her election as the Federal Conservative Member of Parliament for the riding of Kildonan-St. Paul, Manitoba, Smith was an active anti-trafficking volunteer, participating in conferences to raise awareness

³⁶ See e.g.: Stewart Bell, "U.S. berates Canada on human trade: Ottawa taken by surprise" (June 13, 2003) *National Post*.

about international and domestic human trafficking, and assisting trafficking victims who have escaped from their enslavement.³⁷ Subsequent to her election to the House of Commons, Smith became a leading activist for anti-trafficking initiatives within the Canadian government.³⁸ For example, Smith proposed Private Members Motion (PMM) M-153 to the House of Commons in May of 2006 which sought Parliament's condemnation of the trafficking of women and girls across international borders, including Canada's, for sexual exploitation, and encouraged the government to introduce a comprehensive national strategy to combat this form of international trafficking.³⁹ The House of Commons approved PMM M-153 unanimously on November 23rd, 2006.⁴⁰ In addition to the foregoing example, Smith was also the lead sponsor for Bill C-268 that instituted amendments to the Criminal Code which resulted in the potential for judicial sentences of greater punishment for human trafficking offenders upon conviction.⁴¹ She has been an active member of the Standing Committee on the Status of Women Canada and assisted in the production of the SWC Committee's 2007 report on human trafficking that expressed the belief that international and domestic human trafficking was largely an issue involving women and prostitution.⁴² Although this report is primarily focused on sex trafficking, the Committee meetings were originally mandated to study the larger issue of international and domestic human

³⁷ Jane Taber, "A 'Family Affair' to Counter Human Trafficking", in *The Globe and Mail*, (September 7, 2010) on line: <<http://www.theglobeandmail.com/news/politics/ottawa-notebook/a-family-affair-to-counter-human-trafficking/article1698171/>>;

Winnipeg Free Press, "Kildonan-St Paul, Vote Canada", in *Winnipeg Free Press* (April 27th, 2011) online: <<http://www.winnipegfreepress.com/special/federal-election/kildonan-stpaul/Kildonan-StPaul-Profile.html>>.

³⁸ Ibid.

³⁹ House of Commons, 39th Parliament, 1st Session, "Twenty-Second Report" (2007) online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2528865&Mode=1&Parl=39&Ses=1&Language=E>>.

⁴⁰ Ibid.

⁴¹ Canada, Bill C-268, *An Act to amend the Criminal Code* (minimum sentence for offences involving trafficking of persons under the age of eighteen years of age), 2nd Sess, 40th Parl, 2009, (as passed by the House of Commons 30 September 2009).

⁴² Standing Committee on the Status of Women, *Turning Outrage Into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada* (2007) online: <<http://cmte.parl.gc.ca/Content/HOC/committee/391/fewo/reports/rp2738918/feworp12-e.pdf>>.

trafficking. However, as the SWC report noted, after receiving testimony to the effect that women constituted 92 percent of the victims of human trafficking the Committee opted to limit the focus of the report to sex trafficking.⁴³ Smith has also been the recipient of a number of awards for her efforts to encourage the Canadian government to combat human trafficking.⁴⁴ And most recently, in furtherance of her Private Members Motion M-153 of 2006, Smith submitted a proposal to the government for a Canadian national strategy to combat human trafficking called - *Connecting the Dots – A Proposal for a National Action Plan to Combat Human Trafficking*. It is this document which I have selected as the fourth key example of interaction /power relationship struggles that have taken place between the international anti-trafficking social field and the Canadian juridical field.

Within the ‘foreword’ for her proposal, Smith claims that her report details the state of human trafficking in Canada and makes a number of key recommendations that should be incorporated into a national action plan, premised upon the results of consultation with Canadian law enforcement, academics, NGOs and human trafficking survivors.⁴⁵ Relying on the 2000 UN Convention’s definition of human trafficking, Smith referenced the estimates of global trafficking provided by the United Nations Office on Drugs and Crime (UNODC) to underscore her message that trafficking for sexual exploitation is the most common form of international human trafficking that has been reported to date.⁴⁶ With respect to Canada, Smith indicates that

⁴³ Ibid at 1.

⁴⁴ Information obtained from Joy Smith, MP, Kildonan–St. Paul web site: <www.joysmith.ca>. Examples of awards noted on site for her anti-trafficking activities as a Member of Parliament are: Ratanak Wilberforce Award (2010); I Stand Award (2010); My Canada 2009 Hero Award; and the Victor Award (2008).

⁴⁵ Joy Smith, *Connecting the Dots: A Proposal for a National Action Plan to Combat Human Trafficking* (2007) at Forward, online: Joy Smith <<http://www.joysmith.ca/assets/final%20-%20proposal%20for%20a%20national%20action%20plan%20to%20combat%20human%20trafficking%20-%20sept%202010.pdf>>.

⁴⁶ Ibid at 4.

human trafficking is growing at an alarming rate within the country although she offers no proof to support this claim.⁴⁷ However, she does rely upon the 2006 US TIP report to reveal the depth of international trafficking into Canada which, as previously noted, was based upon the 2003 RCMP trafficking intelligence report. Smith concludes from these statistics that the victims of international trafficking that have been trafficked into Canada have been primarily women for the purpose of commercial sexual exploitation.⁴⁸ And as a result, Smith advocates strongly for the development of a national anti-trafficking strategy, a furtherance of PMM M-153 that is grounded by anti-trafficking prevention policies focused on curbing the demand for sexual services because as she argues in the report, sexual exploitation represents the largest form of international trafficking into Canada.⁴⁹

This report reinforces the conceptualization of international trafficking in Canada to the juridical field as a crime involving women and girls trafficked for the sex trade. This leading juridical actor, who is also a leading actor within the international anti-trafficking social field, has encouraged the government to accept the promoted social construction of international trafficking. Through her access to both fields, anti-trafficking and juridical, coupled with her status as a result of the power relationship struggles that create a hierarchy of influence within either field and between fields, I argue that this report represents Smith's attempt to influence and advance the understanding of international trafficking within the government. Although Smith tacitly acknowledges the existence of trafficking for labour exploitation in her report, she implies that this form of trafficking is much smaller in scope than trafficking for sexual exploitation which by its very nature, the often violent sexual exploitation of women,

⁴⁷ Ibid at 6.

⁴⁸ Ibid.

⁴⁹ Ibid at 6 - 16.

necessitates urgent action on the part of the government to rescue and protect these vulnerable female victims through an effective national anti-trafficking strategy.⁵⁰ I believe that Smith is the type of expert that Houtzager identified within his study of Brazilian land reform as a required element in order for a social movement to successfully influence a juridical field.⁵¹ Although not a legal expert in terms of Houtzager's defined requirements, Smith is a political expert, an influential actor from within both fields, which has facilitated her ability to influence the Canadian juridical field's understanding of international trafficking in line with the social construction advanced by the international anti-trafficking social movement.

These four key reports reflect power relationship struggles that have taken place at various levels between the international anti-trafficking social field and the Canadian juridical field which have resulted in shaping the Canadian government's understanding of international trafficking in terms of international sex trafficking. To reinforce my argument, I turn to the research interviews that were conducted with key juridical actors within government agencies. Their insights demonstrate an awareness of the anti-trafficking movement's ability to influence the government's acceptance of the social construction of international trafficking as reflected by the four documents. Interview respondent #2021, for example, in response to an open-ended question concerning the focus of Canada's anti-trafficking enforcement strategy, commented that international trafficking has been framed as an issue of women, girls and prostitution within the international trafficking discourse – that this has been the understood traditional focus of international trafficking by governments, including Canada – and was the principal issue of discussion in shaping the definition of human trafficking as contained in the Trafficking Protocol

⁵⁰ Ibid at 4 - 8.

⁵¹ See Chapter 3 at 78 - 80 for greater detail of Houtzager's application of Bourdieu's 'field' theory in relation to the ability of a social movement to influence a 'juridical field'.

for the 2000 UN Convention.⁵² As this individual indicated, international trafficking in Canada is often understood as an issue of women and prostitution because the depiction of women in relation to sex "... is an issue that captures the public and media attention".⁵³ As a result, this juridical actor, concerned that this perception of trafficking would have undue influence at various levels within the government attempted to encourage other members within the juridical field, especially at training sessions, to look beyond the narrow understanding of trafficking that was being promoted and to view international trafficking from a broader context – an issue that not only involves the sex trade but many other forms of labour exploitation. However, he expressed the belief that his efforts met with limited success.⁵⁴

Interviewee 2021, when asked about the possibility of whether or not a moral panic was taking place in today's trafficking discourse, indicated that it was to a degree because the main focus of human trafficking has been on prostitution and the associated issue of morality.⁵⁵ The interview subject expressed disappointment that many in the government have accepted trafficking from this perspective which has unfortunately limited the trafficking debate and has resulted in focusing public attention on the purported underlying cause of the demand for trafficking - men who buy sex.⁵⁶ Consequently, this juridical actor believes that the government, by focusing on the demand for sexual services as the primary cause of international trafficking as evidenced by the report on human trafficking produced by the Parliamentary Committee for the Status of Women, has lost sight of other related issues that contribute to international trafficking

⁵² Interview #2021.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

and irregular migration such as poverty and related forms of persecution which makes it difficult for the government to develop appropriate anti-trafficking policies and solutions.⁵⁷

In contrast to interview 2021, interviews 2022 and 2023 represent those from within the juridical field who exhibit a high degree of the acceptance of the social construction of international trafficking, without question. Interviewee 2023, for example, when asked about the extent of their knowledge of international trafficking indicated that although they have had little direct involvement with any past international trafficking enforcement, they were quite conversant with sexual assault investigations – the inference being that the two types of crime were synonymous in nature.⁵⁸ This predisposition to view international trafficking in terms of the sexual exploitation of women was also present during interview 2022 when the interview respondent explained that international trafficking in Canada is largely concerned with micro-brothels that move on a frequent basis.⁵⁹ Both interview subjects gave the general impression throughout the course of the interviews that from their perspective, international trafficking is a crime in which women and girls are the main victims, sexually exploited for prostitution.⁶⁰

Conversely, interview 2024 believes that special interest groups have succeeded in influencing the Canadian juridical field such that the government has generally accepted the promoted understanding of international trafficking. The individual stated that the government's perception of international trafficking has been the result of "... special interest groups ... [who] ... definitely have an agenda and ... have managed, I think, to take over in many respects the public discourse."⁶¹ This juridical actor stated that "... in Canada, [NGOs] ... have managed to

⁵⁷

Ibid.

⁵⁸

Interview #2023.

⁵⁹

Interview #2022.

⁶⁰

Interview #2022 and 2023.

⁶¹

Interview #2024.

manipulate the agenda so that if you say anything contrary to human trafficking or the prevalence of human trafficking or the prevalence of women involved in being oppressed in prostitution or what have you ... you're wrong, you're 'anti' something, you're immoral by suggesting that. To oppose these groups that are supposedly on the side of the right, not politically, I am saying the moral right ... then you must be inhumane yourself if you can somehow oppose what [the NGOs] say about this subject that tugs at the heart strings ... and I think it's quashed the debate and has not allowed government and people in general to be objective publically because if they do, they risk being perceived as racist or biased or whatever."⁶²

Three other government representatives interviewed (2025, 2026 and 2028) agreed during general discussion that international trafficking has been largely understood by the government as women trafficked for prostitution. During their respective interviews, these juridical actors questioned the validity of the claim that has been made by a number of NGOs that sex trafficking is the most dominant form of international trafficking into Canada. The three indicated that many within the government have accepted this perception but based on their own expertise and knowledge acquired during the course of their respective duties they are now of the view that labour exploitation is the much larger form of international trafficking occurring in Canada.⁶³ Interview subjects 2025 and 2026 suggested that the anti-trafficking public discourse has been occupied with sensationalized media narratives of foreign women being trafficked into Canada for the sex trade such that these narratives have influenced the Canadian government into responding to this limited understanding of trafficking.⁶⁴ In response to an open-ended question

⁶² Ibid.

⁶³ Interview #2025, 2026 and 2028.

⁶⁴ Interview #2025 and 2026.

regarding the focus of the government's strategy to combat human trafficking, interviewee 2026 stated that: "A lot of the attention is placed on the sexual exploitation side of trafficking and not enough on forced labour",⁶⁵ and interviewee 2028 elaborated by stating that "... the sex trade is such a hot topic ... [NGOs are] ... utilizing it as a platform to raise awareness about the sex trade ... but it is wrong that they forget about the other people."⁶⁶

The analysis of the foregoing, research interviews and the four key documents, demonstrate not only has there been a variety of types and degrees of interaction/power relationship struggles that have taken place between the Canadian juridical field and the international anti-trafficking social field but they also confirm that the international anti-trafficking social movement successfully influenced the Canadian juridical field into embracing an understanding international trafficking premised on a particular victim conceptualization. The research interviews involved persons who have had a direct involvement in the development and management of anti-trafficking policies and enforcement strategies in Canada. Five of the twelve key juridical actors interviewed expressed the view that the Canadian government, in their opinion, has been influenced by special interest groups such that the government has adopted an understanding of international trafficking that largely equates the crime to an issue involving women and girls trafficked for sexual exploitation, and has incorporated this conceptualization into the government's anti-trafficking strategies.⁶⁷ And although these five respondents indicated that they view international trafficking from a broader context, all twelve

⁶⁵ Interview #2026.

⁶⁶ Interview # 2028.

⁶⁷ Interviews # 2021, 2024, 2025, 2026, and 2028.

key juridical actors interviewed confirmed that within the Canadian juridical field, sex trafficking is perceived as the main form of international trafficking taking place in Canada.⁶⁸

Beyond the documents and research interviews that I have referenced, recent news stories and government websites confirm that the juridical field continues to understand trafficking on the basis of the social construction advanced by the international anti-trafficking social field. For example, at a news conference held in September of 2010 to announce the national Crime Stoppers campaign against human trafficking, Blue Blindfold, Vic Toews, the Public Safety Minister, while paying tribute to Joy Smith's anti-trafficking efforts over the preceding years stated that "... most human trafficking victims are women and children from Asia, who are often forced into the sex trade."⁶⁹ - a clear indication that the political level of the juridical field continues to understand international trafficking as sex trafficking. This understanding is also documented on the Department of Justice website for human trafficking under the section: An Overview of Trafficking in Persons and the Government of Canada's Efforts to respond to this Crime, 2009-2010. In the sub-section titled – Canada's Experiences with Trafficking in Persons – the government web-site states: "Experiences to date suggest that trafficking for sexual exploitation is more prevalent in Canada than trafficking for labour exploitation ..."⁷⁰ Thus, even though some juridical actors who are directly responsible for anti-trafficking strategies have asserted that labour exploitation is the more prevalent form of

⁶⁸ Ibid, and interviews #2022, 2023, 2027, 2030, 2033, 2034 and 2035.

⁶⁹ CBC News, "Tories target human trafficking in campaign" (Sept 7, 2010) online: CBC News <<http://www.cbc.ca/news/canada/story/2010/09/07/toews-human-smuggling-tamil-ship.html#>>; See Also: Jane Taber, "A 'Family Affair' to Counter Human Trafficking", in *The Globe and Mail*, (September 7, 2010) on line: <<http://www.theglobeandmail.com/news/politics/ottawa-notebook/a-family-affair-to-counter-human-trafficking/article1698171/>>.

⁷⁰ Department of Justice Canada, "Canada's Experiences with Trafficking in Persons" (2010) online: Department of Justice Canada <<http://justice.gc.ca/eng/fs-sv/tp/over-surv.html>>.

international trafficking in Canada,⁷¹ the foregoing news articles suggest that those who currently control the power relationship struggles within the hierarchy of the juridical field continue to adhere to the belief that sex trafficking remains the dominant form of international trafficking taking place in Canada.

5.3 The Anti-Trafficking Response of the Canadian Juridical Field

This section examines a number of responses by the juridical field to international human trafficking in Canada with two objectives in mind. First, I wish to reinforce to the reader that the Canadian juridical field, the actors within the field, were influenced by a specific social construction of international trafficking and responded by applying that understanding to the government's anti-trafficking strategies that resulted in focusing on the sex trade. Secondly, and as will be discussed further on in this chapter, some of the frequent explanations that have been given for the lack of prosecutions contend that the government has not adequately responded to the crime of human trafficking, especially in regards to the allocation of funding, development of national strategies, and the provision of anti-trafficking training for law enforcement. Some of the juridical responses that I have chosen to highlight in this section will assist in the later analysis of those explanations.

The creation of human trafficking as an offence in Canada, through the enactment of IRPA in 2002,⁷² created a significant new law enforcement responsibility for a number of government agencies, one of which was the RCMP. At the time, I had been recently assigned the responsibility for managing the policy centre that provided oversight for the RCMP's immigration enforcement program (September 2002) and was given the additional responsibility

⁷¹ See *supra* note 67.

⁷² *Immigration and Refugee Protection Act*, SC 2001, c.27, s 118.

of immediately conducting a comprehensive review of the program's performance. The overarching objective of the study was to assess past immigration enforcement activities, to incorporate the new responsibility of combating international human trafficking within the program, and to identify the future direction of the program that would result in improved and enhanced immigration enforcement across Canada in relation to the RCMP's responsibilities. This review resulted in a number of significant changes, including the development of new internal policy, the restructuring of the management of the program, and a redistribution of immigration investigative human resources within the country to locations that would support the program's strategic objective of combating and disrupting the organized smuggling and trafficking of persons.⁷³

One particular recommendation of the program review that came to fruition in 2005 was the creation of the Human Trafficking National Coordination Centre (HTNCC) tasked with the responsibility of: national oversight of human trafficking investigations; providing anti-trafficking support to law enforcement and other government agencies as requested; developing domestic and international partnerships with international agencies and NGOs; providing intelligence assessments to assist in prioritizing investigations; providing assistance to international agencies and domestic agencies in need of international inquiries; providing analytical services to Canadian enforcement agencies regarding investigations, raising awareness of the issue of human trafficking within the government and among NGOs and the public through awareness training workshops; and providing investigative tools to law enforcement

⁷³ Strategic objective for the program obtained from the RCMP Web-site for Immigration and Passport Branch - <<http://www.rcmp-grc.gc.ca/imm-passp/index-eng.htm>>.

across the country.⁷⁴ It is my view that many of the activities and field support that have been provided by this centre, especially with respect to training and intelligence reports, have contributed to the targeting of prostitution related activities by immigration investigators in order to pro-actively combat international human traffickers.

For example, the HTNCC, since its inception, has assisted in coordinating the delivery of numerous anti-trafficking awareness/training sessions that have been delivered by the RCMP regional coordinators to 39,500 people across Canada – approximately 18,400 law enforcement personnel, 4,500 other government representatives, and 16,600 members of NGOs and the public.⁷⁵ But, as confirmed in interview #2028, and as a result of my own personal experience when attending an RCMP anti-trafficking training awareness session provided by the Pacific Region Coordinator in early 2010, the focus of these awareness/training sessions coordinated by the HTNCC concentrated upon portraying the trafficking victim as an innocent woman or girl trafficked for prostitution. The training sessions provide the audience with the indicators and situations that would assist in alerting the recipients of the training to identifying potential victims of trafficking. But, the sessions present international trafficking from the context of sex trafficking and as commented upon by interview respondent 2028, little attention is being paid to the factors, indicators and situations that would result in an increased general awareness with respect to other forms of international trafficking. As a consequence, in my opinion these training sessions reinforce the general belief among a significant number of law enforcement and

⁷⁴ Royal Canadian Mounted Police, “Human Trafficking National Coordination Centre” (2011) online: RCMP <<http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm>>.

⁷⁵ Ibid.
See also: Standing Committee on the Status of Women, 40th Parliament, 2nd Session, “Committee Meeting #46” (December 8th, 2009) at testimony of Superintendent Aubin, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4306833&Language=E&Mode=1&Parl=40&Ses=2>>.

government personnel, as well as members of the public that international trafficking is primarily an issue that involves women and prostitution.

The national program review also led to a redistribution of some of the immigration enforcement resources from their then existing locations within Canada to new positions across the country in order to create a more effective strategy to combat human trafficking and human smuggling through a regional investigative approach to immigration enforcement. In subsequent years and as a result of the increased anti-trafficking funding provided by the federal government in 2007, regional anti-trafficking coordinator positions were also established across the country to supplement, facilitate and coordinate regional anti-trafficking investigations; to ensure the sharing of information and intelligence between local, regional and national enforcement agencies; to coordinate the provision of protection for victims through partnerships with appropriate NGOs; and to assist in the provision of local anti-human trafficking training and awareness sessions.⁷⁶ However, as noted in Chapter 4, many of the members of the RCMP's immigration enforcement program who participated in the review, including myself, understood the then new emerging phenomenon of international trafficking as an offence mainly involving the trafficking of women and girls for the sex trade. And, as a consequence, many of the initial anti-trafficking enforcement strategies developed and implemented by the RCMP, in partnership with other government investigative agencies, were shaped by this understanding and are evident in the 2003 and subsequent 2010 RCMP intelligence reports that assessed the nature and scope of human trafficking in Canada, and the strategies employed to combat it. Both reports

⁷⁶ Synopsis based on the results of research interviews, in particular 2008 and 2035, and personal recollections. The source of 2007 funding for the regional coordinator positions originated with a Memorandum to Cabinet for Budget 2007 that dealt with the "National Strategy for the Protection of Children from Sexual Exploitation on the Internet (National Strategy) – Department of Justice (2009). "Government Response to the Annual Report of the Federal Ombudsman for Victims of Crime April 2007-March 2008", online: <http://www.justice.gc.ca/eng/news-nouv/nr-cp/2009/doc_32330.html>.

confirmed that most international trafficking investigations undertaken by police agencies in this country since 1999 were comprised of investigations focused on the sex trade.⁷⁷

The revitalized RCMP immigration enforcement program ensured that the approximately 200 investigators from the RCMP and related agencies assigned immigration enforcement responsibilities were dedicated to investigating human trafficking and human smuggling offences.⁷⁸ This represented a previously established and ongoing annual investment of approximately \$35 million dollars by the federal government directly into one government department that shares the responsibility for combating international trafficking.⁷⁹ In addition, the immigration enforcement program activities have often been supplemented directly and indirectly by the anti-trafficking efforts of other provincial and municipal police departments, other units within the RCMP such as the Integrated Border Enforcement Team program, Drug Enforcement program, Organized Crime Enforcement, Customs and Excise Enforcement, and the Criminal Intelligence Directorate, as well as uniform personnel from various RCMP detachments across the country, many of whom have received either the full anti-trafficking training workshop or the one day anti-trafficking training awareness sessions.⁸⁰ I have noted this level of funding in order to emphasize that the government has been investing substantially

⁷⁷ RCMP, *supra* note 5 at 7 - 8;
Royal Canadian Mounted Police, Criminal Intelligence, *Human Trafficking in Canada* (Ottawa: Royal Canadian Mounted Police, 2010) at 10.
My opinion in relation to the majority of RCMP immigration investigators believing that trafficking was largely a crime involving women and prostitution is based on my work experience as the Director of the program during which I often interacted with program managers and investigators who frequently expressed this viewpoint. The above noted intelligence reports support this view as they both note that the majority of anti-trafficking investigations undertaken by law enforcement have focused on the sex trade.

