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MILESTONE OR MISSED OPPORTUNITY? A CRITICAL ANALYSIS OF THE IMPACT OF *DOMOTOR* ON THE FUTURE OF HUMAN TRAFFICKING CASES IN CANADA

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INTRODUCTION

In 2011, the largest human trafficking operation to date in Canada was uncovered in Hamilton, Ontario. The *Domotor* case involved over nineteen trafficked persons, transnational elements, and a criminal organization engaged in an elaborate fraud scheme.¹ As the first successfully prosecuted case of international human trafficking, and the largest uncovered trafficking operation to date in Canada, the *Domotor* case has been hailed as a significant milestone in the fight against human trafficking in Canada.² Yet, little time has been taken to critically reflect on this case, assessing not only its successes but also its failures, and the implications it may have for future cases of human trafficking in Canada. While the particular criminal justice outcomes of this case have been praised as progress in Canada's response to human trafficking, the

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1 This article uses the term "*Domotor*" to refer generally to the case, which includes two judicial decisions: a bail review hearing, *R v Domotor*, 2011 ONSC 626, [2011] OJ No 6357 (QL) [*Domotor* 2011]; and a sentencing decision, *R v Domotor*, [2012] OJ No 3630 (SC) (QL) [*Domotor* 2012]. This article focuses on the key accused in the case, Ferenc Domotor Sr, who pled guilty to charges of human trafficking, along with other offences. Ultimately, twelve members of the organized crime group pled guilty to various charges in the course of the investigation, eight of which included guilty pleas for the charge of conspiracy to traffic in humans: see "Hamilton human trafficking kingpin sentenced to 9 years" *CBC News* (3 April 2012), online: CBC <<http://www.cbc.ca/news>>.

2 See, i.e., Nicole O'Reilly, "Couple sentenced in largest human trafficking case in Canadian history" *The Hamilton Spectator* (3 April 2012), online: <<http://www.thespec.com>> [O'Reilly, "Couple"]; Samina Esha, "Ferenc Domotor sentenced to nine years in prison in Canada's largest-ever human trafficking ring" *The National Post* (4 April 2012), online: <<http://news.nationalpost.com>>. Prior to *Domotor*, only one case involving a foreign national victim had proceeded to trial under charges of human trafficking in the *Immigration and Refugee Protection Act*, *infra* note 18: see *R v Ng*, 2007 BCPC 204. All other cases known to have resulted in conviction for human trafficking charges under s 279.01–s 279.04 of the *Criminal Code*, RSC 1985, c C-46 involved the domestic sex trafficking of Canadian citizens or residents. See, i.e., Royal Canadian Mounted Police, "Human Trafficking in Canada: A Threat Assessment" (Ottawa: Royal Canadian Mounted Police, 2010) at 1, 23 [RCMP]; Department of Justice, "An Overview of Trafficking in Persons and the Government of Canada's Efforts to respond to this Crime: 2010-2011", online: Department of Justice Canada <www.justice.gc.ca> [DOJ]; "Canada", United Nations Office on Drugs and Crime Human Trafficking Case Law Database, online: <<http://www.unodc.org/cld>>; Benjamin Perrin, *Invisible Chains: Canada's Underground World of Human Trafficking* (Toronto: Penguin Canada, 2010) [Perrin].

unique and exceptional facts that underpin the judicial decisions in *Domotor* may limit its impact on future criminal justice responses to human trafficking cases. Further, the significant focus on the case as a milestone in Canadian criminal legal history has left more important lessons by the wayside. For example, *Domotor* has illustrated numerous unexamined gaps in Canada's current response to human trafficking, particularly from a service and protection perspective.

This article critically examines the *Domotor* case and the role it has, or may have, within the broader landscape of human trafficking cases in Canada. Part I will provide a contextual background regarding human trafficking in Canadian law and policy, and situate *Domotor* within the known landscape of human trafficking cases in Canada to date. This part will also outline the relevant facts and chronology of the *Domotor* case that will be relied upon in the following sections of the article. Part II will outline and analyse the pre-trial detention and sentencing judgments of several accused individuals in this case with attention to the exceptional facts and criminal charges that heavily influenced the judicial reasoning. Here, a critical analysis of the exceptionality of criminal elements in *Domotor* guides our questioning of its relevance as precedent for future human trafficking cases. Part III will discuss the possible impacts—positive and negative—that *Domotor* may have on future responses to human trafficking cases in Canada both within and beyond the criminal justice arena.

