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FOURTH COMMISSION’S TOPIC FOR THE 61\textsuperscript{ST} ANNUAL REUNION OF THE IAJ
CANADA

“Rights and Obligations of Refugees: Risk of Modern Slavery?”

I. Rights and Obligations

Immigrants or migrants are individuals who leave their country (by choice or by force) and seek residence or citizenship in another country. Refugees are a subset of immigrants who have been forced to leave their country in order to escape war, persecution, or a natural disaster.

Specify what are:

[1] The obligations imposed on a migrant (with undocumented status):

– when applying for access to the territory of your country, whether on entering the country (by air, boat, rail or road),

or

– being later found to have entered the country illegally.


– during the period of the regularization procedure following his request to get refugee status;
— after being accepted as a refugee;

— after the rejection of his application as a refugee.

Every person seeking to enter Canada must present themselves at a port of entry and submit to border control for permission to enter. A refugee claim may be made at this time at Border Services, or it can be made later at one of the Immigration, Refugees and Citizenship Canada (IRCC) offices.

If someone has entered Canada illegally and is arrested, they will be brought to either a port of entry, or the closest Border Control or IRCC office, and a refugee claim can be commenced at that time.

Refugee claims will be triaged by the immigration officer at boarder control or at the IRCC office and if it is deemed eligible it will be forwarded to the Immigration and Refugee Board of Canada for a hearing. This Board will hear the refugee claimant’s case and it will determine its credibility. Usually, the refugee claimant will be released pending the hearing.

All refugee claimants, including those who entered illegally, are afforded the rights protected under the Canadian Charter of Rights and Freedoms. The Charter, which is a constitutional document, guarantees the right to life, liberty and security of the person. Canadian government authorities are bound by the Charter whilst determining the refugee claimant’s status claim regardless of whether they have already entered Canada or if they are at a port of entry.

Further, in light of the principle of non-refoulement (no turning back), no one will be returned to a country where he or she risks persecution, torture, or cruel and unusual punishment because of his or her race, religion, nationality, membership in a particular social group or political opinion.

Accordingly, Canada will grant “Protected Person” status to those who qualify under the United Nations Convention relating to the Status of Refugees as well as to those who would risk torture, cruel treatment, or their life, should they be returned.

Those with “Protected Person” status can then apply for permanent resident status in Canada.

Throughout these procedures, a refugee claimant will be on conditional release subject to deportation if his or her claim is rejected. With the appropriate permission, some claimants can work and study while awaiting
their claim’s decision. They have the right to legal aid and certain financial assistance. In addition, they may be granted limited health care rights under the Interim Federal Health Program (IFHP). The conditional deportation order will be cancelled should the refugee claimant obtain permanent resident status.

Refugee claimants can appeal a rejection of refugee protection to the Refugee Appeal Division. Further, the Minister of Citizenship and Immigration can grant a foreign national permanent status or an exemption from any applicable criteria or obligations if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

Finally, in certain cases, a foreign national subject to a deportation order can seek a further examination about the risks, a process to ensure that the person can be returned safely. This is an appeal of last resort.

Source: Sasha Baglay and Martin Jones, Refugee Law, Toronto, Irwin Law, 2017
www.canada.ca/immigration
Immigration and Refugee Protection Act, S.C. 2001, c. 27

II. Risk of modern slavery?

In summary, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons defines human trafficking as the recruitment, transportation, transfer, harbouring or receipt by threat, force or other forms of coercion, fraud, deception, or abuse of power for purpose of exploitation.

The question we are focusing on is not the lucrative business of charging money to a migrant to cross a border, often called alien smuggling. It is about "trafficking human beings", which consists of the exploitation of a person for profit.
Trafficking essentially involves the exploitation of people in conditions contrary to human dignity. These people can be legally resident in the host country or be in an irregular situation, while having to provide for their daily subsistence (food, housing, medical aid, etc ...).

Exploitation of the precarious situation in which these migrants workers find themselves is a form of modern slavery.

It can be of a sexual nature (prostitution for example) but also of an economic nature (exploitation of a person as a worker).

This can be the case, for example, for people working in the construction sector, catering (hotel – restaurant – café), transport, seasonal work, industrial butcher shops, child care, cleaning companies and domestic cleaning.

This exploitation may also be of a financial nature with regard to the "sleep merchants (marchands de sommeil)" who abuse a person in a vulnerable position (because of his illegal or precarious administrative situation or his precarious social situation).

The intention of these “sleep merchants” is to make an abnormal profit at the expense of these people in a precarious situation by selling, renting or providing them a house, a dwelling, a caravan or a single room in conditions incompatible with human dignity, these people having no other real and acceptable choice than to submit to this abuse.

What is the situation in your country?

According to the Human Trafficking National Coordination Centre, although it is difficult to estimate the extent of human trafficking, domestic human trafficking for sexual exploitation purposes is predominant in
Canada. Human trafficking does not necessarily implicate the crossing of international borders. In Canada, most often the trafficking occurs between provinces.

A 2013 report on Human Trafficking for Sexual Exploitation in Canada states (at p. 1) that “the majority of traffickers is male, Canadian citizens, between the ages of 19 and 32 years, and are of various ethnicities or races. Adult females and individuals under the age of 18 years (especially those who are female) are increasingly becoming involved as victims of sexual exploitation.

With respect to the victims, these are generally female, Canadian citizens, between the ages of 14 and 22 years, and are typically Caucasian and are especially targeted if they are in need of financial or emotional support. Individuals dancing in adult entertainment establishments and/or involved in prostitution are more vulnerable: although approximately 50% of victims have no previous experience in these activities.

Between 2007 and 2013, 132 cases were brought to the attention of the Human Trafficking National Coordination Centre (HTNCC) involving 200 victims and 202 accused.

Sections 279.01 to 279.04 of the *Criminal Code of Canada* deal specifically with domestic human trafficking. It is a crime to recruit, transport, harbor a person, or exercise control, a direction or influence over the person to exploit or facilitate her exploitation. It also condemns those who facilitate or take advantage of human trafficking.

“Exploitation” is defined as: a person exploits another if that person’s behavior could reasonably be expected to cause the other to believe that their safety, or that of someone known to them, would be compromised if the labour or service is not provided.

In *R. v Unizar*, the Court of Appeal of Quebec pointed out that Canada is one of the first countries to have ratified, in May 2002, the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*. According to the *Protocol*, each State should take the necessary legislative means to suppress exploitation and human trafficking. Justice Rochon said: “the infraction is committed by actions that, in various ways, create a constraint on the movements of a person with the intent to exploit, or facilitate her exploitation” [translation]. It is not necessary that victims are displaced or that any international border is crossed.