⁷⁸ Estimate derived from past experience as Director of the program and from information provided during interview #2034.

⁷⁹ The funding for a fully equipped police officer with federal responsibilities was approximately \$175,000 per year during my tenure as Director of the program.
See also: District of West Kelowna Council Report dated June 22nd, 2011 which estimates the cost of a uniform RCMP police officer, including the 10 percent federal funding contribution, as approximately \$150,000 per year, online:
<<http://www.districtofwestkelowna.ca/Modules/ShowDocument.aspx?documentid=6343>>.

⁸⁰ This conclusion is the result of the research interviews with 7 juridical actors, and my personal experience.

towards combating human trafficking – maybe not to the level some might consider appropriate but at least to a level that cannot be discounted as inconsequential.

Collectively, the federal government responded to the issue of international trafficking by creating an ‘Interdepartmental Working Group’ (IWG) in February of 2004 to oversee and coordinate all the anti-trafficking activities within the various agencies of the federal government that have an anti-trafficking responsibility, including the RCMP. The IWG has also partnered with a number of provincial/municipal agencies and has provided funding to a number of NGOs such as the People’s Law School in British Columbia to advocate on behalf of trafficking victims.⁸¹ Co-chaired by Department of Foreign and International Affairs (DFAIT) and the Department of Justice Canada (DOJ), the IWG is comprised of juridical representatives that originate from within 17 different federal government departments.⁸² To date, it has facilitated the exchange of information and of human resources among the participants and with international agencies in order to: enhance anti-trafficking prevention, enforcement and victim protection efforts; to ensure the creation of domestic and international information campaigns to alert potential victims to the crime of human trafficking; and to focus the energies of the 17 government departments such that it has resulted in the creation of complementary internal policies within those departments that improve the targeting of human traffickers.⁸³

Nevertheless, as I noted in Chapter 4, the IWG has tended to present the issue of international trafficking from the perspective of the international anti-trafficking social field – the trafficking

⁸¹ Interview #2021.

⁸² Current composition of IWG: Canada Border Services Agency, Canadian Heritage, Canadian International Development Agency, Criminal Intelligence Service Canada, Citizenship and Immigration Canada, Department of Justice Canada, Department of National Defence, Department of Foreign Affairs and International Trade, Health Canada, Human Resources and Skills Development Canada, Indian and Northern Affairs Canada, Passport Canada, Public Prosecution Service of Canada, Public Safety Canada, Royal Canadian Mounted Police, Statistics Canada, Status of Women Canada. Retrieved from the Department of Justice Canada website: <<http://www.justice.gc.ca/eng/fs-sv/tp/p4.html>>.

⁸³ Ibid, and Interview #2035.

victim is often presented or discussed from the aspect of being a vulnerable woman or girl trafficked for the sex trade.⁸⁴ For example, at an IWG anti-trafficking conference hosted by the then Department of Public Safety and Emergency Preparedness from November 1st through 4th of 2004, with participation from federal, provincial and local government representatives, members of the academia, and representatives from NGOs, the thematic focus of the conference's final report, endorsed by the IWG and participants, concluded that "globally, women and children make up the vast majority of trafficked persons."⁸⁵ The report also highlighted that "many of the presentations focused on adult sex work and youth sexual exploitation, speaking to the strong connections between trafficking and sex work both within Canada and internationally."⁸⁶

The International Seminar on Trafficking in Persons for Police Crown Prosecutors, Immigration, Customs, and Consular Officials held in Ottawa on March 8th and 9th of 2004 is another example of a similar response from within the juridical field. This conference was intended to promote cooperation between various Canadian and US government departments with respect to their efforts to combat international trafficking. Much of the discussion concerning human trafficking into Canada was from the context that international trafficking primarily involved women being trafficked for prostitution and that Canada was both a destination point for young women trafficked into Canada or transiting through Canada to the US.⁸⁷ As I outlined in Chapter 4, former Justice Minister Irwin Cotler believed that the trafficking of women for the sex trade was the largest form of international trafficking taking

⁸⁴ Interviews #2021, 2024, and 2035.

⁸⁵ Department of Public Safety and Emergency Preparedness Canada, "Vancouver Roundtable on Trafficking in Persons (TIP) report" (2004) at 9, online: Centre for Research and Education <www.crvawc.ca>.

⁸⁶ Ibid at 8.

⁸⁷ Department of Justice Canada and the International Organization of Migration, "Seminar on Trafficking in Persons for Police, Crown Prosecutors, Immigration, Customs and Consular Officials" (2004) online: <<http://www.docstoc.com/docs/38950486/Seminar-on-Trafficking-in-Persons-for-Police-Crown-Prosecutors>>.

The perception that much of the discussion at this meeting pertained to international sex trafficking is drawn from information provided during interview #2035 and my own personal recollection.

place in Canada and thus, he believed that it should be a priority of the Canadian government. As a keynote speaker at this conference, Cotler introduced a 'Ten Point Action Plan' that all Canadian government departments involved with combating international trafficking were to incorporate into their anti-trafficking activities in order to provide a focused holistic government response to the international trafficking of women and girls into Canada for the sex trade:

- To raise public awareness of the urgent need to address human trafficking in Canada;
- To work with international counterparts to enhance the impact of existing legislative tools, both domestically and internationally, and to address root causes of human trafficking in countries of origin;
- To focus on developing a more cooperative effort between Canada and US agencies against human trafficking;
- To enhance inter-agency and inter-jurisdictional collaboration within Canada;
- To undertake a review of the Criminal Code with the view to creating new provisions that address the specific offence of trafficking and enhance existing legislative provisions dealing with trafficking;
- To develop new mechanisms to protect victims and their families, particularly when they participate in the prosecution of traffickers;
- To ensure that the Interdepartmental Working Group on Trafficking in Persons (TIP) becomes the official focal point in the fight against TIP, with the mandate to develop a comprehensive anti-trafficking federal strategy;
- To expand and intensify the work of the RCMP on TIP by: working with local law enforcement agencies; establishing an anti-trafficking unit in the RCMP to work in partnership with domestic and international agencies; working with municipal agencies and CISC to prepare an awareness campaign focusing on victims; promoting the trafficking protocol; and revising training to incorporate trafficking of human beings;
- To ensure the Government of Canada develops new and better ways to collect data and to track TIP problems in Canada.

- To have the Department of Justice host a series of public forums on trafficking in persons.⁸⁸

Although the Department of Justice website no longer displays this national ten point action plan of the federal government, it was premised on the acceptance of the promoted social construction of human trafficking that channelled the collective anti-trafficking energies of the government towards targeting the sex trade.⁸⁹ Most of the objectives identified, including the creation of trafficking offences within the Criminal Code, have been accomplished and many are still ongoing, with the exception that the IWG has yet to publish a national strategy against human trafficking, and the development of mutually agreed to trafficking data collection methodologies has yet to take place.⁹⁰ It is important to draw attention to this plan because it demonstrates the coordinated oversight emanating from the political level from within the structured hierarchy of the juridical field premised on the social construction of international human trafficking.

The Canada Border Service Agency (CBSA) and Citizenship and Immigration Canada (CIC) have also initiated anti-trafficking training and awareness sessions for their respective front-line personnel at the ports of entry and abroad, sometimes provided by the RCMP and especially with regards to identifying human trafficking indicators and factors for those persons at risk in order to enhance their interdiction of potential trafficking victims entering the country.

⁸⁸ The action plan proposed by Cotler to translate the issue of human trafficking into a priority of the government was first published on the Department of Justice website in 2004 but has since been removed. Details of the plan are based on my recollection and information provided during interview #2035.

⁸⁹ Royal Canadian Mounted Police, "RCMP Environmental Scan – 2004" at 151 – 153, online: <<http://www.policecouncil.ca/reports/RCMPEnvironmentScan.pdf>>. The annual RCMP Environmental Scan of 2004 highlighted trafficking as an emerging issue in the report; confirmed that international trafficking is defined as a crime involving women trafficked for the sex trade; and referenced Cotler's proposal although the actual 10 points are not included in the report.

⁹⁰ Assessment provided during interview #2035 in conjunction with my own personal recollections as former Director of the RCMP immigration enforcement program.

These agencies have also been involved in the collection of information that results in the development of intelligence and associated anti-trafficking strategies for their respective departments. Persons interviewed from these organizations have confirmed that much of the training and most of the enforcement strategies developed in the past have been premised on the overarching belief that sex trafficking is the predominant form of international trafficking taking place in Canada with which they now are no longer in agreement. These same individuals believe that labour exploitation is the largest form of international trafficking taking place in Canada and have begun the process of ensuring that those assigned duties at ports of entry are aware of the indicators for this form of international human trafficking.⁹¹

In 2006, in compliance with the protection provisions for trafficking victims identified in the UN Trafficking Protocol (Article 6) and influenced by the lobbying of various NGOs, CIC moved forward with the creation of the Temporary Resident Permit (TRP) which permits recognized victims of international trafficking the opportunity to remain legally in Canada for up to 180 days with the potential that the TRP can be renewed again an unlimited number of times.⁹² The TRP provides victims the opportunity to escape their captors with a period of reflection during which they can decide what their next steps will be; an opportunity to obtain counselling and medical assistance to recover from the trauma, both physical and mental; the opportunity to assist law enforcement if they wish to do so voluntarily; and to assist in obtaining

⁹¹ I have not referenced the specific interviews from which I have summarized their views as I assured the participants confidentiality. I believe indicating which specific interview contributed to the summary might compromise the identity of the person(s) participating.

⁹² *Immigration and Refugee Protection Act*, SC 2001, c.27, s 24 (1); and Citizenship and Immigration. “Instrument of Designation and Delegation” (2011) *Immigration and Refugee Protection Act and Regulation* at 14 - 19, online: CIC <<http://www.cic.gc.ca/english/resources/manuals/il/il3-eng.pdf>>.

employment while deciding their future.⁹³ According to Paul Desautais of CIC, during his testimony before the Status of Women Parliamentary Committee, December 8th, 2009, regarding the Canadian government efforts to address the issue of international trafficking in relation to the then upcoming 2010 Vancouver Winter Olympics, 18 international trafficking victims had received a TRP from CIC between May of 2006, when they were first offered, and December of 2008. He asserted that his department had a strong commitment to protecting victims regardless of the reason for which they may have been trafficked. But as noted earlier, most of the discussion of international trafficking during this particular Committee Meeting pertained to sex trafficking and to the efforts the government was undertaking to prevent this form of trafficking.⁹⁴ Interview 2028 expressed the belief that the majority of the recipients of the 18 TRP's referenced by Desautais were in fact women or girls trafficked for either the sex trade or women who legitimately migrated to Canada to work as care givers or nannies and their labour was subsequently exploited by their employers.⁹⁵

The juridical responses to the issue of international trafficking have taken many forms beyond the examples that have been provided thus far with regards to the RCMP, the IWG and CIC. As noted earlier in Chapter 4, the Department of the Status of Women Canada (SWC), a participant in the IWG, held a number of Parliamentary Committee meetings for the expressed

⁹³ Citizenship and Immigration Canada. "Protection and Assistance for Victims of Human Trafficking" (2009) online: <<http://www.cic.gc.ca/english/information/applications/trp.asp>>. NGOs, nationally and internationally frequently identified the need for a recovery period for victims following the creation of the UN Trafficking Protocol. The following Canadian study is an example that confirms this type of request from Canadian NGOs: Jacqueline Oxman-Martinez, Jill Hanley and Fanny Gomez, "Canadian Policy on Human Trafficking: A Four Year Analysis" (2005) 43:4 International Migration 7 at 15 - 16 and 21 - 23.

⁹⁴ Standing Committee on the Status of Women, 40th Parliament, 2nd Session, "Committee Meeting #46" (December 8th, 2009) testimony of Paul Desautais, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4306833&Language=E&Mode=1&Parl=40&Ses=2>>.

⁹⁵ Interview #2028.

purpose of examining the issue of human trafficking in Canada⁹⁶. These meetings included testimony and submissions from interested persons and organizations from within government, academia, and NGOs. The Committee efforts have led to the compilation of a report that was subsequently submitted to, and accepted by, the House of Commons in which the SWC sought policy and legislative changes that would further the prevention of human trafficking in Canada and enhance the protection of trafficking victims, all from the perspective that women and girls trafficked for the sex trade were the majority of international trafficking victims⁹⁷

Another example relates to the efforts by various departments within the Canadian government such as the Department of Foreign Affairs and International Trade (DFAIT), CBSA and the RCMP to work in partnership with US agencies (Immigration and Customs Enforcement, FBI and the Department of Homeland Security) to collaboratively improve the coordination of anti-trafficking enforcement activities between Canada and the US across their common border. In a progress report of combined anti-trafficking efforts tabled at the 2006 Cross Border Crime Forum, the Canadian and US government departments highlighted a number of steps that have been undertaken to improve cross border anti-trafficking enforcement.⁹⁸ But, it is important to note that these collective actions and anti-trafficking strategies identified were grounded by the understanding that sex trafficking into the US and into Canada is the most common form of international trafficking. “In Canada, intelligence indicates that the majority of trafficking

⁹⁶ SWC has held 16 committee meetings during which testimony was provided by juridical and non-juridical actors on the issue of human trafficking, international and domestic, beginning with the 39th Parliament, 1st Session, April 3rd, 2006 and continuing until the 40th Parliament, 2nd Session, December 2009.

⁹⁷ Standing Committee on the Status of Women, *supra* note 42.

As previously noted earlier in this Chapter, the SWC Committee was originally mandated to examine the broad issue of international and domestic trafficking. However, as a result of testimony which indicated that 92 percent of the victims of trafficking were women and girls for prostitution, the Committee’s report to the government was limited to focusing on the issue of sex trafficking.

⁹⁸ Governments of the United States and Canada. “Bi-National Assessment of Trafficking in Persons”, (2006) presented at the 2006 Cross Border Crime Forum, online: <http://www.publicsafety.gc.ca/prg/le/_fl/1666i-en.pdf>.

victims are forced to work in the sex trade. Investigations conducted by Canadian law enforcement support these findings; the majority of TIP cases encountered by Canadian law enforcement involve women and children who are trafficked for the purpose of sexual exploitation.”⁹⁹ And, as a result of this perception, the joint strategies recommended by the US and Canada contained in the report to address international trafficking from a cross border perspective such as the promotion of cooperative anti-trafficking enforcement with their partners from within the G-8, the United Nations, the Organization for Security and Cooperation in Europe (OSCE) and the Organization from American States (OAS), have been mainly anchored by the underlying socially constructed perception of international human trafficking as mainly sex trafficking as advanced by the international anti-trafficking social field.¹⁰⁰

The final example of a juridical response that I wish to raise is captured in an annual report of the Criminal Intelligence Services Canada (CISC). This consortium of 380 Canadian law enforcement agencies (federal, provincial and municipal), juridical actors from across the country, work together sharing information, intelligence and resources in their collective efforts to diminish the activities of organized crime in Canada, including the trafficking of vulnerable persons orchestrated by transnational and national organized crime groups.¹⁰¹ These annual reports are designed to provide a summary of the collective view of the associated agencies with respect to organized crime activity within the country, to reveal the threat that organized crime poses to Canadians, and to outline the strategies that have been undertaken by the law enforcement community to combat organized crime. The report is intended to promote awareness among the public of the problem that organized crime creates in the hopes of

⁹⁹ Ibid at 10.

¹⁰⁰ Ibid at 11 - 18.

¹⁰¹ Criminal Intelligence Services Canada, “2007 Annual Report on Organized Crime in Canada” (2007) at 8, online: <http://www.cisc.gc.ca/annual_reports/annual_report_2007/document/annual_report_2007_e.pdf>.

engaging community support for law enforcement action against organized crime.¹⁰² According to the 2007 CISC annual report, the 380 law enforcement agencies that comprise the CISC membership have designed and implemented anti-trafficking strategies based on the following insight: “In Canada, trafficking in persons is known to exist in the form of sexual exploitation and domestic servitude. Several crime groups are also involved in domestic trafficking in persons: recruiting young women, transporting them throughout Canada and in some instances to the U.S., and exploiting them in the sex trade”.¹⁰³ As a consequence, and as will be discussed in greater detail in the following section, I argue that the law enforcement component of the juridical field, in response to this understanding of international trafficking, has targeted prostitution and the associated activities that are believed to involve organized crime.

The juridical responses confirm that the juridical field designed many of its anti-trafficking strategies premised upon a particular understanding of international trafficking – women trafficked for the sex trade. These examples support my argument that the juridical field, influenced by the international anti-trafficking social field accepted the anti-trafficking movement’s perception of international trafficking - sex trafficking - and concentrated their efforts on investigations related to the sex trade. Most documented juridical anti-trafficking efforts have effectively ignored any other form of international human trafficking. Numerous reports confirm a juridical response that represents a targeted approach against prostitution with the underlying belief that sex trafficking is the most substantial and prolific form of international trafficking in Canada when there has been no credible research conducted to date that would

¹⁰² Ibid at 11.

¹⁰³ Ibid at 28.

support this position.¹⁰⁴ This is a vital piece of the puzzle for understanding the absence of prosecutions for international trafficking in Canada.

5.4 Why So Few Prosecutions?

Nine years have passed since the enactment of IRPA and the included offence of international human trafficking in Canada. The number of human trafficking investigations that have taken place since the summer of 2002, conducted by the various agencies within the juridical field, is obscure. According to the RCMP's most recent human trafficking assessment, the scope and nature of human trafficking in Canada is currently unknown.¹⁰⁵ And as noted in Chapter 2, Lucy Ogrodnik from the Canadian Centre of Justice Statistics, in her 2010 report, concluded that there are many reasons for the incompleteness of the statistical data that has been compiled by the Canadian government in relation to human trafficking, including the lack of a mutually agreed upon criteria for defining a victim of human trafficking.¹⁰⁶ But the problem of which Ogrodnik spoke should not rest simply upon the perception that there may be a lack of willingness between government agencies to agree to a standard statistical methodology for the capturing and classifying of human trafficking information. I would suggest that the inability for cooperation between agencies has been much more of an issue of affordability rather than unwillingness. In 2004, I met with representatives from other federal departments tasked with combating trafficking for the expressed purpose of ensuring that we were capturing human trafficking information in the same manner. It quickly became apparent that many departments,

¹⁰⁴ This conclusion is a result of the analysis of the various reports referenced in this chapter, including the 2 RCMP intelligence assessments, the US TIP reports from 2000 to 2011, and other reports produced internally within the government or at the request of the government in relation to international human trafficking.

¹⁰⁵ RCMP (2010), *supra* note 77 at 8.

¹⁰⁶ Lucie Ogrodnik, Lucie, "Towards the Development of a National Data Collection Framework To Measure Trafficking in Persons" (2010) online: Statistics Canada, Canadian Centre for Justice Statistics <<http://www.statcan.gc.ca/pub/85-561-m/85-561-m2010021-eng.pdf>>.

although in agreement for the need to implement compatible and accurate data collection methodologies which were recognized by all as essential in the formulation of effective human trafficking policies, were at different points in their evolution of technology with regards to data management. Thus, for all government agencies at the federal level to capture trafficking information in a compatible fashion would necessitate not only an agreement on the criteria and methodology to be employed to develop accurate trafficking statistics but would require an infusion of millions in funding in order to revitalize some of the aging technology currently inhibiting the data collection of trafficking information. To date, it is my understanding through personal interaction with current managers in various government departments that this required funding has yet to materialize and as a result, statistical information regarding human trafficking in Canada is and will continue to be limited for the foreseeable future.