I. UNDERSTANDING DOMOTOR WITHIN THE LEGAL AND POLITICAL LANDSCAPE OF HUMAN TRAFFICKING IN CANADA

Canada has been identified as a destination, transit, and origin country for human trafficking, meaning that trafficked persons come *to*, *through*, and *from* Canada.³ International human trafficking for both sexual and labour exploitation has been found to exist within Canadian borders in addition to the domestic trafficking of Canadian women and girls for sexual exploitation.⁴ Trafficked persons come from a broad and diverse range of backgrounds; in short, there is no single 'trend' regarding human trafficking in Canada. However, a significant amount of attention and action has recently been focused on the domestic sex trafficking issue. Reports from various government actors, including the RCMP⁵ and CSIS,⁶ have identified this form of trafficking as a particular and heightened concern within Canadian borders. Contrary to the dominant trends existing at this time in Canada, the *Domotor* case, which involved non-sexual forced labour, represented not only Canada's largest uncovered human trafficking ring to date but also the only successfully prosecuted case for both international and labour trafficking.⁷

3 See, i.e., Perrin, *supra* note 2; RCMP, *supra* note 2; DOJ, *supra* note 2.

4 *Ibid.*

5 RCMP, *supra* note 2.

6 Criminal Intelligence Service Canada, "Organized Crime and Domestic Trafficking in Persons in Canada" (August 2008), online: Criminal Intelligence Service Canada <<http://www.cisc.gc.ca>> [CISC].

7 Prior to *Domotor*, only one case involving a foreign national victim had proceeded to trial under charges of human trafficking in the *Immigration and Refugee Protection Act*: see *R v Ng*, 2007 BCPC 204. The accused in that case was acquitted of the human trafficking charge. Since *Domotor*, one case of international labour trafficking has been successfully prosecuted under the *Immigration and Refugee Protection Act*, *infra* note 18, s 118. That case involved the domestic servitude of a Filipino woman in BC: see "Vancouver man convicted of human trafficking in Filipino nanny case" *The Vancouver Sun* (26 June 2013), online: Vancouver Sun <<http://www.vancouversun.com>>; *R v Orr*, 2013 BCSC 1883.

The case of *Domotor* presented several stereotypical features of international human trafficking: deceptive recruitment; debt bondage; forced falsified government applications and documents; and violence.⁸ The scheme, carried out by a family-run criminal organization, recruited men from Hungary to work in Canada with the promise of a better quality of life and good wages to support their families back home.⁹ Upon arrival to Canada, the men's travel documents were confiscated and they were forced to make false refugee and welfare claims.¹⁰ The men were then taken to open bank accounts, the documentation of which was confiscated by their traffickers.¹¹ They were housed in cramped and unsanitary conditions in the basement of several houses, were often fed poorly or not at all, and were forced to work in manual labour for up to thirteen or fourteen hours per day for little or no pay.¹² Threats and other intimidation tactics were routinely used against the trafficked men as well as their family members back home, including at least two recorded instances of physical violence.¹³ In addition, some of the trafficked men were made to steal from Canada Post mail boxes, to search for cheques in the mail, and to deposit stolen cheques into bank accounts.¹⁴ Province-wide losses totaled an estimated \$1,000,000.¹⁵ The accused's profits flowed from the trafficked men's unpaid labour, from the welfare fraud scheme, and, substantially, through the theft of cheques from the mail.¹⁶

Following the development of the international *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* ("Protocol"),¹⁷ Canada first created an offence of trafficking in persons under the *Immigration and Refugee Protection Act*¹⁸ in 2001, and subsequently created specific criminal offences under the *Criminal Code* in 2005. The *Criminal Code* offences prohibit trafficking in persons,¹⁹ and the associated acts of obtaining a material benefit²⁰ and withholding or destroying documents.²¹ The primary offence of trafficking in persons is punishable up to a maximum term of 14 years imprisonment,²² or, where aggravating factors are present, to a maximum term of life imprisonment.²³ *Criminal Code* convictions for trafficking in persons in Canada have generally garnered sentences ranging from 18 months to seven years,²⁴ though cases without aggravating factors such as extreme physical violence have tended to attract

8 For a summary of facts, see *Domotor 2011*, *supra* note 1 at paras 6-12; *Domotor 2012*, *supra* note 1 at paras 7-16.

9 *Domotor 2011*, *ibid* at para 6; *Domotor 2012*, *ibid* at paras 11-12.

10 *Domotor 2011*, *ibid* at paras 8-9; *Domotor 2012*, *ibid* at paras 12-13.

11 *Domotor 2011*, *ibid* at para 8; *Domotor 2012*, *ibid* at para 12.

12 *Domotor 2011*, *ibid* at paras 7 and 9. See also *Domotor 2012*, *ibid* at paras 12, 22-23; *R v Ferenc Domotor Jr, Ferenc Domotor Sr, Gyongyi Kolompar* (3 April 2012), Hamilton CR-11-3032-0000 (ONSC) (Victim Impact Statement of Tamas Miko) [Victim Impact Statement].

