

LABOUR TRAFFICKING ROUNDTABLE

SUMMARY

MARCH 5, 2014

VANCOUVER, BC

OVERVIEW:

On March 5, 2014, the BC Office to Combat Trafficking in Persons (OCTIP), Ministry of Justice, the West Coast Domestic Workers' Association (WCDWA), and the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) hosted a one day roundtable on labour trafficking. The consultation brought together 40 participants from the provincial and federal governments, law enforcement, federal prosecution service, non-profit organizations, service organizations and academia to collaboratively address the issue of labour trafficking in BC.

The focus of the roundtable was twofold:

- 1) to identify the salient issues, gaps, priorities, and recommendations regarding the issue of preventing the trafficking and exploitation of live-in caregivers and domestic workers in BC;
- 2) to improve the detection, investigation, and prosecution of labour trafficking cases in BC.

The results of the meeting will be used to further inform BC's response to human trafficking through the implementation of the BC Action Plan to Combat Human Trafficking and the federal government's National Action Plan to Combat Human Trafficking.

PRESENTATIONS:

Elder Larry Grant - Welcome to the Traditional Territories

Elder Larry Grant, a representative of the Coast Salish people and an Elder-in-Residence at the UBC First Nations House of Learning, welcome participants to his traditional territory in both the language of the Musqueam Nation and English. Elder Grant stressed the importance of addressing labour trafficking in Canada because of the historical roots of the issue evident in the early construction of the railroads as part of the nation's infrastructure. Elder Grant also highlighted the vulnerability of First Nations people to sexual exploitation and human trafficking.

Lynda Cavanaugh, Assistant Deputy Minister, Community Safety and Crime Prevention Branch -Welcome to the Roundtable

Lynda Cavanaugh, Assistant Deputy Minister, Community Safety and Crime Prevention Branch, BC Ministry of Justice, reiterated BC's ongoing commitment to combating human trafficking issues since the establishment of OCTIP in 2007. Ms. Cavanaugh emphasized the three-year BC Action Plan to Combat Human Trafficking and the concrete steps being taken by the BC Office to Combat Trafficking in Persons (OCTIP) to raise awareness and understanding of human trafficking issues, including labour trafficking. Ms. Cavanaugh praised the collaboration between WCDWA and OCTIP to raise awareness of human trafficking amongst live-in caregiver communities. Ms. Cavanaugh highlighted the new poster created by OCTIP on the issue of live-in caregivers and human trafficking (available in 5 languages) that was on display at the Roundtable. Ms. Cavanaugh thanked ICCLR for working with OCTIP and participants of the Roundtable to improve methods to identify investigate and prosecute labour trafficking in BC.

Live-In Caregivers and Labour Trafficking Panel Presentation:

A panel presentation provided information about domestic servitude as a form of labour trafficking in BC and Canada. The panel included presentations from four panelists including Bethany Hastie, a PhD candidate in law from McGill University focusing on labour trafficking in Canada, Peter La Prairie and Charles Hough, Federal Prosecutors representing the Public Prosecution Service of Canada, and Ai Li Lim, Staff Lawyer and Executive Director of WCDWA. Vivienne Chin, an Associate from ICCLR, moderated the panel discussion.

Bethany Hastie from McGill University – Literature Review

Bethany Hastie explored the issue of labour trafficking and the exploitation of domestic workers and live-in caregivers in Canada through a legal framework based on the UN *Trafficking in Persons Protocol*. Ms. Hastie reviewed current literature available on the issue. The primary conclusions drawn from the research findings include how to understand the concept of domestic servitude from a legal perspective, current challenges in Canada, responding to current challenges, primary trends apparent in the literature, and proposed recommendations to better respond to the issue of labour trafficking in Canada. Two forms of vulnerability for labour trafficking and five distinguishing characteristics of domestic servitude were explained. Four broad categories of factors of domestic servitude were also detailed along with recommendations for future steps centered on policies, legislations, and practices.

Ms. Hastie's PowerPoint presentation is included as an *Appendix* to this report.

Ai Li Lim, Staff Lawyer and Executive Director WCDWA

Ai Li Lim, presented information about the Public Legal Education Project launched in August 2013 by the WCDWA in association with OCTIP. This project focused on providing legal information to Live-in Caregivers and their networks of support, including front-line service providers in BC.

Fifteen Public Legal Education sessions have been provided to date in BC, particularly in areas where very little legal access was available and the number of live-in caregivers was high. The goals of the project included increasing awareness about human trafficking with live-in caregiver communities, facilitating new community based networks of support, and building upon and strengthening already existing community partnerships and support networks.

The immediate results of the project included new partnerships being formed in Fort St. John and Dawson Creek, five cases of labour trafficking being reported, and many participants sharing their personal experiences about exploitation and trafficking. The workshops with Live in Caregivers explored an understanding of factors that prevent live-in caregivers from reporting their exploitative situations and build a culture of silence around the issue of human trafficking for the purpose of labour exploitation. A final report from this project will summarize the key findings of the project and provide a set of recommendations for next steps at the end of March 2014.