However, it is my intention to present an analysis of the trafficking data that is available from the government in order to situate the examination of the explanations that have been offered for so few international trafficking prosecutions. I begin with examining the statistical information contained in the 2010 RCMP study that identifies the number of international human trafficking investigations that were undertaken over a 5 year period as a result of law enforcement anti-trafficking efforts. The RCMP study examined anti-trafficking investigative files from 2005 through 2009, inclusive. Over 700 investigations were examined that had been opened by various law enforcement agencies across Canada during this period of time. Many of these investigations were not originally classified as trafficking investigations but were chosen for the RCMP study because the investigations might contain some element of exploitation, especially with regards to the sex trade, and as a result, had the potential of involving human

trafficking.¹⁰⁷ Although the substance of the report indicates that the majority of these investigations were focused upon the sex trade, the report itself does not provide any breakdown of the specific percentages. However, the key findings documented in the report indicate that most of the investigative analysis involved investigations focused on the sex trade.¹⁰⁸ From this starting point, the RCMP analysts then identified 275 investigations undertaken by Canadian law enforcement from among the over 700 files considered that appear to have had some element of human trafficking even if the file was not originally classified as a human trafficking investigation. The report indicated that 33 of the remaining 275 potential trafficking cases were considered to be domestic trafficking investigations, leaving a balance of 242 potential international trafficking investigations undertaken between 2005 and 2009. The report does not disclose how many of the 242 investigations were later classified as ‘unfounded’.¹⁰⁹ But, based on the foregoing, it would appear that on average approximately 48.4 international human trafficking investigations were conducted in Canada by Canadian law enforcement for each year of the five year period with the majority focused on international trafficking for sexual exploitation.

In addition to the data from the RCMP study, Access To Information Privacy (ATIP) requests were made to the RCMP, CIC, CBSA, IRB and DOJ in June of 2010 in furtherance of gathering human trafficking statistical information for this study covering the period from January 1st, 2002 to and including May 31st 2010. Only the RCMP was able to provide information directly related to the number of anti-trafficking investigations that have taken place

¹⁰⁷ RCMP (2010), *supra* note 77 at 5.

¹⁰⁸ *Ibid* at 1-2 and 31.

¹⁰⁹ *Ibid* at 5, 20 - 23.

Investigations classified as ‘unfounded’ are those in which the allegation (eg: human trafficking) cannot be substantiated for a number of reasons.

in Canada. As noted in correspondence received from CBSA regarding the ATIP request for statistical information, the agency indicated that it does not capture international trafficking statistical information because all potential victims of trafficking are referred by CBSA to the ‘lead police agency’, the RCMP.¹¹⁰ According to the material provided by RCMP, the RCMP were either directly or indirectly involved in the investigation of 267 human trafficking cases¹¹¹ during the 8 ½ year period covered in the ATIP request, with ‘indirect involvement’ constituting investigations in which the RCMP may have assisted another law enforcement or government agency that was considered to be the primary investigative unit for the file. Of the 267 investigations, it would appear that 93 were classified as domestic human trafficking cases of which 73 of those files were deemed to be ‘unfounded’. This leaves a total of 174 potential international human trafficking investigations undertaken by the RCMP but there is no indication in the statistical material provided as to how many of these files were also deemed to be ‘unfounded’.

Table 5.1 – ATIP and RCMP Human Trafficking Statistics

	2010 RCMP Study 2005 - 2009	2010 RCMP ATIP Request Jan 2002 – May 2010
International Trafficking	242	174
Domestic Trafficking	33	93
Cases ‘unfounded’	unknown	73 domestic trafficking cases
Total number of trafficking investigations	275	267
Annual Average of international trafficking cases	48.4	20.4

¹¹⁰ CBSA letter dated July 15th, 2010, re: ATIP request, File Number A-2010-00861.

¹¹¹ These are files that have been ‘scored’ or ‘categorized’ specifically as human trafficking investigations using a standard data records management system that is compatible to Statistics Canada reporting requirements.

As summarized in Table 5.1, the ATIP material indicates that the RCMP had been involved on average in 20.4 international trafficking investigations per year either as the lead agency or as having assisted another law enforcement or government department.¹¹² This result may initially appear to be in conflict with the average determined from the 2010 RCMP report, 48.4 per year, but it should be noted that the files referenced in the ATIP request were only investigations involving the RCMP while the analysis for the 2010 study included files conducted by a variety of law enforcement agencies, many of which concerned the sex trade in which an element of human trafficking was thought to be present and may or may not have involved the RCMP. In addition, the ATIP information provided by the RCMP indicates that the RCMP was involved in 32 trafficking investigations between 2002 through 2004. If confined to the same 5 year period as the intelligence report, 2005 through 2009, the RCMP increased its annual average to 28.4 international trafficking investigations per year.

Although there is little statistical information available about international trafficking in Canada from other government departments, CIC did capture information with respect to the number of Temporary Resident Permits that are issued to foreign nationals who are believed to be victims of international trafficking. As previously noted, Paul Desautels of CIC, in his testimony before the Status of Women Parliamentary Committee of December 2009, indicated that 18 persons had been the recipient of a TRP since creation of the policy in 2006. And, as a result of his testimony and information obtained during research interviews, most of these TRPs were understood to have been issued to women involved in either the sex trade or situations of

¹¹² Statistical information obtained as a result of an ATIP request to the RCMP in June of 2010.

domestic servitude, the percentage of each not disclosed.¹¹³ A more recent report prepared by Nicolle Barrett of the International Centre for Criminal Law Reform and Criminal Justice Policy for the Federal, Provincial, and Territorial Forum of Status of Senior Women Officials in May 2010, indicated that a total of 43 foreign nationals had received a TRP between 2006 and the end of December 2009.¹¹⁴ This information was confirmed as a result of the ATIP request to CIC. According to CIC's information, 74 potential victims of international trafficking actually applied for a TRP during the period of May 2006 until the end of December 2009. Only 43 of the applicants received a TRP with the 31 other applications either being cancelled because the potential victim had chosen another immigration process (18), or their application as a victim was rejected (13). Of the 43 who did receive a TRP, 31 were female and 12 were male but there is no information as to age of the victims (minors versus adults). However, it is interesting to note that only 8 of the 43 approved applications dealt with victimization as a result of sexual exploitation. The remainder dealt with victims who are believed to have suffered some form of labour exploitation.¹¹⁵ CIC did not provide a breakdown of the types of labour exploitation that resulted in approved TRPs but given the testimony of Desautais from the CIC at the SWC Committee meetings, in conjunction with the results of research interviews, it is presumed that a number of the remaining 23 women who did receive a TRP would likely have been the victim of labour exploitation through the government sponsored 'care-giver' program. The issuance of 35 of the 43 TRPs for labour exploitation may be indicative of the comments provided during interviews 2025 and 2028 in which the respondents suggested that at the

¹¹³ See *supra* notes 94 and 95.

¹¹⁴ Nicolle Barrett, "The Federal/Provincial/Territorial Forum of Status of Senior Women Officials" (2010) at 6, online: International Centre for Criminal Law Reform and Criminal Justice Policy <<http://www.icclr.law.ubc.ca/files/2010/An%20Exploration%20of%20Promising%20Practices%20in%20Response%20to%20Human%20Trafficking%20in%20Canada.pdf>>.

¹¹⁵ Statistical information the result of an ATIP request to CIC in June 2010.

operational/investigative level, labour exploitation is now being perceived as the greater form of international trafficking taking place in Canada.¹¹⁶

There are two important issues that are reflected within the limited statistical information that I have presented. First, the statistics, when taken into consideration with the RCMP 2003 and 2010 human trafficking intelligence assessments, the results of the research interviews documented in this thesis, the testimony of juridical actors before the SWC Parliamentary Committee on human trafficking that has been referenced in this dissertation, and my own recollections as a juridical actor regarding the focus of human trafficking enforcement in Canada, confirm that the juridical field concentrated its anti-trafficking enforcement efforts on international trafficking investigations that involved the sex trade. Secondly, after several hundred trafficking investigations during the study period between January 1st, 2002 and May 31st 2010, only one resulted in an international trafficking prosecution.

There have been many explanations that have been published to account for this lack of trafficking prosecutions in Canada. Framed by the belief that international trafficking for the sex trade is the largest form of trafficking taking place within Canada, many of the reasons that have been offered for the government's failure to prosecute traffickers for international trafficking can be placed into three basic categories: explanations that are based on the nature of the crime; explanations that relate to issues directly pertaining to the trafficking victim from which generalizations are drawn; and explanations that relate directly to the government's commitment to effectively address the crime. I have chosen examples for each category that I believe have been frequently cited in the public domain. Their selection is derived from the trafficking literature, various media narratives, government reports, and the research interviews. It is not

¹¹⁶ Interview #2025 and 2028.

intended to be an exhaustive list but rather representative of the list of common explanations that have been provided by both fields as to why Canada has not had more international trafficking prosecutions.

5.4.1 The Nature of the Crime

I begin with an explanation that many agencies, within and outside of the government, have often referenced with respect to the difficulty of investigating international trafficking cases. They claim that trafficking is a ‘hidden crime’, implying that in some undisclosed manner or fashion, the clandestine nature of international trafficking inhibits investigation and prosecutions.¹¹⁷ Some have referred to trafficking being hidden from the perspective that the public is generally unaware that this crime is happening around them.¹¹⁸ This supports the argument that trafficking is hard to detect due to a lack of public awareness who presumably would, if aware, report the crime to the appropriate authorities. The aspect of ‘hidden crime’, crime going unreported by the public, and as a result not investigated, has been the subject of study by numerous scholars. For example, Wesley Skogan, professor of Political Science at Northwestern University, suggested that the majority of unreported crime, hidden crime, consists mainly of minor property offences in which the victim does not foresee any benefit, financial or otherwise in reporting the crime to authorities.¹¹⁹ He concluded from his research that victim culpability, victim attitudes towards the police, and public awareness had little impact on the decision as to whether or not to report a crime.¹²⁰ Although there are serious unreported crimes

¹¹⁷ Oxman-Martinez, Lacroix, and Hanley, *supra* note 15; and Research interviews #2022 and 2023.

¹¹⁸ Interviews #2022 and 2023.

¹¹⁹ Wesley G. Skogan (1977). “Dimensions of the Dark Figure of Unreported Crime”, in *Crime and Delinquency*, Vol. 23, p. 41 - 50; Wesley G. Skogan, “Reporting Crimes to the Police: The Status of World Research” (1984) 21 *Journal of Research in Crime and Delinquency* 113.

¹²⁰ *Ibid.*

such as elder abuse, date rape, and sexual abuse in the home which raises a variety of complex social issues,¹²¹ what should be drawn from Skogan's research is that the reporting of hidden crime will largely not be affected by the level of public awareness of the crime. In the case of human trafficking, it is difficult to accept that this crime is hidden from the public if you consider that trafficking relates to prostitution which is an activity that in many respects is dependent upon public participation and at the very least, is subject to public scrutiny. In addition, trafficking has been the subject of an extensive public awareness campaign for several years. This has taken many forms such as numerous Canadian government press releases, a national Crime Stopper anti-trafficking campaign in print and TV to facilitate the reporting of the crime, the IWG focused awareness campaign which includes anti-trafficking posters located in many government offices and airports across the country, awareness training sessions available to the public, as well as significant Canadian media attention to the issue of human trafficking in the form of trafficking news narratives and docudramas produced for TV reflecting the victimization of women forced into the sex trade.¹²² As of the date of this study, contrary to the perception that increased public awareness would result in the increased reporting of human trafficking, the statistics provided by the RCMP as a result of the ATIP request do not indicate that there has been any significant change in the number of anti-trafficking investigations conducting annually.

Others have suggested that this crime is very complex, hidden from the normal avenues of investigation used by law enforcement which requires an infusion of dedicated anti-trafficking

¹²¹ Examples:
Laura Russo, "Date Rape: A Hidden Crime" (2000) 157 *Crime and Criminal Justice*, Australian Institute of Criminology 1 at 1 - 6;
Amélie Bourret, *Elder Abuse: Promoting Informed Action*, (Quebec: Centre québécois de ressources en promotion de la sécurité et en prévention de la criminalité, 2006).

¹²² See *supra* notes 6, 13, 69, 70, and 74;
Department of Justice Canada, "People for Sale in Canada?" (2009) online: Department of Justice Canada <<http://www.justice.gc.ca/eng/fs-sv/tp/pub/post-aff/pa2.html>>.

enforcement resources in order to address the clandestine aspects of the crime.¹²³ From my experience, most crime is intended to be hidden - most violators have no wish to be uncovered, arrested and/or prosecuted. I agree that some crimes such as drug trafficking, national security investigations, and commercial crime investigations can be very complex that require considerable expertise and a significant investment of dedicated human resources in order to conduct successful investigations. And I can understand how one can argue that the complexities of the crime can keep it hidden from public scrutiny. But, as a result of my policing experience, especially with regards to human trafficking, I do not accept the argument that the crime is somehow hidden from the police. Yes, the complexity of the crime makes it more challenging to investigate but it should not inhibit law enforcement from uncovering the crime. If one accepts the premise that sex trafficking is the most prolific form of international trafficking in Canada, then by its very nature, this crime that involves prostitution should be subject to much more law enforcement scrutiny than most other crimes because it is dependent upon securing an ever increasing flow of customers from the public. The sex trade is publically available and its success is dependent on ensuring that the members of the public are aware that it is available and where to obtain the service. Thus, contrary to the explanation that it is somehow a hidden crime to the police due to the inordinate investigative complexities, I would

¹²³ Examples of both perspectives:
British Columbia Ministry of Public Safety and Solicitor General, “Human Trafficking in BC, Office To Combat Trafficking in Persons” (2011) online: BC Ministry of Justice <<http://www.pssg.gov.bc.ca/octip/>>;
HQPrinceGeorge.com – news, “Workshop Sheds Light on Hidden Crime” (April 14, 2011) online: HQ PrinceGeorge.com <<http://hqprincegeorge.com/news/news/Local/11/04/14/Workshop-Sheds-Light-on-Hidden-Crime>>;
Erika Klein, “Human Sex Trafficking: Canada’s Hidden Crime” (2010) online: The Mantle <<http://mantlethought.org/content/human-sexual-trafficking-canadas-hidden-crime>>;
ACT Alberta, “Edmonton Declares Human Trafficking Awareness Day” (2011), online: ACT Alberta <<http://www.actalberta.org/news/reported-cases/>>;
Jacqueline Oxman-Martinez, Marie Lacroix and Jill Hanley, “Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector” (2005) at 2, online: Research and Statistics Division, Department of Justice Canada <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_3/toc-tdm.html>;
Interviews #2022, 2023, 2025 and 2030.

argue that if potential trafficking victims are involved in the sex trade then it would seem reasonable that law enforcement, trained to identify potential victims with their investigative capacity focused on the sex trade, would often encounter potential international trafficking victims without too much difficulty. Yet, after hundreds of potential international human trafficking investigations conducted by trained Canadian law enforcement that have largely been focused on the sex trade, this appears not to have happened.

Interview respondent 2030 was among several interviewed that provided the explanation that international trafficking was a hidden crime in order to account why there have been so few prosecutions. During the interview, I explored with the respondent their rationale for believing that human trafficking was a hidden crime. The respondent advised that they felt the crime was underreported by both the public and the police due to a lack of awareness or sensitivity to recognizing the presence of trafficking victims. The interview respondent indicated that they had used this explanation in training presentations that they have given to the government, public, and NGOs. However, upon exploring the issue further during the interview, the interviewee could see the validity in questioning this explanation and acknowledged that the crime of sex trafficking may not really be hidden because it frequently involves illicit prostitution in the form of bawdy houses which are often investigated by the police. But, the respondent maintained that it does require an investment of trained anti-trafficking investigators in order to surface trafficking victims that the police might encounter while conducting investigations involving the sex trade. In other words, if sex trade investigations are conducted by police that have not been

trained to identify potential victims, then it is unlikely they would recognize a trafficking victim within investigations dealing with the illicit sex trade.¹²⁴

Conversely, Inspector Usui of the Vancouver Police Department, during his testimony before the Status of Women Parliamentary Committee regarding human trafficking, indicated that finding brothels in which potential victims of international trafficking might be held is not problematic. In responding to a question about the number of human trafficking investigations being conducted by the Vancouver Police as a prelude to the preparations for the 2010 Olympics, Usui claimed that from June through December of 2009, the Vancouver police had conducted trafficking investigations involving five ‘bawdy houses’. From his perspective, the difficulty in conducting these types of international trafficking investigations was not an issue in relation to the crime’s clandestine or hidden nature. Rather, he felt that his department lacked the human resources necessary in order to effectively combat illicit sex trade activities in Vancouver beyond the issue of human trafficking. Usui stated that “... there are so many bawdy houses and massage parlours operating in the City of Vancouver that they’re too numerous to count....”¹²⁵ Usui’s viewpoint is consistent with that of Detective Sergeant Kim Scanlan and Detective Sergeant Michel Hamel of the Toronto Police Service, who during their earlier testimony before the same committee in October 2006 indicated that the Toronto Police have had no difficulty in identifying potential trafficking victims and were very active in targeting the sex trade in order to prevent and combat human trafficking. They indicated that Toronto Police Services often

¹²⁴

Interview #2030.

¹²⁵

Standing Committee on the Status of Women, 40th Parliament, 2nd Session, “Committee Meeting #46” (December 8th, 2009) testimony of Inspector Bob Usui, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4306833&Language=E&Mode=1&Parl=40&Ses=2>>.

partner with NGOs and sex trade workers in order to help identify trafficking victims and provide victim protection services.¹²⁶

The next explanation examined in relation to the nature of the crime relates to the ‘newness’ of the trafficking legislation. In other words, the reason for so few international trafficking prosecutions is because the police and the prosecutors are unfamiliar with the new legislation (IRPA – 2002/CCC amendments - 2005) such that criminal charges are often pursued in relation to sex trade offences within the Criminal Code (sexual assault, common bawdy house, assault causing bodily harm) with which they, the police and prosecutors, are presumably more familiar and not with regards to human trafficking offences having yet to developing an appreciation and understanding of human trafficking and the evidentiary requirements for satisfying a successful prosecution. During interview 2021, the respondent stated that “... it takes time ... time for the police and prosecutors to become aware of the offence and then become aware of how to proceed.”¹²⁷ Several other interview respondents echoed this same sentiment and identified the pressing need to educate prosecutors and law enforcement personnel in order to ensure the development of a common understanding and investigative process for human trafficking such that it would lead to trafficking prosecutions.¹²⁸ In her report prepared for the Federal/Provincial/Territorial Forum of Status of Senior Women Officials held in Winnipeg in May 2010, Nicolle Barrett noted the same explanation during her study interviews with crown prosecutors.¹²⁹

¹²⁶ Standing Committee on the Status of Women, 39th Parliament, 1st Session, “Committee Meeting #20” (October 31, 2006) testimony of Det. Sgt. Kim Scanlan and Det. Sgt. Michel Hamel, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2458465&Language=E&Mode=1&Parl=39&Ses=1>>.

¹²⁷ Interview #2021.

¹²⁸ Examples: Interviews #2022, 2023, 2026, and 2028.

¹²⁹ Barrett, *supra* note 114 at 10/11.

It is important to note that in either explanation offered, hidden crime or newness of legislation, there has been no research conducted to date that validates either claim. As I have argued earlier, if international trafficking constitutes women and prostitution then it should not be considered a 'hidden' crime. In keeping with Mariana Valverde's apt assessment of the sex trade at the beginning of the 20th century, I contend that prostitution today, as it has been in the past, is a sexual activity that often takes place in public places.¹³⁰ Thus, by its very nature, prostitution, the purported destination for international trafficking victims in Canada, has been subjected to ongoing law enforcement scrutiny by trained investigators and as Usui and others have indicated, uncovering illegal prostitution operations poses no difficulty.

With regards to the explanation premised on the newness of the legislation, it has been nine years since the offence of international trafficking was first created in Canada. As noted by Irwin Cotler, prosecuting international traffickers has been a priority of the Canadian government.¹³¹ On that basis alone, it would seem logical that both the police and prosecutors would familiarize themselves with the appropriate legislation. There were and are approximately 200 federal investigators tasked with the responsibility of enforcing Section 118 of IRPA. There have been hundreds of potential trafficking related investigations, and there has been an aggressive trafficking awareness training campaign for the past 6 years conducted by the Federal IWG and the RCMP to educate law enforcement, prosecutors and the public. Yet, as recently as 2010, law enforcement and prosecutors continue to claim that confusion as a result of the newness of the legislation can inhibit the ability to pursue international trafficking

¹³⁰ Mariana Valverde, *Age of Light, Soap and Water: Moral Reform in English Canada 1885-1925* (Toronto: McClelland & Stewart Inc., 1991) at 77 - 79.

¹³¹ See *supra* notes 88 and 89.

prosecutions.¹³² I find this difficult to accept. Comparatively, the police and prosecutors do not seem to have any problem when laying charges and securing convictions with respect to domestic human trafficking.¹³³ The amendments for the Criminal Code for that offence took place in 2005 - three years after international trafficking became an offence in Canada. Given that the definition of trafficking for both offences (IRPA and CCC) is relatively the same and most of the elements that constitute the offence are the same, why then has international trafficking prosecutions been inhibited by the purported newness of the legislation while the more recent related domestic trafficking legislation has resulted in 5 convictions and 22 prosecutions before the court as of November 15th, 2009?¹³⁴ In my opinion, these two explanations are simply a part of the international anti-trafficking rhetoric that exists to account for so few prosecutions.

5.4.2 The Issues of the Trafficking Victim

Many of those interviewed for this study identified a number of issues in relation to trafficking victims that together, the respondents believe can only be dealt with through an effective 'victim management' process. In other words, the undertaking of an international trafficking prosecution will not take place if the victim and their respective needs are not managed and adequately addressed by government authorities. The most common issues raised during the interviews were: victim fear of retaliation by the trafficker; fear of deportation by Canadian authorities; cultural mistrust of authorities; victim suffering trauma (physical and

¹³² Barrett, *supra* note 114 at 10/11.

¹³³ *R. v. Lazore*, [2008] O.J. No. 4545, 2008 ONCJ 578 (QL) is the only reported domestic case of human trafficking with a confirmed conviction. There are two other separate convictions in Ontario as of February 2010 but both are unreported. They are currently documented within news releases on the Internet. All three pertained to prostitution of minor females.

¹³⁴ RCMP (2010), *supra* note 77 at 22. The 2010 RCMP Human Trafficking intelligence assessment advises that there are 22 cases of domestic trafficking before the court as of November 2009.

¹³⁴ *Ibid* – RCMP (2010) at 22/23.

mental) as a result of being trafficked; language barrier; victim unaware that they are a victim; and victim shame in relation to their participation in the trafficking activity (prostitution).¹³⁵ All of these issues are important considerations and they need to be considered as potential or partial explanations for so few international trafficking prosecutions.

As of February 2010, one interview respondent indicated that fear of reprisals have not appreciably affected pursuing trafficking prosecutions. The respondent indicated that there has been only a couple of documented cases of attempted intimidation of a victim by the trafficker in which the victim alleged that the trafficker had tried to deter her from cooperating with the police by threatening to harm either the victim or her family in her country of origin. In one case, investigators were unable to validate the claim of intimidation, and according to the police, no action was ever taken by the trafficker against the victim's family.¹³⁶ In the other case, it involved the victims of the only prosecution of an international trafficker which is covered in detail in Chapter 6. The two victims claimed that the trafficker, Michael Ng, had threatened their families in China.¹³⁷ However, this did not deter either victim from returning from China to testify against their alleged trafficker. Threats against potential witnesses in complex international cases are not unknown and the police have several avenues available to pursue in order to ensure the victim's safety. It has been my experience that although some victims of a serious crime may refuse to testify due to direct or indirect threats of retaliation, this will not stop everyone from testifying. The victims have been removed from the trafficker's control and are no longer in danger of imminent violence against them from the trafficker. In the two cases noted, the victims were not deterred from testifying in a prosecution. I am of the view that the

¹³⁵ Interviews #2021, 2022, 2023, 2026, 2028, 2029, 2030, and 2031.

¹³⁶ Interview #2028.

¹³⁷ *R. v. Ng* [2007] B.C.J. No. 1388, 2007 BCPC 2004 (QL).

fear of reprisal, although a legitimate concern, does not appear to have played a significant role in inhibiting international trafficking prosecutions in Canada as some have alleged.

Shortly after the 2000 UN Convention was ratified many NGOs began clamouring for a period of ‘reflection’ that would be provided to international trafficking victims by the host country in order that the victim would no longer fear immediate deportation, that they could distance themselves both physically and psychologically from their trafficker, receive appropriate medical and psychological support, and make an informed decision with regards to cooperating with law enforcement by ensuring the victim was provided free legal counsel and information with regards to their respective rights.¹³⁸ In Canada, the government was initially slow to respond to this issue. However, by 2006, CIC formally introduced the Temporary Resident Permit (TRP) which provides potential trafficking victims with the requested period of ‘reflection’ (180 days) which many NGOs believe is necessary for the wellbeing of the victim. During this period, international trafficking victims can obtain a number of support services including medical and legal as well as a temporary work permits. There is no obligation on the part of the victim to cooperate with the police in order to receive this permit.¹³⁹ However, as noted earlier, only 43 persons have been given a TRP of which only 8 approved TRPs were based on claims of sexual exploitation which tends to indicate that the scope of international sex trafficking into Canada is far less than what the anti-trafficking movement has been claiming.

¹³⁸ See e.g.:
Anti-Slavery International, “Support, assistance and protection of victims of trafficking, particularly in host countries” (2003) online: Anti-Slavery International
<<http://old.antislavery.org/archive/submission/submission2003-trafficking.htm>>;
OSCE Human Dimension Implementation Meeting, “NGOs Statement On Protection Measures for Trafficked Persons in Western Europe” (2003) online: Anti-Slavery International
<<http://www.antislavery.org/homepage/resources/WetraffickingNGOstatement2003.pdf>>;
Ryszard Piotrowicz, “European Initiatives in the Protection of Victims of Trafficking who Give Evidence Against Their Traffickers” (2002) 14 IJRL 263;
Jacqueline Oxman-Martinez, Jill Hanley and Fanny Gomez, “Canadian Policy on Human Trafficking: A Four Year Analysis” (2005) 43:4 International Migration 7 at 15 – 16 and 21 - 23.

¹³⁹ See *supra* note 93.

And of those that have been provided a TRP, none have resulted in the victim participating in a prosecution. Interestingly, the trafficking victims of Canada's only prosecution did not have the TRP process and associated services available to them. They were not protected from deportation back to their home country and yet, they still agreed to testify against their trafficker.

Interview respondent 2025 speculated that because there is no mandatory requirement for a potential victim to testify in order to receive a TRP, this practice undermines potential trafficking prosecutions. The respondent could offer no evidence to support this claim but believes that the lack of a mandatory incentive that would require a potential victim to cooperate with authorities, based on the interviewee's personal experience, may explain why so few prosecutions have been undertaken. In other words, this juridical actor believes that it has not been the failure to provide a TRP prior to 2006 that inhibited prosecutions but rather, the failure to incorporate a requirement to testify on the part of the victim as a condition of receiving a TRP that has diminished the possibility of prosecutions.¹⁴⁰ This sentiment was also echoed during interview 2028. The interview respondent stated that "the TRP is not a real incentive [for a victim] ... to testify ... zero incentive to cooperate with the police ... [the victim has] ... no allegiance to Canada ... why would they face their traffickers to be cross examined".¹⁴¹ As a result, according to interviewee 2028, the issue of 'victim management' becomes of even more paramount consideration in order to: (a) overcome the victim's reluctance to cooperate with authorities, whether the reluctance is culturally ingrained or results from a fear that they may be charged with a criminal offence; (b) to educate the victim such that they can appreciate that they have been victimized; (c) and to address the issue of shame due to the victim's involvement in

¹⁴⁰ Interview #2025.

¹⁴¹ Interview #2028.

the sex trade.¹⁴² Interview respondents 2022 and 2023 echoed 2028's position concerning victim management and indicated that many international trafficking victims have been 'brainwashed' into accepting their trafficking environment and conditions and thus, they are not aware that they are victims of international trafficking.¹⁴³ As a result, according to these interview respondents, law enforcement has had to expend significant human resources in order to gain the trust and cooperation of the victim and overcome their shame.

Examples of this 'victim management' process were discussed during the interviews and it was determined that in some cases, the police have spent a considerable amount of time interacting with the victim in her daily life such as assisting in grocery shopping, going for coffee and outings for lunch or dinner. This practice provoked a concern within me that the authorities might inadvertently also be 'brainwashing' the victim by psychologically exerting undue influence over the victim to gain the victim's cooperation because the victim is dependent upon the law enforcement agency for their continued safety. Interviewee 2028 agreed that this approach could be perceived as the police exercising inappropriate influence over the victim and acknowledged that this concern had been broached with them by other managers. However, 2028 countered that in their opinion no other investigative approach is currently available to law enforcement that would overcome a victim's reluctance to testify other than to expend considerable time with the victim in order to gain their trust. As 2028 noted, the success of a prosecution largely rests upon the willingness of the victim to testify and the credibility of that actual testimony.¹⁴⁴ As will become evident in Chapter 6, the trafficking victim's credibility in court is an extremely important issue for a successful prosecution.

¹⁴² Ibid.

¹⁴³ Interviews #2022 and 2023.

¹⁴⁴ Interview #2028.

The 2010 RCMP trafficking intelligence report also mirrored the interview claims that law enforcement has been frustrated in their efforts to combat trafficking by the lack of cooperation from potential sex trafficking victims. The report, like some of the research interviews, attributes this phenomenon to such issues as victim shame, cultural distrust of police, language barrier and that the victim does not recognize the benefits of cooperating with authorities.¹⁴⁵ And, the study highlighted a specific problem with victim credibility among Asian sex workers who refuse to acknowledge that they work in the sex trade and they often offer contradictory or fabricated stories.¹⁴⁶ As a result, the RCMP study indicated that “the process of converting a victim into a witness can be volatile and intense”.¹⁴⁷ However, to date, this intensive ‘victim management’ approach identified during the research interviews and noted in the RCMP study as necessary to promote trust and cooperation has yet to result in any other international trafficking prosecution other than the one failed attempt which did not rely on this process.

Although a language barrier and cultural mistrust of government authorities were often also cited during research interviews as inhibiting factors, many of the interview respondents did acknowledge that the provision of translation services is now a standard feature of international trafficking investigations. Further, they confirmed that government authorities have and are establishing partnerships with NGOs linked to immigrant communities in Canada that represent source countries for potential trafficking victims which has ensured the availability of persons who can help bridge any potential gulf of distrust created by a victim’s cultural perception of

¹⁴⁵ RMCP (2010), *supra* note 77 at 16 and 38.

¹⁴⁶ *Ibid* at 16.

¹⁴⁷ *Ibid* at 38.

government authorities.¹⁴⁸ Even the victims of the one prosecution who originated from China were able to overcome any language barrier, did not appear to distrust Canadian authorities, and although they had been sex trade workers, they were not ashamed to testify.¹⁴⁹

It is reasonable to expect that the foregoing victim issues identified can be factors that might contribute to a lack of international prosecutions, but it is important to stress that there is no research upon which anyone can comfortably rely that would substantiate that these issues have in fact played any significant role in producing so few international trafficking prosecutions. As noted in the literature review of Chapter 2, there is a considerable gap in human trafficking research. In the case of Canada, there has been no credible study conducted with respect to the contributing factors that inhibit trafficking prosecutions. Many of the claims that surfaced during the research interviews, and those documented in the RCMP study of 2010, have relied upon unverified anecdotal stories and a subjective interpretation of information from unknown sources. As of the date of this study, the intensive ‘victim management’ approach advocated by some juridical actors as necessary to garner the victim’s trust has yet to produce any new international trafficking prosecutions. Until such time as an in-depth study of this issue is conducted using appropriate research methodologies, it will continue to be simple speculation and conjecture on the part of those who raise these victim issues as plausible explanations for the lack of international human trafficking prosecutions.

5.4.3 Government Commitment

“Will they [the NGOs] say the police haven’t looked hard enough, haven’t devoted enough resources ... will the burden [to account for so few international trafficking prosecutions] shift to us [the government]?”¹⁵⁰

¹⁴⁸ Interviews #2022, 2023, 2025, 2026 and 2028.

¹⁴⁹ RCMP (2010), *supra* note 77; and *R v Ng [2007]*, *supra* note 137.

For this last section, I examine two explanations that have often been cited as key factors that many argue reflects a lethargic approach on the part of the Canadian government to aggressively pursue international trafficking investigations and prosecutions. The first is the claim that the government has failed to appropriately train law enforcement personnel such that they have a heightened awareness of the existence of the crime of human trafficking, the indicators that would assist in identifying potential trafficking victims, and the ability to conduct an investigation. The second explanation relates to the claim that the government has not adequately resourced law enforcement with sufficient personnel in order to effectively combat international trafficking.¹⁵¹ Like all of the other previous explanations that have been examined in this chapter, there has been no research conducted that would verify the legitimacy of either of these two claims.

In regards to human trafficking training, prior to 2005, I would agree that very little training was being provided to law enforcement. Within the RCMP, I am aware that steps had been taken shortly after the creation of the international trafficking offence in IRPA in 2002 to incorporate trafficking awareness training into the then existing RCMP national immigration course designed for those officers within the RCMP who were newly assigned to immigration

¹⁵⁰ Interview #2024.

¹⁵¹ Examples:

John Winterdyk and Kelly Sundberg, “Human Trafficking: Need for Reform in Canada” (2011) online: Crime & Justice International <<http://www.cjimazine.com/content/view/227/349/>>;

Tamara Cherry, “Human trafficking victims fall through gaps” (June 14th, 2010) *Toronto Sun*, online: <<http://www.torontosun.com/news/torontoandgta/2010/06/14/14387631.html>>;

Michael Wood, “Alberta Ripe for human traffickers” (August 20th, 2011), *Toronto Sun*, online: <<http://www.torontosun.com/2011/08/20/alberta-ripe-for-human-traffickers>>;

Tamara Cherry (2009). “Falling through the cracks” (October 25th, 2009), *Toronto Sun*, online: <<http://www.torontosun.com/news/torontoandgta/2009/10/25/11517661-sun.html>>;

Standing Committee on the Status of Women, 39th Parliament, 1st Session, “Committee Meeting #20” (October 31, 2006) testimony of Sgt. Matt Kelly, Det. Sgt. Kim Scanlan and Det. Sgt. Michel Hamel (representing the viewpoint of municipal police departments), online:

<<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2458465&Language=E&Mode=1&Parl=39&Ses=1>>;

Interviews #2022, 2023, 2025, 2026 and 2028 indicated the need for more training and/or resources in order to effectively combat trafficking and secure increased prosecutions.

enforcement duties. But, as previously noted, following the creation of the RCMP HTNCC in 2005, the development and delivery of human trafficking workshops and awareness training began to take place across the country. It is my understanding that NGOs that have provided protection to trafficking victims have been involved in some aspects of the training sessions that have been provided to law enforcement at the local level. To date over 22,000 law enforcement and other government personnel have received human trafficking training that ensures that law enforcement and prosecutors are conversant with the issues surrounding human trafficking and the necessary criteria in order to identify potential trafficking victims.¹⁵² This training was supplemented by the development of the ‘Human Trafficking – Reference Guide for Law Enforcement’ which has been widely distributed to policing agencies. This guide was the result of a collaborative undertaking in 2005 between the University of the Fraser Valley, the RCMP, the International Centre for Criminal Law Reform and Criminal Justice Policy, and the UN Office on Drugs and Crime.¹⁵³ The guide, in my opinion, is an informative document that articulates many of the human trafficking issues of which the police should be aware, especially during the course of any investigation that may have the potential for human trafficking. This includes providing the reader, the police, with trafficking victim indicators that would assist police personnel with identifying potential trafficking victims. There have also been numerous workshops and conferences hosted by various government departments and NGOs during the past nine years that have publically highlighted the issue of human trafficking in Canada and the indicators to apply in helping to identify potential trafficking victims. Most recently, the BC Provincial Office to Combat Trafficking in Persons (OCTIP) has published an in-depth on-line

¹⁵² Royal Canadian Mounted Police (2011), *supra* note 74.

¹⁵³ University College of the Fraser Valley, *Human Trafficking – Reference Guide for Law Enforcement*, (Abbotsford: University of the Fraser Valley Press, 2005) online: <http://www.icclr.law.ubc.ca/Publications/Reports/HT_Canadian_Law_Enforcement_Guide.pdf>.

trafficking awareness course that is available to all law enforcement and the public.¹⁵⁴ As a result I would argue, given the depth of training that has taken place across this country on the single issue of human trafficking, it is no longer reasonable to claim that the police are generally unaware of the offence or how to recognize a potential victim because the government has not made a commitment to train these resources.

The need for more law enforcement resources in order to effectively combat international trafficking has been a common refrain by the police, NGOs and other interested parties. To some, the lack of additional resources has been perceived as a lack of commitment by the government to really address the issue of human trafficking.¹⁵⁵ From my experience as a past manager within the RCMP, whenever new duties were assigned to existing resources, the common and logical practice would be to seek additional investigative capacity in order to maintain current enforcement strategies and to address the new responsibilities. In many cases, if funding for additional resources was not forthcoming, then the current duties and investigative priorities would be reviewed in order to incorporate the new duties into an updated enforcement strategy. In the case of human trafficking investigations, the new responsibilities that were assigned the RCMP in 2002 coincided with the RCMP immigration enforcement program review. And as a consequence, re-evaluating the enforcement program in terms of organized crime's orchestration of human smuggling and human trafficking did result in a shifting of existing resources within the program to meet the new objectives. And as noted earlier, the government did fund (2007) regional human trafficking coordinator positions which have

¹⁵⁴ OCTIP, BC Provincial Government, "Human Trafficking: Canada Is Not Immune" (2011) online: <<http://www.pssg.gov.bc.ca/octiptraining/index.html>>.

¹⁵⁵ See *supra* note 151.

ensured that human trafficking investigations are a priority of the RCMP immigration enforcement program.

The end result of the 2003 program review amounted to focusing approximately 200 immigration enforcement resources on investigating human trafficking and human smuggling operations believed to be predominantly orchestrated by organized crime. Yet, during the following 7 years, the RCMP did not conduct a single investigation that resulted in an international human trafficking prosecution. As of May 2010, the only two investigations that had resulted in international human trafficking charges being levelled by the RCMP have since been withdrawn – one because it was determined that the victim had made a false claim of being a trafficking victim and in the other case, the three alleged victims did not attend the trial.¹⁵⁶ The only international trafficking prosecution during the study period has been as a result of an investigation undertaken by the Vancouver Police Department.¹⁵⁷ Given the foregoing, it is unclear how an increase in the investigative capacity of law enforcement in relation to human trafficking investigations, as identified in a number of research interviews, would increase the likelihood of producing more charges when 200 dedicated resources did not produce one prosecution.

The RCMP maintains an information data bank known as Management Information System III (MIS III). From a broad perspective, the purpose of this system is to compile statistical information of federal enforcement units within the RCMP with respect to the number

¹⁵⁶ Sue Montgomery, “RCMP’s human trafficking case falls apart – Charges dropped. Family wants apology from police after accusations they enslaved servant” (December 7th, 2007) *Montreal Gazette* A7; Care2, “Human Trafficking Charges Withdrawn after Witnesses Don’t Show” (2011) online: <<http://www.care2.com/news/member/616982338/2724332>>; Please note that in Chapter 7 reference is made to two recent prosecutions for international trafficking (2011) initiated by the RCMP that were not a part of the study period. The prosecutions have yet to complete.

¹⁵⁷ *R v Ng* [2007], *supra* note 137.

of investigations being conducted regarding a particular type of federal crime; the person hours expended to conduct that type of investigation (including the hours expended by any personnel from the lead investigative unit as well as the hours of those person(s) who may assist the investigative unit, such as outside police departments and prosecutors); and the outcomes of the investigation – convictions and penalties. The information can be used by managers to determine budget requirements, personnel requirements, and enforcement strategies for the investigative unit.¹⁵⁸ The ATIP request to the RCMP in May of 2010 covering the eight and a half year period since the creation of human trafficking as an offence revealed that the RCMP has not ensured that this information is being captured in a consistent and complete manner within its own MIS III system. As a result, the RCMP do not know how much time of the approximately 200 persons directly involved in the immigration enforcement program has been expended in relation to international human trafficking investigations. Consequently, it would be difficult to claim with any certainty that a lack of resources has contributed to a lack of investigations and by default a lack of prosecutions. It should also be noted that based on the research interviews, no other government department has tracked the time spent by their respective personnel on international trafficking cases. Thus, other than providing subjective assessments based on anecdotal stories concerning the projected intensive labour requirements for the ‘victim management’ process, no federal government department can credibly establish the need for additional human resources or that the current level of anti-human trafficking resources they have available can be shown to have had a negative impact on prosecutions.

In the case of municipal police departments such as the Toronto Police Service (TPS) and the Vancouver Police Department (VPD), representatives from both departments during their

¹⁵⁸ Knowledge of the MIS III system is drawn from my career with the RCMP.

respective testimony before the Parliamentary Committee for the Status of Women echoed the claim that conducting human trafficking investigations is a labour intensive experience for which their departments have not received any additional resources or funding from the federal government.¹⁵⁹ According to the testimony of Sgt. Matt Kelly from the VPD in a committee meeting held in 2006, "... Canada must establish funding for police agencies to deal with these costly human trafficking files so that departmental budgetary concerns do not threaten effective investigations due to fiscal restraint."¹⁶⁰ However, from a somewhat contradictory viewpoint, Insp. Usui of the same department testified three years later in 2009 that the VPD had not seen any increase in human trafficking, especially as result of the then pending 2010 Olympics. He did indicate that the illicit sex trade was growing exponentially within Vancouver, and on occasion, was overwhelming the VPD vice unit's capacity to investigate sex related crimes but emphasized that the VPD intelligence unit had no information that would support the belief that human trafficking was increasing in Vancouver.¹⁶¹

It is unknown whether Insp. Usui's 2009 perception of international trafficking in Vancouver is accurate. But his viewpoint does contradict that of Sgt. Kelly, who in 2006 implied that without an immediate infusion of funding from the federal government into municipal police departments, human trafficking investigations would not take place because they are so labour intensive. Usui did not suggest that this was an issue and inferred that the VPD has been conducting international trafficking investigations in concert with their investigations regarding the illegal activities of the sex trade in Vancouver. From my perspective, given the statistical results regarding international trafficking prosecutions, no one

¹⁵⁹ Standing Committee on the Status of Women, 39th Parliament, 1st Session (2006), *supra* note 151 - testimony of Sgt. Matt Kelly, Det. Sgt. Kim Scanlon and Det. Sgt. Michelle Hamel.

¹⁶⁰ *Ibid* - testimony of Sgt. Matt Kelly.

¹⁶¹ See *supra* note 125.

has been able to demonstrate with any degree of certainty that the current level of police resources (national, provincial or municipal) assigned to human trafficking investigations is inadequate and as a consequence, has resulted in producing few international trafficking prosecutions.

5.5 Conclusion

To understand why there have been so few international prosecutions in Canada, this thesis began by examining the conceptualization of contemporary international trafficking that has dominated the contemporary trafficking literature and discourse – the vulnerable foreign woman and girl forced into prostitution. It explored the international anti-trafficking social movement that has promoted this understanding of international trafficking and investigated the victim formation that has underpinned this social construction. This chapter advances our understanding of why there have been so few international trafficking prosecutions by first examining examples of the power relationship struggles that have taken place between the juridical field and the international anti-trafficking social field. It determined that as a result of this type of interaction, the Canadian government embraced a conceptualization of international trafficking that has been predicated upon a specific form of trafficking victimization. Through a subsequent analysis of juridical responses to this construction of trafficking, the chapter illustrated that the Canadian government channelled much of its anti-trafficking enforcement efforts towards investigations that targeted the sex trade. And, as a result of reviewing the available government human trafficking statistics covering the period from January 1st 2002 to May 31st 2010, it has confirmed that several hundred international trafficking investigations, most in relation to the sex trade, have actually been conducted during this period but with only one resulting in a prosecution.