Ms. Lim's PowerPoint presentation is included as an *Appendix* to this report.

Peter La Prairie, and Charles Hough, Public Prosecution Service of Canada

Peter La Prairie and Charles Hough provided information on three key prosecutions in BC related to human trafficking for sexual exploitation and for labour trafficking/domestic servitude. The three cases highlighted include the Ng, Ladha, and Orr cases under Section 118 of IRPA (*Immigration and Refugee Protection Act*). Issues discussed included the penalty provisions for convictions of human trafficking, the business visitor provisions in the federal immigration law that have been used to misrepresent individuals being trafficked into Canada for the purposes of domestic servitude, the lack of awareness and education for the judiciary and law enforcement when dealing with human trafficking cases, and examining the crucial elements of a human trafficking case. Mr. La Prairie and Mr. Hough also expanded on the main elements of a human trafficking case that include recognizing when a person is a victim of human trafficking, understanding why they are in Canada, what are the cultural factors in play, the community supports and networks available to a trafficked individual, what are the consequences of deportation for a trafficked individual, do they owe a debt to their trafficker, and most importantly what is a trafficked individual's concept of the legal system and police services.

Mr. LaPrairie PowerPoint presentation is attached as an *Appendix* to this report.

KEY THEMES: Preventing the Trafficking and Exploitation of Live-on Caregivers (Discussion Session)

Challenges, Barriers, and Limitations Identified

- There is a lack of support for individuals who report to law enforcement and testify at trial as victims of labour trafficking. For example, women who testified in the recent

domestic servitude/human trafficking cases in BC held full-time or multiple part-time minimum wage jobs and missing days of work for trial attendance can be a substantial cost to them. Media attention on victims is overwhelming and can dissuade many individuals from coming forward with their cases of labour trafficking and exploitation.

- There is growing concern that a 6-month TRP offered to victims of labour trafficking isn't easily available and does not allow trafficked persons the time they need to reflect, heal and integrate in society again.
- There is a lack of protection and rights offered to victims who come forward to report to law enforcement. The lack of knowledge of rights and where to access assistance and support in the community for victims of labour trafficking is also a concern.
- The lack of enforcement of employment standards and labour regulations in BC means that the focus is being targeted on a victim's personal responsibility on part of the victims to report and fight for justice. This theme was emphasized by several participants. The personal responsibility that is placed on migrant workers for reporting crimes of labour trafficking and labour exploitation is onerous. The structures of certain migrant worker programs foster an environment of vulnerability, particularly with respect to isolation and alienation for the trafficked individuals resulting from employment in private homes, , and remote geographical or rural locations. Personal choice and free will in these cases become negligible under psychological, emotional, and physical control exerted by the employers and traffickers, especially when dependency on employers is cultivated.
- The decision to come forward and report labour trafficking is also not an option for many of the victims because they feel personal responsibility for the exploitative situation that they are currently experiencing. Many traffickers and employers coerce workers to lie on CIC applications as part of the control process to ensure that the trafficked individual participates in fraud and breaches of regulations. This misrepresentation acts as a disincentive for workers to come forward due to a fear of deportation. .
- Confusion around the definitions and offences surrounding human trafficking, exploitation, and servitude in the *Criminal Code of Canada (CCC)* act as a deterrent to more prosecutions in BC and Canada. The CCC definition of exploitation requires "fear for safety" and has been interpreted as requiring that a threat of physical violence or force, rather than psychological means of control and coercion, is required.
- Structural issues are embedded within immigration law and programs such as the Live-in Caregiver Program requiring a work permit tied to one employer which increases vulnerability of the live in caregiver. The new changes introduced to spousal eligibility in Canada may foster further exploitation and vulnerability for the individuals availing these programs.
- There is a lack of training, awareness, and sensitivity towards human trafficking issues on part of some in law enforcement, particularly the RCMP.

- A recommendation to increase funding for education and training for RCMP, and a human trafficking specific training course as part of the orientation for every newly hired RCMP official was made. The judiciary also lack knowledge about cases of human trafficking, and as such, may have difficulty in recognizing human trafficking for the purposes of exploitation.
- Federal prosecutors urged more reporting of potential situations of human trafficking to law enforcement in order to increase the number of prosecutions.

Yvon Dandurand, Senior Associate ICCLR & University of Fraser Valley

Yvon Dandurand, Senior Associate of ICCLR and Faculty at the School of Criminology and Criminal Justice at University of Fraser Valley presented an ICCLR project that is funded by Public Safety Canada. This project includes five consultations conducted across Canada in Toronto, Ottawa, Montreal, Calgary, and Vancouver. The consultations supplemented previous work performed by ICCLR on labour trafficking, Annette Sitka's study on labour trafficking in Canada, and American research by Amy Farrell who studied ways in which law enforcement and detection of labour trafficking cases can be improved were highlighted. The most prominent issues highlighted by the research included the following:

- Identification of victims in their communities is the biggest challenge for RCMP and service providers.
- Victims don't come forward to report their cases due to persuasive factors rooted in psychological fear and the inability recognize themselves as being a labour trafficking victim.
- There is a lack of proactive law enforcement in this area.
- It is challenging to distinguish between labour infractions and forced labour, and between smuggled individuals, and trafficked individuals.
- Ideas for combating and preventing labour trafficking included mobilizing and building joint inspection teams and investigations with professionals from various sectors of labour, health, municipal by-laws and work safety to ensure collaboration and smooth exchange of information.