There have been many explanations that have been put forth by both the juridical and international anti-trafficking social fields to account for why Canada's anti-trafficking efforts have not achieved more success. Grouped into three categories - explanations based on the nature of the crime; explanations that relate to issues pertaining to the trafficking victim; and explanations that question the government's commitment to effectively addressing the crime - this chapter examined a number of the most frequent ones that have been offered. But, after careful consideration, these explanations individually and collectively do not adequately account for why there have been so few prosecutions if international sex trafficking is as widespread in this country as many have claimed. The government implemented an anti-trafficking strategy that focused on the sex trade. Several hundred international trafficking investigations were conducted in this regard. The enforcement activity spanned several years and was carried out for the most part by trained and dedicated anti-trafficking investigators. And yet, there has only been one investigation during the study period that has ever resulted in a prosecution. The most plausible reason for this outcome is that the international trafficking of women and girls for sexual exploitation into Canada is not as widespread as many have assumed. It is not the most dominant form of international trafficking taking place in this country.

As expressed by six key juridical actors interviewed for this study, labour exploitation is believed to be the greater form of international trafficking taking place in Canada.¹⁶² As one juridical actor summarized, the lack of international trafficking prosecutions in Canada is "... an accurate reflection of what the level of the problem [international sex trafficking] is in this country".¹⁶³ And of the NGOs that agreed to participate in this study,¹⁶⁴ interview respondent

¹⁶² Interviews #2021, 2024, 2025, 2026, 2028, and 2030.

¹⁶³ Interview #2024.

2031 indicated that based on the experience of their agency, one which provides dedicated trafficking victim services, foreign labour exploitation, especially in terms of agricultural workers, is by far the greater source of international human trafficking occurring in Canada. The respondent commented that the focus on international sex trafficking advocated by such individuals as Joy Smith and NGOs such as the Salvation Army have not been helpful in informing the understanding of international trafficking nor has it contributed towards the creation of effective anti-international human trafficking strategies by the government.¹⁶⁵

However, although the international trafficking of women for sexual exploitation into Canada does not exist to the degree that many have suggested, this explanation by itself does not provide a complete answer as to why there have been so few prosecutions because international sex trafficking does exist. I believe the remainder of the answer rests within the complex victim formation that has anchored the social construction of international trafficking. In other words, the idealistic victim construction that has had such a positive effect on motivating and unifying juridical actors into developing and implementing strategies to rescue the vulnerable woman from sexual exploitation may also have had a reciprocating negative impact on the government's ability to identify such victims from within the singular construction of international trafficking. As noted in Chapter 4, Aronowitz suggested that a narrowly constructed victim precludes others that exist beyond the boundaries of the particular victim formation from consideration as a trafficking victim. In this regard, the next chapter provides an important clue as to the impact that the victim construction that grounds the understanding of international trafficking has had on trafficking prosecutions in Canada.

¹⁶⁴ Fifteen NGOs were contacted but only 2 were interviewed. A third was interested but unfortunately not available, and a fourth advised that they could offer nothing specific with respect to trafficking prosecutions in Canada. Two refused to participate and the remaining nine did not respond to requests for interviews.

¹⁶⁵ Interview #2031.

6. A Case Study

R. v. Ng [2007] B.C.J. No. 1388, 2007 BCPC 2004 (QL).

6.1 Introduction

In 2004, Wai Chi (Michael) Ng became the first person ever charged in Canada for international human trafficking. Stemming from an investigation conducted by the Vancouver Police Department into Ng's operation of a local Vancouver massage parlour, Ng was charged with 22 criminal offences: 5 counts of human smuggling - Sections 117,126 IRPA; 2 counts of assault - Sections 266, 267(a) CCC; 3 counts of threatening - Section 264 (1) CCC; 8 counts related to prostitution: procuring, living off the avails of prostitution, and keeping a common bawdy house - Sections 210(1) and 212(1)(a),(g),(h), and (j) CCC; 2 counts of obstructing justice - Section 139 (2) CCC; and 2 counts of international human trafficking – Section 118(1) IRPA. At the conclusion of his trial, Ng was convicted of 2 counts of procurement, 1 count of keeping a common bawdy house, and 1 count of human smuggling (section 126 IRPA).¹ The trafficking charges, and their eventual dismissal, represent the only prosecution of international human trafficking that had taken place in Canada as of May 31st, 2010. The objective of this case study is to unite the main points of the earlier chapters and to illustrate how the formation of the trafficking victim, used to motivate the juridical field's acceptance of the social construction of international trafficking in Canada, has resulted in limiting who is considered a victim of international trafficking.

I begin with providing a brief background of the origin of the two international trafficking charges against Ng in order to situate the later analysis that takes place regarding the

¹ *R. v. Ng* [2007] B.C.J. No. 1388, 2007 BCPC 2004 (QL) at para 1 through 6, inclusive, and para 119 through 141, inclusive.

judicial decision. This will include identifying how Ng came to the attention of the police and the relationship between Ng and the two potential victims² that eventually led to the charges. I then summarize the Crown's case, the testimony of the two trafficking victims and the judicial decision only in regards to the two counts of international trafficking. Subsequently, I analyze the judicial reasoning, drawing upon themes contained in the earlier chapters. It is evident that the decision of Provincial Court Judge Malcolm MacLean largely pivoted on the credibility of the testimony of the two alleged trafficking victims framed by the social construction of the international trafficking victim that was presented to and accepted by the Court.

6.2 Ng's Narrative

Ng became a Canadian citizen after immigrating to Canada from China in 1980. Although the evidence produced in court for the trial is unclear as to when Michael Ng actually began operating a massage parlour in Vancouver, the documentary evidence submitted during the trial does confirm that he was doing so under the name of King City Massage Accupressure Therapy Ltd. from 2002 up until his arrest in 2004. On the evening of May 12th, 2004, as a result of a '911' call to the Vancouver Police, police officers attended at Ng's business located on Kingsway Ave. in Vancouver and were met outside of the business by Ms. W., who was in a heightened emotional state. As Ms. W. explained to the officers, she had been assaulted by Ng in the massage parlour and was suffering from a sore neck and throat. Ng was not at the scene at the time of the police arrival and the VPD officers could see no evidence of the assault on Ms. W.'s person. However, they did make further inquiries which eventually led them to interview Ms. T., who was still inside the massage parlour. She confirmed that both she and Ms. W. had

² The victim identities were protected by the Court from public disclosure under authority of Section 486.4 of the *Criminal Code of Canada* due to the charges involving the sexual exploitation of the victims. They are referred to as Ms. W. and Ms. T. in the judicial decision.

been physically assaulted by Ng. As a result, the VPD officers took the two victims into protective custody and went with them to Ng's residence to obtain their personal belongings. At some point during this process, the VPD officers decided that immigration authorities (CIC/CBSA) should be contacted because there was some indication that both victims might have illegally entered the country. Written statements were subsequently obtained from both Ms. W. and Ms. T. by the VPD officers and Canada Border Service Agency (CBSA) representatives, covering both the assault by Ng and their illegal presence in Canada.³

The information obtained from the two victims strongly indicated that Ng was involved in their trafficking to Canada. Ms. W. and Ms. T. alleged that he had facilitated their illegal entry into Canada and had forced the two women to work as prostitutes in his massage parlour. As a result of the cooperation and information received from Ms. W. and Ms. T., an intensive investigation was initiated by VPD into Ng's running of the massage parlour. It was led by VPD officers with the assistance of representatives from the RCMP, CBSA, and Citizenship and Immigration Canada (CIC). According to Sgt. Matt Kelly of the VPD, nine VPD officers (1 Sgt. and 8 Detective Constables) were fully occupied with the investigation for approximately six months after the initial emergency call that was made to the VPD. During that time, the police used a variety of investigative techniques including an undercover operation and the execution of search warrants at Ng's business and residence.⁴ Ms. W. revealed to the investigators that she and Ng had a romantic relationship in China and that Ng had convinced her to leave her husband and join him to live in Canada. The VPD investigators confirmed that Ms. W. had entered

³ *R. v. Ng* [2007], *supra* note 1 at para 8, 38 and 39;

R. v. Ng [2008] B.C.J. 2576, 2008 BCCA 535 (QL) at para 11.

⁴ Standing Committee on the Status of Women, 39th Parliament, 1st Session, "Committee Meeting #20" (October 31, 2006) testimony of Sgt. Matt Kelly, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2458465&Language=E&Mode=1&Parl=39&Ses=1>>;
R v Ng [2007], *supra* note 1 at para 6 and 35.

Canada illegally in July of 2002 using false documents provided by Ng. They also determined that Ms. T is the sister-in-law of Ms. W. and that she was induced to migrate to Canada by Ng and Ms. W in 2004, again using false immigration documents to gain entry. The lengthy investigation resulted in the laying of 22 criminal charges against Ng in 2005.⁵ At the time of the Ng investigation (2005), the TRP process discussed in Chapter 5 which provides potential trafficking victims with a safe haven and addresses the issue of the potential re-victimization of trafficking victims through their immediate deportation was not in existence.

Before the main trial, scheduled to commence on May 28th, 2006, Ng's counsel challenged the constitutionality of Section 118 (1) of the *Immigration and Refugee Protection Act* (IRPA) in relation to Counts 3 and 4 of the Ng indictment on February 23rd, 2006. Section 118 (1) reads: "No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threats of force or coercion."⁶ Michael Klein and Alexandra Booth argued that the inclusion of the words of 'fraud' and 'deception' in this section rendered the section so 'vague' and/or 'overly broad' that it constituted a violation of Ng's rights in terms of Section 7 of the *Canadian Charter of Rights and Freedoms* because the inclusion of the words do "... not provide sufficient guidance to the citizen to identify the conduct that is unlawful and further that it does not place sufficient limitation on the discretion of law enforcement."⁷ In other words, the defence team argued that because the section failed to provide greater specificity as to what type of conduct constituted fraud and deception in relation to the charge of human trafficking, the use of these terms within Section 118 (1) violated Ng's rights and denied him the ability to adequately prepare a proper defence. The terms of 'fraud'

⁵ *R v Ng* [2007], *supra* note 1 at para 1 - 41.

⁶ *Immigration and Refugee Protection Act*, SC 2001, c.27, s 118 (1).

⁷ *R. v. Ng* [2006] B.C.J. No. 774, 140 C.R.R. (2nd) 224 at para 16.

and ‘deception’ in defining the offence of human trafficking were critical to the trafficking charges against Ng. The Crown was not alleging that the trafficking of Ms. W. and Ms. T was the result of force or coercion but rather, the charges were premised on the belief that Ng had deceived the two victims into illegally entering Canada through promises of false employment.

To address the issue raised by Ng’s counsel, Provincial Court Judge Malcolm MacLean first reviewed the critical elements that distinguish human trafficking from human smuggling. He concluded that human smuggling involves a willing participant in the scheme to illegally enter Canada while in contrast human trafficking involves the use of force, fraud or deception, to compel a person to participate in the scheme to gain illegal entry into the country. Judge MacLean then reviewed the legislative objective of Section 118 (1) of IRPA in relation to the objectives of the 2000 UN Trafficking Protocol, finding that the objectives of Section 118 (1) were consistent with those of the Protocol. In addition, he pointed out that the wording of Section 118 (1) was similar to the wording used within the Trafficking Protocol to define trafficking, especially with regards to the terms fraud and deception. Judge MacLean then turned to Canadian case law with respect to ‘vagueness’ and ‘overbreadth’ of legislation, citing *R. v. Olan*, *Hudson and Harnett*, *R. v. Heywood* and *R. v. Clay*. He concluded from his review of these precedents that the use of the terms of fraud and deception were not disproportional to the objectives of Section 118 (1) of IRPA such that these terms would render the section vague or overly broad, thereby constituting a violation of Ng’s Charter Rights. As a result, he dismissed the Defence’s application.⁸

⁸ Ibid at para 8 - 26, inclusive.
See also the following cited in judgment:
R. v. Olan, Hudson and Harnett (1978), 41 C.C.C. (2d) 145;
R. v. Heywood [1994] 3 S.C.R. 761;
R. v. Clay [2003] 3 S.C.R. 735.

6.3 The Prosecution

On May 28th, 2006, the prosecution of Ng began. The trial resulted in several days of testimony interspaced over a period of almost one year. This included the testimony of a number of witnesses in addition to the testimony of the two victims and the submission of documentary evidence by the Crown in support of all the allegations against Ng, including the charges that Ng secured false immigration documents that assisted Ms. W. and Ms. T. to illegally enter Canada. Final arguments were heard on May 14th, 2007, with the judgment delivered on June 21st, 2007. In the following pages, I briefly summarize the Crown's case with respect to the human trafficking charges. This is then followed by a synopsis of the testimony of the two victims, presented from the Crown's perspective. The prosecutors relied almost exclusively upon the testimony of Ms. W. and Ms. T. to support their theory regarding Ng's commission of the alleged trafficking offences. As a result, it is only their testimony that is presented for analysis in this chapter. I draw the reader's attention to the importance of the testimony of these two victims because the success or failure of this prosecution for human trafficking, Count 3 and 4 of the indictment, largely pivoted upon the credibility of these two witnesses and the Court's reliance upon the trafficking victim indicia presented during the trial by the Crown. As will become apparent in the summary of the judicial decision that is provided, Judge MacLean dismissed the trafficking charges because he did not believe the evidence of the two women.

Summary of Crown's Case:

Count 3:⁹

The Crown alleged that Ng traveled to China in 2001 where he met Ms. W. and began an intimate affair. The prosecution claimed that Ng presented himself as a successful Canadian

⁹ Summary compiled from judicial decision - *R v Ng* [2007], *supra* note 1 at para 9, 10, 13, 16, 17, 18 and 36.

businessman to Ms. W. and argued that Ng convinced her to accompany him to Canada, using false papers to gain admission, under the pretext that she would reside with him and be employed in his restaurant as a waitress at a far greater salary than what she was then currently earning in China. The Crown argued that the representations of employment and living arrangements made to Ms. W. by Ng in China were materially false and misleading. They maintained that it was these false representations upon which Ms W. relied, believing them to be true, that resulted in her decision to accompany Ng and illegally enter Canada.

The Crown alleged that contrary to the promise of living with Ng and working in his restaurant, upon their arrival in Vancouver on July 3rd 2002, Ms. W was forced to stay in a closet in Ng's residence and to accept his order to work in his massage parlour as a prostitute because she believed that she was at his mercy and had no other viable alternative. The Crown posited that shortly after their arrival in Vancouver, Ng maintained a degree of physical, psychological and financial control over Ms. W. while she was in Canada consistent with the offence of human trafficking contained in Section 118 (1) of IRPA. The Crown claimed that Ms. W. worked under these horrendous conditions, sexually exploited, until the matter was brought to the attention of the VPD as a result of the assault complaint against Ng on May 12th, 2004.

Count 4:¹⁰

The Crown alleged that shortly after her arrival in Vancouver in 2002, Ms. W. began communicating by phone with her sister-in-law in China, Ms. T. During these conversations, Ms. W. invited Ms. T. to travel to Canada, claiming that she was working in Ng's restaurant and that Ms. T. could make significantly more money by also working in Ng's restaurant rather than working in China. Ms. W offered to facilitate Ms. T.'s migration to Canada by securing her a

¹⁰ Ibid at para 21, 22, 24, 26, 29, 32, 34 and 36.

false marriage and the appropriate travel documents. These offers of employment and illegal travel to Vancouver were echoed directly to Ms. T. by Ng during several subsequent phone conversations between the two parties. Eventually, Ms. T entered into a false marriage arrangement with Mr. C. in order to secure a visa and travel documents to Canada. She traveled to Canada accompanied by Ng and Ms. W., relying on the false travel documents obtained by Ng to enter Canada on March 7th, 2004. Shortly after her arrival in Vancouver, she began working as a prostitute in Ng's massage parlour. After working for approximately 10 days, Ms. T. wanted to stop working for Ng but believed she had no choice other than to continue. She claimed that she was in fear of Ng who controlled her immigration documents and who made demands on her for increased monetary payment from her work as a prostitute.

The Crown theorized that the representations by Ng to Ms. T. that induced her to travel to Vancouver were false and constituted a violation of Section 118 (1) of IRPA. In particular, the Crown posited that the representations made by Ng to Ms. T. that she would be employed in his Vancouver restaurant were materially false; that Ms. T. relied upon these fraudulent representations of employment as if they were true in regards to her decision to travel to Canada with Ng and Ms. W.; and that Ms. T.'s work as a prostitute in Ng's massage parlour due to her fear of Ng after her arrival in Vancouver was consistent with the dynamics of human trafficking.

Summary of Ms. W's Testimony:¹¹

Ms. W. claimed to have first met Ng in the fall of 2001 in China at a hotel. She encountered him at a party held at the hotel at which she was serving in her capacity as a waitress. They had a brief conversation during which Ng gave her his telephone number. He met her a few days later at the hotel restaurant at which she worked and they eventually began to

¹¹ Ibid at para 9 - 11, 13 - 16, 26, 27, 33, 40, 48, 53, and 54.

date. Shortly thereafter they began an intimate relationship. During this period of time, Ms. W. claimed that Ng confided in her that he had a restaurant, a massage parlour and a tourist business in Vancouver and that Ng often encouraged her to consider relocating with him to Vancouver where she could earn more money in his restaurant than she was currently then earning in China. Ms. W. recounted that as a result of Ng's promises she left her husband and willingly traveled to Canada under false immigration travel documents obtained by Ng in July 2002. Her decision to accompany Ng was based on the employment and living arrangement representations that had been made by Ng. She claimed that it was her understanding that she would be living with Ng in Vancouver in a degree of comfort and thus was 'shocked' and 'distressed' to find herself forced to stay in a closet in Ng's residence and periodically, to sleep at the massage parlour offices after arriving in Canada.

Ms. W. testified that Ng explained to her that his restaurant had to close and that he wanted her to work in his massage parlour as a prostitute. She claimed that she did not want to be a prostitute but felt she had no alternative but to comply with Ng's demands, believing she was under his control because of the illegal manner in which she had entered the country. She indicated that she was paid \$1,500.00 per month by Ng but generated approximately \$11,000.00 per month as a prostitute for him. Ms. W. testified that she continued to work for Ng as a prostitute in his massage parlour starting from her arrival in July 2002 until the assault complaint in May of 2004.

Ms. W. confirmed under oath that she assisted Ng in a scheme to induce Ms. T. into agreeing to travel to Vancouver to work for Ng in his restaurant that did not exist. She confirmed that she had contacted Ms. T. by phone shortly after her arrival in Canada, claiming that Canada was a nice place to live and that Ms. T. should consider joining her in Vancouver.

Ms. W. testified that she and Ng had several phone calls with Ms. T., initially to convince her to come to Canada, and then to arrange for the false marriage that would support the fraudulent documents by which she would travel to Vancouver. Ms. W. testified that she and Ng traveled to China in 2004 to finalize the preparations for the false marriage. According to her evidence, Ms. T. resided with Ng and Ms. W. while they were in China awaiting approval for Ms. T.'s travel to Canada. Ms. W. testified that the three of them left China in early March 2004, traveling together via Hong Kong on their way to Canada. Ms. W. claimed that while in Hong Kong she revealed to Ms. T. that she had been working not as a waitress in a restaurant but as a prostitute in Ng's massage parlour in Vancouver. Ms. W. recounted that she told Ms. T. that she could return to China instead of continuing on to Vancouver if she wished to do so. Ms. W. claimed that Ms. T. acknowledged that she might be required to work as a prostitute in Ng's massage parlour but she decided to continue on to Vancouver regardless. Ms. W. testified that Ng made the arrangements for the clients to whom she and Ms. T. would later provide sexual services. In her evidence, Ms. W. claimed that Ng was at first charming when the relationship began but later became threatening once she was under his control. She spoke of his ongoing intimidation of her and claimed that her underlying reason for returning to Canada with Ng and Ms. T. in March of 2004 was to seek revenge against Ng by reporting him to the Canadian authorities as she did not think she could obtain justice in China.

Summary of Ms. T.'s testimony:¹²

Ms. T. confirmed during her testimony that she did receive phone calls from Ms. W. after Ms. W.'s departure for Canada. Ms. T. indicated that she was surprised to receive such calls as she did not believe that she had a close relationship with Ms. W. She testified that during the

¹² Ibid at para 21 - 25, 28, 31 - 34, 37, and 87.

second phone call from Ms. W. she spoke directly to Ng, who was introduced to her as Ms. W.'s employer, and who offered her work in his restaurant in Vancouver at \$1,500.00 per month. She initially declined the offer but indicated that during subsequent telephone conversations Ng again repeated the offer and in time, she accepted. Ms. T. also testified that Ng offered to secure her passage to Canada by way of false travel documents based on a fraudulent marriage to a Mr. C.

Ms. T. recounted that Ng and Mr. C. came to China in November of 2002 at which time she and Mr. C. met for the first time. Mr. C. returned to Canada in December 2002 but he continued to maintain contact with Ms. T. after his departure. According to Ms. T., Ng, Ms. W. and Mr. C. returned to China in April 2003 and at that time, she and Ms. W. stayed together at Ng's home in China. She testified that she and Mr. C. posed for wedding pictures in support of the false marriage application which included their participation at a wedding banquet arranged by Ng. She claimed that Ng stated to her that the false wedding cost him 300,000 RMB in Chinese funds. Ms. T. testified that eventually a Chinese wedding certificate was issued and Mr. C. returned to Canada while she remained in China awaiting the documents that would permit her travel to Canada.