Yvon Dandarand's PowerPoint presentation is attached as an *Appendix* to this report.

SMALL GROUP DISCUSSIONS:

Challenges, Priorities, and Recommendations in the Prevention, Protection and Prosecution Labour Trafficking

Small group discussions focused on questions that were designed to gather ideas about the detection, investigation, and prosecution of labour trafficking in BC. The following challenges, priorities, and recommendations were offered during the discussion group session:

- The most common cases of suspected or confirmed labour trafficking involved labour exploitation in the hospitality and construction industries, where long hours, undocumented workers being paid very little wages or nothing at all, fear and intimidation used as coercion techniques, sexual assault, and sexual/racial harassment were identified as typical occurrences. Most of these cases had been identified by community organizations and service providers, but few were investigated or confirmed by authorities.
- Case detection occurred in several ways:
 - 1) Individual identification as a concerned community citizen;
 - 2) Self-reporting by victims; and
 - 3) Investigation of immigration offences, by CBSA and RCMP.

Identification by front-line workers, staff in transition houses, community organizations, government agencies, and religious organizations was also a factor in the detection of cases. Most cases are not identified, investigated, and prosecuted because individuals don't identify themselves as being a victim of labour trafficking and exploitation, don't report due to the fear of deportation and unemployment, are working in isolation from the rest of the community, share a connection or relationship with the trafficker or employer, have debt bondage, and lack knowledge about their human and legal rights and their status in the country.

- Culture is a challenging issue for labour trafficking cases being detected, investigated, and prosecuted. One of the cultural challenges is the cultural interpretation of what is "exploitation" and "extreme exploitation". There has been a normalization of the concept of exploitation amongst many live-in caregiver communities, where employers and workers believe that permanent resident status (PR) usually needs to be "earned" on part of the workers who sometimes feel they must endure a level of exploitation to "deserve" Permanent Residency. Exploitation and normalcy might mean very different things to each individual worker compared to the dominant Western cultural understanding of labour standards and human rights.
- There is often a culture of disbelief or issues of credibility surrounding the self-reporting of victims of human trafficking. Participants' noted that these workers felt a need to prove themselves to different agencies to legitimize their experiences of exploitation. Language used by officials in authority such as "cue jumpers" or "bogus refugees" implies that there is a culture of general scepticism and disbelief, which is not conducive to creating a safe environment where exploited workers would feel comfortable to come forward and self-report.
- For many domestic workers English is a second language and without professional interpretation, their lived experience of being exploited may not be communicated effectively to law enforcement and the judiciary.

- There is need for the legislative framework to reflect accountability on part of the employers. Protections need to be put into place that will ensure that the response is survivor-centered. Survivors need to have some form of protection against immediate removal or deportation if their case doesn't qualify as a labour trafficking case.
- A transferable or open work permit that would allow trafficked individuals to change employers would be a very helpful solution to this issue.
- It was also recognized that labour laws and standards also need to be regularly enforced through a policy framework in order to ensure continued efforts to investigate human trafficking and labour exploitation. A specific idea that was proposed was a central registry for domestic workers to regulate official records of workers within a given community.
- Another fundamental area of recommendation was funding. Funds were required for projects that incorporated collaboration amongst partners, for legal aid, community groups, front line workers, RCMP training, and for public education and awareness initiatives.
- A specific recommendation was made to build a system of information dissemination to educate live-in caregivers when they arrive in Canada or from their home country. This would ideally mean that the information would need to be province-specific and could be provided in the form of brochures or through kiosks at the airport. Mandated workshops upon arrival, or other educative mediums was also identified as a promising practice. It was also stressed that the education and awareness on human trafficking and labour exploitation needs to be provided for employers who employ temporary foreign workers and live in caregivers.
- A recommendation to create a regulatory body for the prevention of labour trafficking was made. The inter-agency body would be responsible for participating with labour groups and community groups and would act as a hub through which employers would be regulated.

NEXT STEPS:

- A summary report of the Roundtable will be provided to participants including Power Point presentations.
- ICCLR will report the key findings from the Vancouver Labour Trafficking Roundtable to Public Safety Canada to further inform its ongoing research on labour trafficking in Canada.
- OCTIP will use the recommendations from the Roundtable to develop further long term actions to prevent and address labour trafficking in Canada, including the issue of domestic servitude.
- The Live In-Caregiver poster will be available for distribution at the end of March 2014 by contacting the OCTIP office (5 languages available).

- OCTIP's updated online training on human trafficking will be re-launched in Spring 2014, with more comprehensive information on labour trafficking.
- WCDWASS will provide a clearing house on their website for information to Live-in Caregivers about labour exploitation and human trafficking.

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LIST OF PARTICIPANTS (see attached)

PRESENTERS POWER POINTS (see attached)