Ms. T. confirmed that Ng and Ms. W. returned to China again in 2004. She testified that Ng was making the final arrangements for the travel documents at the time and that the three of them later departed China in early March 2004. In support of Ms. W.'s testimony, Ms. T. testified that as a result of a conversation with Ms. W. during her journey to Canada, she became aware that she would likely be working as a prostitute for Ng in his massage parlour after her arrival. She provided a number of reasons for this decision to proceed to Vancouver including her concern that she might lose face if she refused, her desire to make more money than she could in China, and her love of travel in general. Later in her testimony, Ms. T. did confirm that

she eventually worked at Ng's massage parlour as a prostitute but claimed that she did so as she believed that she had no alternative because she had no travel documents or money with which she could arrange her return to China. Ms. T. testified that on May 11th, 2004, Ng made demands upon her for increase monetary payments from her activities as a prostitute and when she refused, he became quite angry. She claimed that Ng refused to return her travel documents so that she could return to China until he received additional payments from her. She testified that she was afraid that Ng would assault her if she did not comply.

Ms. T. gave evidence that due to her fear of Ng she attempted to go to the Chinese Consulate on May 12th, 2004 with a friend but the Consulate was closed. Later that same date, she recalled the altercation between herself, Ng and Ms. W. at the massage parlour. Ms. T. explained that when she refused to pay Ng on the 12th, he demanded the return of the keys for his residence and the massage parlour. Ms. W. attempted to intervene and asked Ms. T. to reconsider and not leave because Ng had possession of their luggage at his residence. Ms. T. testified that eventually Ng became so outraged and upset with both her and Ms. W. that he assaulted each of them, on separate occasions over a period of several minutes in the offices of the massage parlour by physically grabbing them around the neck while making death threats. After Ng left the massage parlour, Ms. T. testified that she contacted a friend who in turn called the emergency line for the VPD.

Summary of Judicial Decision (Counts 3 and 4):¹³

Judge MacLean noted in his decision that the Crown contended that the testimony of Ms. W. and Ms. T. was credible and as a result, the Crown submitted that the evidence of the two trafficking victims should be accepted in their entirety as proof of the human trafficking charges.

¹³ Ibid at para 42 - 118, inclusive.

Conversely, Ng's defence counsel argued that the evidence of two women lacked credibility. They identified a number of material points in which the testimony of the two victims proved inconsistent and contradictory, both within their respective oral evidence and comparatively between their respective testimonies, as well as with the statements that they had originally given to Canadian authorities. The defence counsel argued that the two victims were not truthful, had provided implausible accounts of what transpired, and contrived evidence in order to implicate Ng, motivated by their respective self-interests.

In his decision, Judge MacLean reviewed the testimony of the two trafficking victims. With respect to Ms. W., he concluded that she was not being truthful which rendered much of her evidence unreliable. He highlighted the following:

- Her testimony was often in conflict with that of other witnesses, including that of her father, Ms. T., and VPD investigators;
- Her responses during her testimony appeared selective and self-serving;
- Her demeanour during her testimony was inconsistent with being truthful – her evidence-in-chief was dramatic and theatrical while she was non-responsive and evasive to the defence counsel when questioned about matters that contradicted previous statements to police or her self-interest;
- Her evidence was inconsistent with the Crown's theory that Ng exerted control over her activities and freedom, noting examples of her frequent contradictory evidence on this issue and the implausible explanations she offered in response.

The following is but one of the many examples Judge MacLean referenced in his decision with respect to the numerous contradictions within Ms. W.'s evidence:

“The Crown placed considerable reliance on Ms. W.'s evidence in describing her accommodations when she first arrived at Mr. Ng's home. She described it as no more than a storage room on the first floor. The Crown quoted that portion of her evidence and reminded the Court how Ms. W. emotionally broke down when giving this evidence. A few days later, however, Ms. W. gave a much different impression of the moment. When asked about staying in the basement of Mr. Ng's home, she said whether the place was

nice or not didn't matter to her. When she was reminded how upset she said she was on seeing her accommodations, she disagreed and said she wasn't upset. She said her expectations were not high as Mr. Ng had a wife in Canada and a wife in China. When it was also pointed out to her how emotional she had been a few days earlier in describing her situation and relationship with Mr. Ng, Ms. W. testified "No, that's not what I meant." In view of this evidence it is difficult to determine what Ms. W. meant or what she was trying to convey in this part of her evidence. Ms. T. shared a room with Ms. W. at Mr. Ng's home and did not give a description of the accommodation as initially given by Ms. W. The police who attended the residence described the first floor of the house as a suite. It is difficult to reconcile the very different impressions left by Ms. W.'s evidence. As a result, Ms. W.'s evidence of her impression when she first arrived at Mr. Ng's does not have the significance attributed to it by the Crown."¹⁴

Judge MacLean then reviewed the testimony of Ms. T. and as he did with respect to Ms. W's testimony, he concluded that there were several inconsistencies in her evidence and as a result, her testimony lacked credibility. He summarized the issues as follows:

- Her demeanour in court did not suggest she was being untruthful but whenever possible during her testimony, she provided evidence that implicated Ng while minimizing her responsibility and involvement;
- She did not appear evasive during her testimony regarding the inconsistencies in her evidence and statements to police but she did provide explanations that were not credible;
- She was clearly motivated not to be forthright with the authorities nor with the Court, exhibiting an intention to protect her self-interests with respect to her involvement in any illegal activity.

The following is one of the several examples of Ms. T.'s contradictory and unreliable evidence that was cited by Judge MacLean in support of his decision:

“Another significant inconsistency in Ms. T. evidence is in relation to her identity documents. At various times in her evidence Ms. T. testified while she was in Canada she did not have any identification and Mr. Ng would not give it back to her. Later in her evidence she agreed Mr. Ng never refused to give her any documents but that she never

¹⁴ Ibid at para 64.

asked Mr. Ng for any identification documents. Ms. T. had notarized copies of her passport and marriage certificate.”¹⁵

Significantly, in his analysis of the testimony/evidence of both Ms. W. and Ms. T., Judge Maclean relied upon the testimony of a Crown witness who the Crown submitted was an expert witness on the issue of human trafficking and human trafficking victimization. In his testimony for the Crown, Yvon Dandurand, Professor of Criminology at the University of the Fraser Valley, outlined the crime of human trafficking, covering such areas as “... the psychological aspects of trafficking; patterns of interaction between offenders and victims; the impact of the crime on victims; the modus operandi of human traffickers; and lastly, methods of preventing and controlling human trafficking and providing assistance to victims.”¹⁶ Importantly, Dandurand’s testimony also covered the common markers or criteria that should be used by law enforcement to screen potential human trafficking victims.

Judge MacLean applied Dandurand’s indicia of international human trafficking to the circumstances of the trafficking victims in this particular prosecution. He concluded:

“Taken as whole, Mr. Dandurand's evidence does not support the Crown's theory that Ms. W. and Ms. T. were victims of trafficking. Few of the hallmarks of trafficking applied to either Ms. W. or Ms. T.'s circumstances. They had access and control over significant amounts of money. They had keys to the massage parlour and the house. There appeared to be few, if any, restrictions on their movements. They socialized and had the freedom of movement within the Chinese speaking community in Vancouver. There was no denial to medical or dental care. Both had cell phones. Ms. W. had regular contact with her family who knew where she was, who she was with and the name she was using. They were not denied the food, clothing or the necessities. Ms. W.'s purchase of a very expensive purse attests to her financial freedom. Considering all of the evidence, including that of Mr. Dandurand, it does not support the Crown's theory that Ms. W. and Ms. T. were victims of trafficking.”¹⁷

¹⁵ Ibid at para 92.

¹⁶ Ibid at para 107.

¹⁷ Ibid at para 111 and 112.

As a result of the foregoing, and in addition to the perceived unreliable testimony of Ms. W. and Ms. T., Judge MacLean dismissed the charges of human trafficking on June 21st, 2007.

6.4 Credibility and Victim Construction

Like many prosecutions, the testimony of a key witness can have a significant impact on the success or failure of the case. In many respects, the issue of a witness's truthfulness and credibility in relation to the probative value of their evidence to the charges before the court is of paramount concern. The issue of the credibility of the testimony of the two international human trafficking victims was forefront in Judge MacLean's final decision regarding the two counts of international human trafficking against Ng. He weighed the reliability of their testimony not only in regards to the independent strength that it provided the Crown's case, whether or not their recollections and responses were selective, contradictory, self-serving and/or evasive, but also compared the reliability of their testimony in terms of the documentary evidence concerning the false travel documents that had been introduced during the trial and the additional testimony of other witnesses. In his decision, he cited several examples of inconsistencies within the evidence of the two victims such that he could not with any degree of certainty rely upon their evidence to support the Crown's case, finding that both witnesses were not truthful or credible during much of their testimony.¹⁸

In his weighing of the reliability of the testimony of both victims, Judge MacLean incorporated a new consideration into his evaluation of their evidence. In particular, he considered whether or not the reliability of their testimony had been affected by the trauma of having been trafficked in to Canada. As a result of the evidence of the Crown's expert witness on human trafficking, Dandurand, Judge MacLean wrote that care needed to be taken when

¹⁸ Ibid at para 42 - 118.

evaluating the testimony and conduct of a trafficking victim so as not to misunderstand their behaviour which could inadvertently be construed as a form of consent to or complicity in the illegal activity when this may not in fact be the case. But, he also noted that Dandurand recommended that care also needed to be exercised with respect to the individual who might falsely claim to be a victim of human trafficking in order to avoid the consequences of illegal migration.¹⁹

His concern that human trafficking might have a psychological effect on the two victims and could account for the inconsistencies in their evidence is threaded throughout the decision. But after the careful assessment of their testimony, Judge MacLean determined that the cumulative effect of their inconsistent and evasive answers could not be reasonably explained as the result of trauma associated with trafficking and thus, he found that these inconsistencies rendered their evidence so unreliable that their testimony could not support the Crown's case.²⁰ Beyond his consideration of the possible impact that the crime of human trafficking might have had on the testimony of the victims, Judge MacLean's assessment of the credibility of the two witnesses was also influenced by the criteria for identifying potential victims of international human trafficking that had been presented by the Crown's expert witness. It is apparent in the decision that Judge MacLean relied quite heavily on the human trafficking victim indicia provided by Dandurand in order to arrive at his determination that Ms. W. and Ms. T. were not victims of human trafficking, further eroding the credibility of their testimony.²¹

This case was an important prosecution from a number of perspectives. It was the first attempt to convict an international human trafficker in Canada. It was the result of anti-

¹⁹ Ibid at para 45.

²⁰ Ibid at para 124 - 125.

²¹ Ibid at para 45, 107 - 110.

trafficking efforts by Canadian law enforcement focused on a form of international trafficking that the juridical field had come to believe, as a result of the power relationship struggles with the international anti-trafficking social movement, was the most prevalent in Canada – foreign vulnerable women trafficked into Canada for the sex trade. And, in many respects, this prosecution reflected the government’s acceptance of the construction of the trafficking victim that underpins the prevailing understanding of international trafficking. It is clear that the trafficking victim indicia Dandurand provided during his testimony resulted in reinforcing to the Court the generally accepted social construction of international trafficking and trafficking victimization that has been promoted in the trafficking discourse. As a result of Dandurand’s evidence, the Court came to view international human trafficking through a lens focused on a singular understanding of trafficking victimization in relation to the sex trade rather than a broader conceptualization of trafficking victimization.²²

In his judgement, Judge MacLean highlighted specific features of trafficking victimization furnished by Dandurand upon which he relied to conclude that Ms. W. and Ms. T. were not victims of human trafficking:

- Victims of trafficking are often young and single,
- Victims have no contact with family or community,
- Victims are not paid and have no control over money which would facilitate their escape,
- Victims have no freedom of movement, especially within a community of similar language and background,
- Victims are denied medical care, food, clothing and other basic necessities.²³

²² Interview #36.

²³ *R v Ng* [2007], *supra* note 1 at para 109 and 110.

Judge MacLean emphasized that contrary to the above noted indicia, the two alleged victims had access to money; they had enjoyed a high degree of freedom of movement; they were often in contact with family; they socialized in the Chinese community; and they had access to the basic necessities of life. As a result of this evaluation, Judge MacLean concluded that “few of the hallmarks of trafficking applied to either Ms. W. or Ms. T.’s circumstances.”²⁴

As I have argued in Chapter 4, the trafficking literature has often depicted the international trafficking victim as a young, naïve, innocent female from a 3rd World Country duped or lured to the West with false promises of well paid work. These victim narratives frequently emphasize the vulnerability of the victim, her youth, her purity and her poverty, and that she is forcibly held against her will to live in deplorable conditions in order to underscore the outrage one should feel in regards to her victimization. Similar to the victim indicia provided by Dandurand, these narratives of human trafficking victims are dependent upon a criteria that emphasizes that the victim has no freedom of movement; that she has no access to money; that she does not interact with the community or have contact with family; and that she is often denied the basic necessities of life.²⁵

In the Ng case, the Crown attempted to establish these types of circumstances in relation to Ms. W and Ms. T. - that they were duped into coming to Canada with promises of well paid work; that they were forced into prostitution by Ng; that they were kept in deplorable living conditions; and that they were in psychological and physical fear of Ng and the possibility of repercussions against themselves or their families if they did not comply with his demands. As I have previously argued, the problem with understanding international human trafficking victims

²⁴

Ibid at para 111.

²⁵

See literature review of Chapter 2.

from a unidimensional victim construction is that many potential trafficking victims may not be considered a victim as they are deemed to exist beyond the criteria in order to qualify for recognition. This is what I believe actually occurred with respect to these two women in this trial. They did not fit within the generally accepted parameters of trafficking victimization that were accepted by Judge MacLean such that they could be legitimately considered trafficking victims and as a consequence, the weight of their evidence and its credibility diminished accordingly.

In Chapter 4, I referenced a study conducted by Alexis Aronowitz, who suggested that the complex nature of international human trafficking is such that international trafficking needs to be viewed beyond the narrow parameters of trafficking victimization that currently occupy the trafficking discourse. Aronowitz explained that the attempt to constrict the trafficking victim to a specific point on the continuum of victimization only serves to limit our understanding of international human trafficking and marginalize those victims who exist beyond the narrow criteria. In other words, the adherence to a limited understanding of trafficking victimization results in diminishing and dismissing the existence of victims who do not conform to the established norm. This is what happened in the case of the Ng trial. The indicia accepted by the court were so restrictive that it eliminated the possibility of Ms. W. and Ms. T. being seen as victims of human trafficking, further entrenching within the juridical field the narrow understanding of trafficking victimization that has occupied much of the trafficking discourse. This sentiment has been echoed by authors such as Jo Doezema who have put forth the argument that because of the unwillingness on the part of radical feminist component of the international anti-trafficking social movement to accept the concept that women can voluntarily agree to participate in the sex trade, that they can exercise ‘agency’ in making a choice to participate in

prostitution, that these women who fall beyond the accepted criteria for a trafficking victim are automatically precluded from consideration as trafficking victims, before –during – or after being trafficked, as they arguably do not exist.²⁶

In the case of *R v. Ng*, Judge MacLean ruled that because Ms. W. and Ms. T. did not conform to the trafficking indicia as outlined by Dandurand, the two complainants were not victims of human trafficking. And as a result, the charges of trafficking could not be supported or proven. This is not meant to imply that Judge MacLean erred in his decision. Given the information, documentary evidence and testimony that he had available for his deliberations, in conjunction with the trafficking victim criteria provided by the Crown’s own expert witness, it is understandable why he arrived at his decision. But, if the indicia upon which he had based his decision had been more expansive as encouraged by the crown and suggested by Aronowitz, there exists the possibility that the trial might have resulted in a different outcome. However, it is clear in this case that the victim criteria that Judge MacLean relied upon to define trafficking victims resulted in the rejection of these women being seen as victims and consequently, the charges were dismissed.

The responses from the government and NGO participants in the study’s research interviews demonstrated a deep awareness of this issue, especially in relation to understanding the complexities involved when defining international human trafficking victimization and its relationship to potential prosecutions. For example, research interview 2021, involving a key juridical actor at the national level, explained that the victim is not defined in the Trafficking

²⁶ Jo Doezema, “Loose Women or Lost Women? The re-emergence of the myth of ‘white slavery’ in contemporary discourses of ‘trafficking in women’” (1999) 1 at 15 - 16, online: Walnut <<http://www.walnet.org/csis/papers/doezema-loose.html>>; Jo Doezema, “Now You See Her, Now You Don’t: Sex Workers At The UN Trafficking Protocol Negotiations” (2005) 14 *Social & Legal Studies* 61 at 80 - 83.

Protocol but rather it is the definition of the conduct in the Protocol and the resultant legal interpretations thereof that creates a victim - the threshold for determining a victim can vary in relation to how a country criminalizes the trafficking conduct.²⁷ In the case of Canada's trafficking legislation, this respondent stated that during the delivery of awareness training sessions to prosecutors and law enforcement, they emphasize the broad spectrum of potential trafficking victims, stressing "that just because a woman consents to prostitution doesn't mean that she can't be a victim of trafficking."²⁸ But, the respondent noted that most international trafficking investigations have only involved international sex trafficking which tends to reflect both the police and the Crown's acceptance of the social construction that has been advanced in the public discourse based on a narrow victim construction. The respondent anticipated that in most instances the prosecution of a trafficker would turn upon the 'credibility' of the victim. Therefore, if the victim's form of victimization is sex trafficking and she does not fit within the generally understood victim construction imbedded within that issue, the respondent was of the opinion that this could pose an overwhelming challenge to prosecutors such that trafficking prosecutions might not be undertaken. According to the interview respondent, issues such as coping with the self interests of the trafficking victim that might emerge during testimony or demonstrating the victim's fear of her trafficker, posited as 'the' critical element in achieving a successful prosecution, could undermine the Crown's case dependent upon the relationship between the victim and the alleged trafficker (e.g.: boyfriend/girlfriend versus threatening stranger/abused victim).²⁹ Although the Ng case was never directly discussed in this interview, the challenges identified by the respondent do correlate to the very issues which were of concern to Judge MacLean in his determination of the credibility of the victims.

²⁷ Interview #2021.

²⁸ Ibid.

²⁹ Ibid.

Research interview respondents 2022 and 2023 were of the opinion that if a trafficking victim does not fit within the parameters of the socially constructed victim, then this situation could negatively affect proceeding with international human trafficking investigations and potential prosecutions. They could offer no instances in which such an evaluation of a potential trafficking victim based on their circumstances in relation to the social construction of a victim deterred the pursuit of an investigation or prosecution. They only offered this conclusion on the basis of their belief that the ‘mindset’ of some law enforcement officers towards prostitutes can be limiting and as a result, this might affect undertaking an investigation in which the female victim does not fit within the understood parameters of victimization. The respondents both indicated that some law enforcement personnel have a predisposition to view prostitutes in terms of criminal behaviour and need to be educated such that they can accept the possibility that prostitutes can be potential victims of human trafficking, even if they initially agreed to participate in illicit prostitution activities. Like interview respondent 2021, these two respondents stressed that victim credibility was central to any prosecution and thus presumed that the further a victim’s situation gravitated away from the publically accepted social construction of a trafficking victim, it would pose a challenge to the prosecutor, possibly insurmountable, when establishing the victim’s credibility in Court. They also indicated that many trafficking victims require intensive psychological therapy as a part of the ‘victim management’ process in order to appreciate that they have been victimized, and then to be capable of conveying that message in a credible fashion to the Court.³⁰

The juridical actor interviewed for interview 2025 expressed similar comments to those provided by the respondents of 2022 and 2023. For example, this respondent mused that from a

³⁰

Interviews #2022 and 2023.

theoretically perspective that if a potential victim did not meet the accepted social construction currently promoted in the public discourse then this would presumably impact the government's ability to pursue a trafficking prosecution because the government has tied itself and its anti-trafficking strategies so closely to a specific type of trafficking and threshold of trafficking victimization.³¹ From practical experience, the interview respondent did not believe that the limited trafficking victim construction parameters that currently exist within the upper hierarchy of the government have had a negative impact at an 'operational' level because the trafficking investigations conducted by the RCMP to which the respondent has had some access demonstrates that they, the RCMP, "... have a broader conceptualization of the victim."³² However, the respondent noted that many of the women encountered during potential international trafficking investigations were prostitutes in their country of origin and had illegally entered Canada knowing that they would be prostitutes here. But, although it might affect prosecutions, the respondent did not believe that this situation regarding the victim's prior status as a prostitute appeared to hinder the RCMP from undertaking appropriate investigations.³³

The NGO representative of interview 2031 addressed the issue of victim construction in relation to the pursuit of a prosecution from a different perspective - most of the trafficking victims their agency encountered have been in the form of international human trafficking for labour exploitation. As a result, the respondent indicated that these victims automatically do not fit the profile of the trafficking victim that has occupied the public discourse and as a consequence, they believe that this would probably affect the consideration of international

³¹ Interview #2025.

³² Ibid.

³³ Ibid.

trafficking prosecutions.³⁴ By way of explanation, the respondent contended that labour exploitation trafficking victims have learned to endure and survive such that they do not see themselves as helpless victims. The respondent suggested that if the stories of these trafficking victims do not come across in Court as helpless people in need of rescue and protection then it is likely that their stories will not be believed.³⁵ This perception by this NGO interview respondent has yet to be tested or validated to date in court by any international trafficking prosecution for labour exploitation.

Research interview respondent 2028, like many of the others interviewed did indicate that the credibility of a victim of a crime or lack thereof was often ‘the’ determining factor in whether or not to recommend a prosecution. However, in relation to international trafficking prosecutions, the respondent asserted that the complexities involved in determining the reliability of this type of victim have proven to be very challenging. Not only must the police and prosecutors weigh how the victim’s circumstances might affect the credibility of the victim, willing participant versus innocent casualty, but they are also constantly challenged with investing significant labour in order to validate and legitimate the claims of victimization. This includes managing the victim during the investigative process, addressing her physical and psychological needs, while conducting inquiries at an international level. However, the respondent indicated that even with these investigative realities, it would be hard to determine the impact the limited social construction of the trafficking victim that was applied in the Ng trial might have on other international human trafficking prosecutions because there have been so few international trafficking investigations that have been forwarded to Crown for consideration.³⁶

³⁴ Interview #2031.

³⁵ Ibid.

³⁶ Interview #2028.

According to juridical actors of interviews 2025 and 2028, most of the women that law enforcement has encountered while conducting trafficking investigations in the sex trade have been prostitutes in their country of origin and knew they would be prostitutes while in Canada - they do not see themselves as victims - once interdicted by the police, they simply want to go home.³⁷ As of March 2010, the human trafficking investigations in Canada that have been forwarded to the Crown for consideration have predominantly involved domestic human trafficking in relation to the sex trade, with 33 domestic trafficking prosecutions before the Court, while as of the same date, there were no charges pending with respect to international human trafficking.³⁸

The 2010 RCMP human trafficking intelligence report, Project Seclusion, also touched upon the issue of victim reliability as an existing inhibitor to pursuing international trafficking prosecutions. Similar to the observations expressed during interviews 2025 and 2028, the RCMP assessment of the international sex trafficking victimization of eastern European and Asian women noted that these potential victims of international trafficking frequently deny working in the sex trade, provide contradictory statements to the police, and often fabricate stories of victimization, all of which undermines an investigation as well as any consideration of a prosecution.³⁹ As discussed in Chapter 5, the RCMP attribute this situation to such factors as a victim's cultural mistrust of authorities, language barrier and fear of reprisal, none of which has yet to be validated by research. The report indicates that the police have approached trafficking investigations from the broad perspective that all foreign women involved in the sex trade are potential victims of trafficking until proven otherwise. But, as suggested by interview

³⁷ Interview #2025 and 2028.

³⁸ Interview #2028.

³⁹ Royal Canadian Mounted Police, Criminal Intelligence, *Human Trafficking in Canada* (Ottawa: Royal Canadian Mounted Police, 2010) at 12 - 18.

respondents 2025 and 2028, the respondents believe that many of the foreign women involved in prostitution in Canada were also involved in prostitution in their country of origin and had simply illegally migrated to Canada to earn more money. Thus, their unwillingness to be forthright with the police as noted in the RCMP report may be due, arguably, to their illegal status in Canada and their subsequent involvement in criminal activities while here rather than being a trafficking victim that has a cultural mistrust of the authorities. This was a concern that Judge MacLean noted in his decision – that Ms. W. and Ms. T. were evasive in their testimony, giving self-serving responses in order to protect their self interests and avoid any criminal responsibility.⁴⁰

During her testimony in 2006 before the Status of Women Canada (SWC) Parliamentary Committee, Detective Michelle Holme of the Vancouver Police Department (VPD) cited a specific investigation as an example of the importance of validating a claim of human trafficking before embarking upon a prosecution:

“It is important to note that not all women found working in these underground brothels are victims of trafficking. In August of this year, we executed a search warrant at an exclusive west side house where eight Malaysian women were found to be working as prostitutes. Police charged the male running the operation with keeping a common bawdy house and living on the avails of prostitution. We interviewed every woman found in this house and determined that one of them was possibly a true victim of trafficking. We believed so strongly in her story that she was immediately placed into a safe house and arrangements were made for investigators to travel to Kuala Lumpur to liaise with the local authorities there in ensuring her family's safety and also to corroborate the victim's story for court. Our investigation there determined that this victim wasn't a victim at all but a party to the offence that made many Malaysians a lot of money while involved in the sex trade in Vancouver.”⁴¹

⁴⁰ *R v Ng* [2007], *supra* note 1 at para 75 and 94.

⁴¹ Standing Committee on the Status of Women, 39th Parliament, 1st Session (2006), *supra* note 4, testimony of Det. Michelle Holme.

Similarly, a case pursued in Montreal in May of 2007, also demonstrates the danger of proceeding prematurely with trafficking charges before validating the victims claims. On the strength of a complaint of trafficking made by an Ethiopian ‘care-giver’ that worked in a Montreal couple’s home, Nichan Manoukian and Manoudshag Sarboyadjian were charged by the RCMP with international human trafficking. However, by December of that same year, the charges were withdrawn. Further investigation by the authorities confirmed that the trafficking allegations lodged against the couple were entirely false. The couple’s lawyer explained that because the employment of the ‘care-giver’ was coming to an end, she made a false claim to the authorities in order to avoid having to return to her native country.⁴² In May of 2008, the couple launched a civil suit against the government in the amount of \$5 million dollars as compensation for their humiliation and damage to their reputations that they believe was caused by the overzealous actions of the authorities.⁴³

I have referenced these two particular investigations because they provide some insight into the unique investigative challenges and consequences that are faced by the authorities when combating this type of crime. The rationale or explanations as to why potential victims might lie to authorities are numerous and complex. It would be wrong to draw the conclusion that women who have lied about their involvement in the sex trade are not trafficking victims. These examples are offered only to demonstrate that victimization is a very complex issue and determining who is and is not a victim is not an easy challenge. As has been my experience, many victims of a crime may attempt to deceive authorities for a variety of reasons such as protecting another person from being subjected to police attention that may have nothing to do

⁴² Sue Montgomery, “RCMP’s human trafficking case falls apart – Charges dropped. Family wants apology from police after accusations they enslaved servant” (December 7th, 2007) *Montreal Gazette* A7.

⁴³ Sidhartha Banerjee, “Couple sues over human trafficking allegations” (May 21, 2008) *Vancouver Sun Newspaper*, Vancouver, Canada at A5.

with their status as a victim. In terms of international human trafficking, many factors may play a role in how the victim presents themselves to the authorities which may affect how law enforcement perceives them as a victim. But, it is clear from the Ng prosecution that a narrow understanding of victimization will clearly limit who will be perceived as a victim.

As a result of the research interviews, the victim construction has not appreciably impacted the decision by law enforcement to pursue international trafficking investigations. It appears that in many respects, law enforcement has erred on the side of caution by approaching any claim of human trafficking as valid until such is proven otherwise. Many of those interviewed attribute the lack of international trafficking prosecutions to the lack of positive investigative results stemming from the hundreds of international trafficking investigations focused on the sex trade that have been undertaken. As noted in Chapter 5, several juridical actors interviewed believe that the scarcity of international trafficking prosecutions is not just the result of potential victims not meeting an accepted template of victim construction but also, is directly related to the government's focus on international sex trafficking which they believe is not a substantial form of human trafficking taking place in Canada and as a result, has produced few cases. But, several interview respondents suggested that the victim's credibility in Court does go hand in hand with the victim's ability to capture the sympathy of the Court and the public. As a consequence, in their opinion, a vulnerable pure violated woman forced into the sex trade would resonate far better with the Court than a woman who has freely participated to some degree in illegal activities and then claims to be a victim of trafficking. If the recommendation for prosecutions should rise due to an associated increase in the results from more international trafficking investigations, several of the respondents anticipated that the victim construction

would come to play ‘the’ deciding role in the approval process of prosecutions, and the subsequent decisions of the Court.⁴⁴

An article in the Vancouver Sun newspaper reflects an issue that emerged during the research interviews - trafficking victims might be negatively perceived by the Courts and public if their circumstances fail to generate the necessary level of sympathy. Reacting strongly to Ng’s acquittal of international trafficking charges, reporter, Ian Mulgrew, characterized the trial as “... a bedroom farce, not an internationally important criminal prosecution. Instead of a serious prosecution of a snakehead or people smuggler, however, we got a run-of-the-mill whorehouse case.”⁴⁵ Mulgrew chastised the Crown for laying charges when it was evident that the alleged victims did not conform to what he understood were the parameters of what constitutes a victim of international human trafficking. “I’m still trying to figure out how the cops and the prosecution concluded any of this fell under the rubric of "human trafficking," as opposed to a common immigration scam soap opera.”⁴⁶ Mulgrew reinforced the general trafficking victim stereotype by revisiting the issues that led Judge MacLean to conclude that the two women were not victims of international trafficking – “I suspect human traffickers don’t give their slaves keys to the office and their home, or access to bank accounts. I also suspect they don’t allow regular contact with families or let those they are exploiting fraternize with the local community. To even talk about the horror of human trafficking in these circumstances [those of the Ng victims] seems to me to have done a great injustice to a truly important cause.”⁴⁷ Although other media accounts of the trial were much more muted in comparison to Mulgrew’s article, they too

⁴⁴ Interviews # 2021, 2024, 2025, 2028 and 2031.

⁴⁵ Ian Mulgrew, “Human Trafficking Case More Like A Bedroom Farce” (June 25th, 2007) *Vancouver Sun Newspaper*, Vancouver, Canada, online: <<http://www.canada.com/vancouversun/news/westcoastnews/story.html?id=94d3df47-05b5-4b30-8ad0-a2a8f0e7b9c1>>.

⁴⁶ Ibid.

⁴⁷ Ibid.

reinforced the perception that the failure to obtain a conviction was directly related to the perception that the victims were not in fact victims of trafficking because they did not meet the expected standard. The CBC News reported that “prosecutors were not able to prove the women working in his [Ng’s] massage parlour were sex slaves. Provincial court Judge Malcolm MacLean ruled there was no evidence the women were forced or coerced into coming to Canada.”⁴⁸ The apparent rebuke of the prosecutors by the media for undertaking the Ng trial when in the opinion of the media it was evident that the alleged victims did not conform to the proscribed understanding of international human trafficking victimization may arguably give the Crown reason for pause in the future before embarking upon another international trafficking prosecution that involves victims from the sex trade.

As recognized by the media, Judge MacLean’s decision set a precedent in relation to establishing the official context or position from which one should view and assess an international trafficking victim. His decision reinforced to the public the indicia, the standard that must be met in order to officially be recognized as a victim of international trafficking by the Court - demonstrated innocence of character; forced or coerced into the sex trade; and their movements are restricted while being held in deplorable conditions. In keeping with the opinions of those interviewed for this study, if cases of international sex trafficking were to rise substantially in Canada, then it is likely that this perception of trafficking victimization, a narrow point along the continuum of potential victimization, formalized by the Ng trial, would become the benchmark to which future victims would be compared in order for the Crown to consider approving a prosecution.

⁴⁸ CBC News, “Man guilty of human smuggling sentenced to 15 months” (April 23rd, 2008) online: CBC News <<http://www.cbc.ca/news/canada/british-columbia/story/2008/04/23/bc-smuggling-women-sentence.html?ref=rss>>.

Pierre Bourdieu noted that the law has a special linguistic and social power capability beyond that which exists in most social fields. In particular, he drew attention to the tendency of the juridical field to formalize everything of interest that enters the field. This process of formalization can take such forms as legislation, government policies, legal and law texts, documented court procedures and importantly, judicial decisions.⁴⁹ He argued “that this formalization is a crucial element in the ability of the law to obtain and sustain general social consent, for it is taken (however illogically) as a *sign* of the law’s impartiality and neutrality, hence of the intrinsic correctness of its determinations.”⁵⁰ In other words, ‘formalization’ becomes an essential practice in order to legitimate the interpretation and application of the law that then serves to reinforce the mutually constituting relationship that exists between society and the law. Judge MacLean’s ruling in the Ng trial is a part of the ‘formalization’ process of which Bourdieu spoke. Conveyed to the public by the media, it is seen as reasoned impartiality and an intrinsic sense of correctness that Bourdieu emphasized was an essential element to maintaining social consent and support - the law’s mutually constituting relationship with society as evidenced through the law’s application. In the final analysis, the Ng decision did reaffirm to society “... that human trafficking is a serious and insidious crime of international proportion”.⁵¹ But more importantly, it ‘formalized’ a specific understanding of international human trafficking victimization that is prevalent within the trafficking discourse and upon which, I suggest, future prosecutions will be compared whether they are in the form of international sex trafficking or labour exploitation.

⁴⁹ Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field” (1987) 38 *Hastings L.J.* 814 at 818 – 823.

Richard Terdiman, “Translator’s Introduction - The Force of Law: Toward a Sociology of the Juridical Field” (1987) 38 *Hastings L.J.* 805 at 809 - 810.

⁵⁰ *Ibid* – Terdiman at 809/810.

⁵¹ *R v Ng* [2007], *supra* note 1 at para 108.

6.5 Conclusion

This case study is unique because by May 31st, 2010, there had only been one attempted prosecution of a person for international human trafficking in Canada. It is unique because it established Canada's first legal precedent with respect to international human trafficking prosecutions and the Court's view of international human trafficking victimization that will likely form part of future prosecutions of this nature. And, it is unique because there are no other cases of its kind in Canada as of the date of this study from which to draw comparisons in order to validate conclusions. With this in mind, I have relied upon various trafficking literature and the results of research interviews to support my analysis of the Court's decision. The objective has been to demonstrate that a correlation exists between a major theme of this study - that the social construction of the human trafficking victim that dominates the trafficking discourse has influenced the Canadian juridical field's understanding of international human trafficking – and the dismissal of the first ever charges of international human trafficking in Canada.

Given the focus of international trafficking investigations in Canada, it is understandable that this first prosecution of international human trafficking would entail a case involving international sex trafficking.⁵² Michael Ng was presented as the epitome of the classic human trafficking villain – an immoral procurer of women who forced them against their will into the sex trade. Unfortunately, the victims in this case who he may have violated and trafficked could not meet the expected societal standard that was eventually established in the Court for a trafficking victim, and as a consequence, they were deemed not to be victims of human trafficking and the charges were subsequently dismissed. Their credibility was directly linked by the Court to their acceptance in court as a trafficking victim.

⁵² See Chapter 5 – the majority of international trafficking investigations in Canada have been focused on or associated to prostitution.

The Ng prosecution underscores two major challenges that are central to any prosecution of international human trafficking that might take place in Canada. The first is always present in a criminal prosecution when the evidence of the crime is largely dependent upon the testimony of the victim – credibility. But trafficking prosecutions, in order to reinforce the credibility and truthfulness of its victims, given the nature of the crime and complexities pertaining to the victim’s potential involvement in criminal activity as a result of the crime, must demonstrate that the victim is in fact a victim and in so doing, reinforce their credibility and truthfulness. The challenge for the prosecutors in this case was to rehabilitate the character and actions of Ms. W. and Ms. T. to such an extent that they could bear some resemblance to the popular trafficking victim construction that exists within the public discourse and which was eventually accepted by the Court during the trial. Unfortunately, they did not succeed and Judge MacLean’s decision has now formalized the Court’s standard for defining international trafficking victimization – a vulnerable female forced into the sex trade, no freedom of movement, no access to money or the community, and held in deplorable conditions. It has been my argument in this case study that this conceptualization of the trafficking victim is limited and fails to address the broader social and legal complexities involved in international human trafficking. As noted by Aronowitz, human trafficking victimization spans a continuum of possibilities which were not considered during the course of the Ng prosecution. In a May 2010 report on human trafficking in Canada, Nicolle Barrett noted that with little empirical trafficking victimization information available, there can be confusion among NGO victim service providers and law enforcement personnel that can lead to a misunderstanding of trafficking victimization in Canada.⁵³ It is my concern that the

⁵³ Nicolle Barrett, “The Federal/Provincial/Territorial Forum of Status of Senior Women Officials” (2010) at 9 – 11, online: International Centre for Criminal Law Reform and Criminal Justice Policy <<http://www.icclr.law.ubc.ca/files/2010/An%20Exploration%20of%20Promising%20Practices%20in%20Response%20to%20Human%20Trafficking%20in%20Canada.pdf>>.

Ng prosecution has only resulted in the formal sanctioning of a specific understanding of human trafficking by the juridical field that in many respects is not relevant to Canada's situation.

7. International Human Trafficking in Canada: Conclusions

7.1 Introduction

The question that I have been pursuing in this study is why, after years of anti-trafficking enforcement in this country, have there been so few international trafficking prosecutions given the frequent claims that international human trafficking is widespread in Canada.¹ This project explored four interrelated settings in order to understand Canada's approach to combating the crime of international human trafficking and why that anti-trafficking strategy deployed by the government produced only one prosecution. It entailed a review of the contemporary trafficking literature, an analysis of the international anti-trafficking social movement, an examination of the trafficking victim construction that underpins the generally accepted conceptualization of international trafficking, and an exploration of the interaction that has taken place between the international anti-trafficking social movement and the Canadian government in order to account for the paucity of international human trafficking prosecutions.

7.2 Summary of Findings

This study has relied upon Bourdieu's field theory for its structure and analytical strategies. Bourdieu suggested that although the juridical field gives the appearance of a high level of autonomy independent from other social fields, he argued that in reality it is closely linked to the other social fields that comprise society through a relationship of intense resistance to the influence of competing forms of social practice.² This project, premised on this theoretical underpinning, pursued an examination of the Canadian government's response to international

¹ Chapter 1 at 1, *supra* note 3.

² Chapter 1 at 8, *supra* note 12.

human trafficking that has resulted in few international trafficking prosecutions. The findings are summarized as follows:

7.2.1 International Anti-Human Trafficking Social Field

The prevailing voices within the international anti-trafficking social field are moral reform and feminist non-government organizations that have promoted the belief that the largest form of international human trafficking taking place internationally and in Canada is the trafficking of women and girls for the sex trade.³ Given the individual focus of many of these organizations, it is understandable that their collective action has promoted this conceptualization of international trafficking.

7.2.2 Lack of Credible Research and Reliable Human Trafficking Data

There exists a significant gap between the numerous statistical claims that have projected the trafficking of women and girls into Canada for the sex trade and the research that is necessary to credibly underpin such claims. This was not only evident in regards to the examination of various claims concerning the nature and scope of international trafficking taking place in Canada but was equally apparent with regards to claims that have been made respecting the role of transnational organized crime and its orchestration of international human trafficking into Canada.

7.2.3 Power Relationship Struggles

This study determined that many actors within the Canadian juridical field in such areas as Citizenship and Immigration Canada, the RCMP, Canada Border Services Agency, and the Department of Justice, as a result of power relationship struggles that have occurred between the

³ This finding is a result of the analysis conducted of the international anti-trafficking social movement/social field as provided in Chapter 3, and is similar to conclusions identified within the trafficking literature reviewed in Chapter 2.

juridical field and the international anti-trafficking social field, have generally accepted the belief that women and girls trafficked into Canada for the sex trade represent ‘the’ major form of international trafficking taking place in this country.

7.2.4 Anti-International Trafficking Enforcement in Canada

As a result of the international anti-trafficking social field’s influence, Canada’s anti-trafficking enforcement strategy from January 1st, 2002 to May 31st, 2010, inclusive, involved over several hundred international trafficking investigations, the majority of which were concentrated on illicit prostitution activities.⁴ Only one prosecution for international human trafficking resulted from these investigations during the study period and no transnational or national criminal organizations, or any individual affiliated with such organizations were prosecuted during this same period for international trafficking in Canada.

7.2.5 Explanations For Lack of Prosecutions

No independent empirical evidence was unearthed to support the various popular explanations that were examined in this study. These explanations could not adequately account, either individually or collectively, for why there have been so few prosecutions of international trafficking in Canada if international trafficking is as widespread in this country as many have claimed.

⁴ The exact number of international trafficking investigations that have been conducted in Canada is not available. Based on the analysis of the ATIP information provided by the RCMP covering the period of January 1st, 2002 through May 31st, 2010, and the 2010 RCMP intelligence report contained in Chapter 5, it is evident that several hundred international investigations have taken place.. However, the RCMP report only indicates that they reviewed over 700 investigations and claimed that the majority were related to the sex trade but it does not provide a percentage breakdown or an exact number. The percentage of investigations that were RCMP led versus those initiated or led by other municipal departments is also unknown which underscores the need for capturing reliable trafficking information for future research.

7.2.6 Summary

Each of these findings contributes to the core finding of the study - international human trafficking in Canada has largely been misunderstood. The Canadian government's enforcement strategy during the study period relied upon unverified and questionable claims that have conceptualized international trafficking in terms of women and girls trafficked for the sex trade. Following years of targeted enforcement anchored by this limited understanding of trafficking that entailed hundreds of anti-trafficking investigations, only one prosecution was attempted. This enforcement outcome supports the most plausible explanation for the lack of international trafficking prosecutions in Canada - that the international trafficking of women and girls into Canada for the sex trade is not as prevalent in this country as many have assumed. This does not mean that international sex trafficking has not occurred or that it does not exist but rather, contrary to the media narratives and NGO claims that portray the international trafficking of women for prostitution as being widespread in our country, there is little evidence to support this belief. There is, however, a growing belief within the Canadian government that the international trafficking of persons for labour exploitation is the most substantive form of international trafficking occurring in the country.

There are inherent weaknesses in this study. The Canadian government has not captured international trafficking data in a uniform and comprehensive manner and as a result, only limited trafficking information was available for examination. Much of the statistical information analyzed was incomplete which may affect the findings of this study to the extent that only general conclusions could be drawn from the available data. For example, although I could independently confirm through ATIP requests that hundreds of anti-trafficking investigations had been undertaken by the RCMP, I had to rely upon the two intelligence reports

produced by the RCMP to conclude that the majority of these anti-trafficking investigations by law enforcement departments were focused on the sex trade, with neither RCMP report providing a percentage breakdown of what constitutes a majority in relation to the investigations that they reviewed. And the 2010 RCMP report did not provide the specific number of trafficking investigations reviewed during their 5 year study period other than to indicate it was more than 700. In addition, the analysis of some of the explanations that have been proffered for the lack of prosecutions, rather than being able to determine their validity through independent empirical research, relied upon subjective assessments and interpretations based on my own personal experience as a police officer, with supporting opinions from various juridical actors which can be subject to question.

7.3 Theoretical and Practical Contribution

This thesis makes both a theoretical and practical contribution to the existing scholarship concerning international human trafficking. From a broad perspective, it contributes to the trafficking literature by enriching our understanding of international human trafficking as seen through the lens of law and society legal theory. This thesis explores the ebb and flow of the mutually constituting interaction between law and society in terms of the creation, interpretation and application of international human trafficking legislation. Through the specific application of Bourdieu's field theory, it adds to a body of literature that argues the relevance of Bourdieu's theoretical approach to the study of the relationship between law and society. And, this thesis articulates a theory of knowledge in concert with other studies within the trafficking literature that have contested the prevailing social construction of international human trafficking which equates international trafficking as largely the trafficking of women for prostitution.

From a Canadian perspective, this thesis expands our collective knowledge of international human trafficking in Canada and provides a more complete picture. Through an in-depth analysis of the Canadian government's response to international trafficking, this thesis breaks new ground within the Canadian trafficking literature. It provides a unique examination of the social and legal dynamics at play between trafficking victimization, the social construction of international trafficking, the international anti-trafficking social movement and the Canadian government through the interpretive application of Bourdieu's field theory. Looking beyond the typical Canadian trafficking study that has either accepted or largely reinforced the basic premise that women trafficked for prostitution constitutes the largest form of international trafficking in Canada, this thesis introduces a new perspective and argues that the Canadian government, susceptible to the influences of the international anti-trafficking social field, has misunderstood international human trafficking in Canada such that it has resulted in an ineffective anti-trafficking enforcement strategy.

The government relied upon unverified claims to guide its current approach to international trafficking in Canada. From a practical perspective, this thesis raises the need for credible research in order to assist the Canadian government in designing appropriate anti-trafficking strategies. It reveals that the Canadian government has neglected to make the effort to accurately capture international human trafficking data, the lack of which, for the immediate future, will likely continue to pose a significant challenge for the development of appropriate government policy. The lack of trafficking data did impact this study and is likely to impact future research. However should the government begin to address this critical issue, it will provide scholars with the opportunity to develop new theoretical perspectives by reconciling past theoretical legal and social knowledge with observable and measurable mechanisms concerning

the collection and production of international human trafficking data in Canada which will hopefully contribute to a more effective anti-trafficking effort.

7.4 Policy Implications

Unfortunately, a significant question within this study remains unanswered – what is the depth and scope of international human trafficking in Canada? Although there are indicators that other forms of trafficking beyond sex trafficking are more prevalent in this country, without verifiable trafficking information to ground the necessary research in the development of an informed response, it is likely that government policy decisions to prevent and combat international trafficking while protecting trafficking victims will continue to prove ineffective. This study has demonstrated the weakness of developing policy that relies upon unverified and spurious information. As a result, I encourage the government to initiate action to address this situation from two perspectives.

7.4.1 Reliable Trafficking Data

The lack of reliable trafficking data, especially with regards to victimization, is a significant problem. The lead anti-trafficking enforcement agency, the RCMP, as recently as March 2010, acknowledged that it is unable to accurately determine the nature and scope of international human trafficking that is taking place in Canada.⁵ Canada is not alone in lacking reliable information and credible research to underpin the anti-trafficking strategies that are being employed. The greatest obstacle to the development of credible research has been the lack of agreed upon criteria for the collection of trafficking data, in conjunction with an appropriate research methodology that can withstand scholarly scrutiny. We cannot continue to

⁵ Royal Canadian Mounted Police, Criminal Intelligence, *Human Trafficking in Canada* (Ottawa: Royal Canadian Mounted Police, 2010) at 8.

stumble from one assumption to another in the pursuit of an effective strategy. This results in poor policy planning. People trafficked to Canada are suffering and will continue to suffer and be exploited until an anti-trafficking strategy that adequately protects them and effectively combats human trafficking is developed. This can only be accomplished with a foundation of reliable information, collected for analysis through agreed upon research methodology.

This is an opportunity for the Canadian government to demonstrate leadership, to reach out and establish a partnership with the academic community, the anti-trafficking movement, the government agencies involved in the Interdepartmental Working Group (IWG), and with interested parties from the international stage in order to create acceptable criteria for trafficking data collection to be used in making informed policy decisions. Although my research confirmed that the technologies that currently exist within various government departments who participate in the IWG are often incompatible and thus, have been an inhibitor to the uniform collection of this information, this does not preclude that the data, once approved criteria have been established, cannot be captured with or without the use of technology by each agency on an interim basis in order to provide reliable data that then can then be analyzed with the view to developing an accurate picture of the nature and scope of international trafficking in Canada, leading to informed policy decisions.

The development of acceptable trafficking victim criteria for data collection will not be a simple task. And not everyone will agree with the final product. But, we must move beyond the limited legal interpretation of trafficking victimization that was applied in the Ng decision, recognizing that future prosecutions are likely to expand our understanding of trafficking victimization in relation to existing trafficking legislation. To limit the victimization criteria now to only one interpretation by the court will limit our ability to research this issue should future

interpretations of the legislation, as a result of the ebb and flow between law and society, expand significantly the understanding of international trafficking and trafficking victimization.

To that end, there are a number of areas within this issue that will require significant effort to resolve or at a minimum to arrive at a decision that most can support. For example, I anticipate that defining trafficking victimization, type and degree, will prove a major challenge. Contrary to the Ng decision which established the only legal precedent in Canada based on a very limited perception of trafficking victimization, I share the view of Alexis Aronowitz that trafficking should be seen to exist along a continuum of trafficking victimization that spans a broad spectrum.⁶ The challenge then is to incorporate a clearly understood continuum of victimization as a measurable factor - when does the continuum of trafficking victimization begin and when does it end – what factors need to be considered in order to recognize a victim and the degree of victimization. In addition, the unsettled issue among feminists in relation to trafficking, women and prostitution which occupied much of the discussion concerning the definition of trafficking that was eventually incorporated into the 2000 Trafficking Protocol is likely to form a major part of the discussion related to trafficking victimization in Canada. The objective should be to produce the best trafficking criteria that will help measure and assess human trafficking in this country, with the recognition that it will not be perfect but will be defensible and sufficiently flexible to incorporate the changing dynamics of international human trafficking that may occur over time especially in relation to the legal decisions rendered as a result of future prosecutions.

⁶ Alexis A. Aronowitz, “Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets That Drive It And The Organizations That Promote It” (2001) 9:2 *European Journal on Criminal Policy and Research*, 163 at 166.

7.4.2 National Anti-trafficking Strategy

The second area that I suggest is in urgent need of government attention is the production of a comprehensive national anti-trafficking strategy. This has been an outstanding issue since the IWG was first tasked with this responsibility by former Minister of Justice, Irwin Cotler.⁷ I am not alone in calling for a national strategy but I believe that such a strategy must move significantly beyond being a national anti-trafficking law enforcement plan and be an action plan that integrates all facets of trafficking - social, legal, and economic - into a comprehensive government response that will produce long term meaningful results. The effectiveness of a national strategy will be directly dependent upon the availability of credible research, both in terms of concretely identifying the current situation in Canada as a precursor to the development of appropriate responses and then later through the assessment of the results of strategic actions by appropriate performance measurement tools. Given that this study has determined that there is currently little reliable information available concerning international trafficking in this country, it is understandable that the IWG has struggled with the production of a national plan. But the difficulty in finding reliable information does not reduce the importance of producing a national anti-trafficking strategy.

This study demonstrated the weakness of pursuing enforcement activities predicated upon unreliable information that nurtured a limited understanding of human trafficking. Not only does it limit an effective response to trafficking but I believe it ignores the larger social and legal considerations that contribute to human trafficking. Factors such as the role poverty plays in trafficking; how people become vulnerable/susceptible to traffickers; do our immigration policies and processes inhibit or encourage trafficking; and how do the push-pull factors that exist in

⁷ Chapter 5 at 208.

Canada and elsewhere contribute to the trafficking dynamic, especially as a component of global irregular migration; and what can be done to mitigate those factors, are just some of the concerns that need to be incorporated into a national plan. I believe that this type of broad based strategic approach within a national strategy will enhance Canada's efforts to provide a more meaningful long term response to international trafficking.

7.5 Conclusion

Testifying before the Status of Women Canada Parliamentary Committee in 2006, Yvon Dandurand expressed the concern that "... our positions on human trafficking often dictate our actions. If we think that human trafficking is practised above all with a view to prostitution or sexual exploitation, we are going to focus our attention on those areas."⁸ This study determined that the Canadian government did in fact view international trafficking largely in terms of women and girls forced into prostitution and as a consequence, focused the weight of the government's anti-trafficking efforts towards the sex trade, resulting in only one international trafficking prosecution. More recently however, there is an indication that there may be a shift in the direction of the government's anti-trafficking enforcement with the introduction of two cases of international human trafficking before the court, one in British Columbia and the other in Ontario. These charges are in relation to international trafficking for labour exploitation which is in keeping with the viewpoints expressed by several juridical actors during this study.⁹

⁸ Standing Committee on the Status of Women, 39th Parliament, 1st Session, "Committee Meeting # 14" (October 3rd, 2006) testimony of Yvon Dandurand, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2382924&Language=E&Mode=1&Parl=39&Ses=1#Int-1677179>>.

⁹ Sarah Douziech (2011). "Human Trafficking happens here in our own backyard" (August 14, 2011) Vancouver Sun Newspaper, online: <<http://www.vancouversun.com/news/Human+trafficking+backyard/5253821/story.html>>. Aimee Mayer, "Family Faces Criminal Charges For Human Trafficking in Canada" (2011) online: Human Rights Brief <<http://hrbrief.org/2011/04/family-faces-criminal-charges-for-human-trafficking-in-canada/>>.

An article written about the Ontario charges by Nicole O'Reilly for the on-line newspaper, the Spec.com, details how a Hungarian Roma gypsy criminal organization was able to abuse Canada's refugee system in order to facilitate the trafficking of 19 persons into our country. According to the article, the 19 victims, also of Roma ancestry, were brought into the country by the organization, forced to claim refugee status and then to apply for welfare benefits, while being held in deplorable living conditions and forced to work for little or no pay. Since the charges were laid, two accused have plead guilty to international trafficking and ten others remain in custody awaiting trial.¹⁰ Given that the news article highlights problems with our refugee and social welfare systems in relation to international trafficking, this prosecution underscores my argument that an effective national strategy to combat international trafficking must be from a broader perspective that integrates a variety of social and legal responses beyond just an anti-trafficking plan largely focused on law enforcement if Canada hopes to provide long term solutions to this horrendous crime.

The power relationship struggles that take place within the juridical field and determine an actor's level of influence within the field are a constant changing dynamic of the field. However slightly, there will be a progression and evolution of change affecting the level of influence a juridical actor, individually or collectively with like minded actors, can exert within the field at any given moment in time. As this study has shown, several juridical actors are now of the belief that labour exploitation is the greater form of international trafficking taking place in Canada. It is possible that the recent international trafficking charges for labour exploitation are the result of these actors having attained a level of greater influence within the juridical field

¹⁰ Nicole O'Reilly, "Human Trafficking case puts spotlight on refugee system" (January 12, 2012) thespec.com, online: <<http://www.thespec.com/news/crime/article/653197--human-trafficking-case-puts-spotlight-on-refugee-system>>.

in regards to ongoing power relationship struggles such that their views are now being incorporated into the anti-trafficking activities at the investigative/operational level. Conversely, it is equally possible that these new charges may simply be the result of one or more investigators at the operational level pursuing a line of inquiry on their own initiative and no sustained change has actually occurred in the strategic direction of the government's anti-trafficking efforts. I believe it would be of value to conduct further research into this area to determine if a shift in the anti-trafficking strategy has occurred, the causes of the shift, and how those causational factors relate to the power relationship struggles within and between the two social fields that have to date shaped Canada's response to international human trafficking.

This study has been a unique experience. The constant application of Bourdieu's concept of reflexivity, self-socio-analysis, during the study proved challenging but rewarding, providing me with a greater appreciation of my role in the development of the government's initial anti-human trafficking strategy. This project has also deeply enriched my understanding of the mutually constituting relationship that exists between law and society. And, as a result of Bourdieu's field theory, I now have a more complete grasp of the dynamics that exist within and between social fields, as evidenced by the power relationship struggles that have taken place between the juridical field and the international anti-trafficking social field. I encourage the government to re-examine their enforcement strategy and to broadly engage with a variety of social fields that have the potential of making a meaningful contribution to Canada's anti-trafficking efforts tailored to Canada's social and legal requirements. We cannot fail to act when people are suffering.

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Appendices

Appendix “A”

Anti-Human Trafficking Social Movement Organizations – International¹¹

- Alliance Anti Trafic www.allianceantitrafic.org
- Amnesty for Women www.amnestyforwomen.de
- Anti Slavery International www.antislavery.org
- ASTRA Anti-trafficking Action www.astra.org.rs/eng/
- Benedictine Sisters of Mount St. Scholastica www.mountosb.org
- Boat People SOS www.bpsos.org
- Catholic Legal Immigration Networks, Inc. www.cliniclegal.org
- Coalition Against Trafficking in Women www.catwinternational.org
- Coalition to Abolish Slavery and Trafficking www.castla.org
- Compassion First www.compassionfirst.org
- Congregation of Notre Dame www.cnd-m.org
- End Child Prostitution, Child Pornography & the Trafficking of Children for Sexual Purposes (ECPAT) www.ecpat.net
- Equality Now www.equalitynow.org

¹¹ This list is not exhaustive but represents the principle organizations involved in the international anti-trafficking social movement as of May 2010. I have not included the countless religious organizations of various denominations that have some level of interaction internationally other than providing a few examples such as the Congregation of Notre Dame. In addition, this list does not include the numerous organizations dedicated to combating trafficking at a national level within various countries that may indirectly voice support relative to the international discourse but have little or no international presence, eg: Associazione On The Road – Italy (www.ontheroadonlus.it) and A.S.B. L. Payoke – Belgium (www.payoke.yucom.be).

- Fair Fund www.fairfund.org
- Free the Slaves www.freetheslaves.net
- Freedom House www.freedomhouse.org
- Freedom network USA www.freedomnetworkusa.org
- Friends of Thai Daughters www.friendsofthaidaughters.org
- Global Alliance Against Trafficking in Women www.gaatw.org
- Global Fund for Women www.globalfundforwomen.org
- Global Rights www.globalrights.org
- Home of New Beginnings (Thailand) www.homeofnewbeginnings.com
- Human Rights Watch www.hrw.org
- Human trafficking.org www.humantrafficking.org
- International Centre for Human Rights & Democratic Development
www.ichrdd.ca
- International Council of Women www.icw-cif.org
- International Federation Terre des Hommes www.terredeshommes.org
- International Labour Organization www.ilo.org
- International Justice Mission www.ijm.org
- International Organization for Adolescents (IOFA) www.iofa.org
- International Organization for Migration www.iom.int
- International Rescue Committee (IRC) www.theirc.org
- Just One www.just4one.org
- La Strada International www.lastradainternational.org
- Network of Sex Work Projects (NSWP) www.nswp.org

- Not For Sale Campaign www.notforsalecampaign.org
- Organization for the Security of Central Europe (OSCE) www.osce.org
- Pearl Alliance www.pearlalliance.org
- Polaris Project www.polarisproject.org
- Prevent Human Trafficking preventhumantrafficking.org
- Red Light Children Campaign www.redlightchildren.org
- SAWSO – The Salvation Army World Service Office www.sawso.org
- Somaly Mam www.somaly.org
- Shared Hope International www.sharedhope.org
- Sisters of the Divine Saviour sdssisters.org/slavery
- Stop Enslavement www.stopenslavement.org
- Stop The Traffik www.stopthetraffik.org
- Tapestri www.tapestri.org
- The A21 Campaign www.thea21campaign.org
- The Emancipation Network www.emancipationnetwork.org
- The Future Group www.thefuturegroup.org
- The Home Foundation www.thehomefoundation.net
- The Human Trafficking Project traffickingproject.blogspot.com
- The Salvation Army (Salvationist) www.salvationist.ca
- The SOLD Project thesoldproject.com
- The Tronie Foundation www.troniefoundation.org

- Transitions Global www.transitionsglobal.org
- UNGIFT – United Nations Global Initiative to Fight Human Trafficking
www.ungift.org
- UNICEF – United Nations Children’s Fund www.unicef.org
- UNODC – United Nations Office on Drugs and Crime
www.unodc.org
- Vital Voices Global Partnership vitalvoices.org
- Women Against Slavery womenagainstsavery.org
- Women for Women International www.womenforwomen.org
- Women’s Christian Temperance Union www.wtcu.org
- World Vision International www.wvi.org
- Youth for Human Rights www.youthforhumanrights.org

Appendix 'B'

Anti-Human Trafficking Social Movement Organizations – Canada¹²

- CATW – Canada www.catwinternational.org
- Canadian Council of Refugees www.crc.ca
- Canadian Ethnocultural Council www.ethnocultural.ca
- Canadian Feminist Alliance for International Action www.fafia-afai.org
- Canada Fights Human Trafficking canadafightshumantrafficking.com
- Exodus Cry (Canada) www.exoduscry.com
- Federation of Sisters of St Joseph of Canada www.csjfederation.ca
- GAATW – Canada www.gaatw.org
- Help Us Help the Children www.helpushelpthechildren.ca
- Homeless Nation www.homelessnation.org
- ILO – Canada www.ilo.org
- IOM – Canada www.iom.int
- International Centre for Human Rights & Democratic Development
www.ichrdd.ca
- International Justice Mission Canada www.ijm.ca
- MOSIAC¹³ www.mosaicbc.com
- National Association of Women and the Law www.nawl.ca
- National Council of Women Canada www.ncwc.ca

¹² These are organizations situated in, or operate within, Canada, some of which have international connections.

¹³ See: Separated Children Intervention and Orientation Network Project for anti-trafficking details

- National Organization of Immigrant and Visible Minority Women of Canada
www.noivmwc.ca
- Native Women’s Association of Canada
www.nwac.ca
- Pivot Legal Society
www.pivotlegal.org
- Stop Human Trafficking
www.humantrafficking.ca
- The Future Group
www.thefuturegroup.org
- The Salvation Army (Canada)
www.salvationarmy.ca
- UNICEF – Canada
www.unicef.ca
- Walk With Me
www.walk-with-me.org
- Women Against Slavery
womenagainstsavery.org

Appendix ‘C’

Generic Interview Script for Study Interviews

Brief introduction of the objectives of the research as per proposal

- in essence examining the anomaly between the claims that international human trafficking is extensive in Canada and the scarcity of prosecution results

Questions:

1. Interviewee’s duty and work responsibilities.
2. Part of IWG – how and when they became involved?
3. Role with respect to human trafficking investigations/intelligence/policy
4. Are there designated employees within the department that are dedicated to human trafficking enforcement?
5. Do employees receive any training – type and from who?
 - a. Have they done any follow-up assessment to determine the success of the training – eg increased number of referrals etc.
6. Recognizing that there is also domestic trafficking as per Section 279.01 CCC, are they involved in that in any way? (Do they contribute resources?)
7. What do they believe is the extent of human trafficking in Canada? And why?
 - a. Intelligence – stats – threat assessment
 - b. Source of this belief – media/courses-training/third party info
 - c. Is this both cross border and domestic – break out if possible
8. How has the issue of human trafficking affected policy?
 - a. Have they created internal policy specifically for human trafficking – details – how why when etc
9. What is the department’s strategy for combating human trafficking?
 - a. Investigations – initiate themselves, work collaboratively with other departments, work with NGOs
 - b. Strategies worked out in isolation or with other departments
 - c. Who do they most frequently partner with
10. From your perspective, why have there been so few prosecutions/claims as a victim of human trafficking? The following to be discussed if respondent does not have any definitive reasons for the lack of prosecutions.
 - a. Human trafficking is/is not systemic
 - b. The construct of the victim inhibits prosecutions
 - c. Poor police investigations

- d. Hard to detect – hidden crime – what efforts are being made to uncover – draw parallel to drug trafficking – even in the face of violence, lots of informants that lead to charges
 - e. Stockholm syndrome
 - f. Threat to family back home
 - g. Fear of police
11. The construct of the victim (as defined by the UN Convention) – define and explore in interview (does it affect the ability to prosecute – is it a reason so few charges, etc)
 - a. Definition in UN Convention versus domestic legislation – are they applied the same
 - b. Do they see this evolving? And to what extent?
 - c. What about debt bondage which is considered as evidence of trafficking in some countries such as Australia but not in Canada
 12. The role of NGO(s) in their department/strategy.
 - a. For example the RCMP – HTCC has an international victim participating
 - b. Do NGO(s) provide advice directly
 13. Their views of NGO involvement with the overall government efforts
 - a. Are they in regular contact with NGOs
 - b. Which are the main NGOs that they deal with on the issue of human trafficking
 - c. Any concern that NGOs have their own agenda which may not be in line with CBSA
 14. What is their view of the future role of the government strategy to combat trafficking?
 - a. Suggestions for improvement
 - b. Maintain the course
 15. It seems that the major focus of the strategy to combat human trafficking is on the issue of prostitution – is this statement valid and if so, why?

There are some theories on the go as to why the government is fighting HT to the degree they are when there is no significant evidence that it exists systemically in Canada – would like your thoughts on these theories.

16. What is their view of the suggestion by some that the fight against human trafficking is more a means of migration control policy by the government (justifies increase border security and/or compensates for failed migration policy).
17. It has been suggested that the NGOs are orchestrating a moral panic similar to the one of a century ago concerning white slavery. What do you think of this suggestion?
18. Any comments you would like to offer?