13 *Domotor 2011*, *ibid* at para 11; *Domotor 2012*, *ibid* at paras 17, 20; Victim Impact Statement, *ibid*.

14 *Domotor 2011*, *ibid* at para 12; *Domotor 2012*, *ibid* at para 6.

15 *Domotor 2011*, *ibid*.

16 *Ibid* at para 13.

17 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, GA Res 55/25, UNODC, 2000 [Protocol].

18 *Immigration and Refugee Protection Act*, SC 2001, s 118 [IRPA].

19 *Criminal Code*, RSC 1985, c-C46, s 279.01 and s 279.04 (amended by SC 2005, c 43; SC 2010, c 3; SC 2012, c 15) [*Criminal Code*]; see also s 279.011 for offences involving minors.

20 *Ibid*, s 279.02.

21 *Ibid*, s 279.03.

22 *Ibid*, s 279.01(1)(b).

23 Aggravating factors include kidnapping, aggravated assault, aggravated sexual assault, or causing death of the victim: *Criminal Code*, *ibid*, s 279.01(1)(a).

24 This range is representative of sentences before credit reductions take place. See RCMP, *supra* note 2 at 24; Perrin, *supra* note 2.

sentences of three years or less.²⁵ For example, the first person convicted in Canada, Imani Nakpangi, received a sentence of three years for the charge of human trafficking in a case involving the sexual exploitation of two Canadian minors.²⁶ Vytautas Vilutis received a conviction of two years in a case involving charges of human trafficking, receiving a material benefit, and assault.²⁷ Prior to *Domotor*, the longest sentence was seven years, which was received by Laura Emerson in a case involving significant aggravating factors concerning the use of violence.²⁸

In the *Domotor* case, the accused were charged with human trafficking,²⁹ withholding travel, identity or immigration status documents,³⁰ receiving a material benefit primarily in the form of unpaid labour,³¹ defrauding the City of Hamilton concerning payments under the *Ontario Works Act*,³² participating in a criminal organization,³³ and criminal conspiracy.³⁴ Unlike the majority of prosecuted cases before it, *Domotor* not only resulted in the lengthiest sentence—nine years before any credit reductions—handed out to date, but it also has had a potential effect on the pre-trial detention process for future cases of human trafficking.

Situated within the known landscape of human trafficking in Canada, *Domotor* clearly stands out as unique in many ways. While the case has been properly recognized as the first successfully prosecuted case of international and labour trafficking, the following sections illustrate that *Domotor* is significantly different from other human trafficking cases because of its organized criminal activities occurring beyond the ‘traditional’ scope of exploitation associated with Canadian cases of human trafficking.

II. THE CRIMINAL JUSTICE OUTCOMES AND *DOMOTOR*: IMPORTANT PRECEDENT OR EXCEPTIONAL CIRCUMSTANCES?

The exceptional factual circumstances and criminal activities in *Domotor* gave rise to its significant media attention and highly influenced the outcomes of the criminal prosecution of individuals involved in this case. In what follows, we present a critical analysis of both the pre-trial detention review and the sentencing hearing, highlighting the circumstances that underpin the judicial reasons.

A. Pre-Trial Detention Review

A pre-trial detention review for four of the accused in *Domotor* arose during the course of the criminal investigation based on applications by three accused against whom pre-trial detention had been ordered, and on application by the prosecutor in relation to

25 Two accused, Laura Emerson and Juan Pablo Urizar, were involved in cases with extreme physical violence. Emerson received a seven-year prison term: see RCMP, *supra* note 2 at 24; Perrin, *supra* note 2. Urizar received a six-year prison term: *R v Urizar* (13 August 2010), Longueuil 505-01-084654-090 (CQ), online: United Nations Office on Drugs and Crime Human Trafficking Case Law Database <<http://www.unodc.org/cld>>. All other cases ranged from 18 months to three years before any credit reductions: see RCMP, *supra* note 2 at 24-26; Perrin, *supra* note 2.

26 RCMP, *supra* note 2 at 24.

27 *Ibid* at 25.

28 *Ibid* at 24, 26.

29 *Criminal Code*, *supra* note 19, s 279.01.

30 *Ibid*, s 279.03.

31 *Ibid*, s 279.02.

32 *Ibid*, s 380(1)(b); *Ontario Works Act*, SO 1997, c 25.

33 *Ibid*, s 467.11(1). This charge was added at a later date.

34 *Ibid*, s 465(1)(c). This charge was added at a later date.

a fourth accused—Ferenc Domotor—who had been released on conditions.³⁵ At the time of review, new charges of criminal conspiracy and organization were laid against the accused,³⁶ which triggered rules for the hearing that had never before been tested in relation to human trafficking charges. Where pre-trial detention is sought, the Crown typically carries the burden of proving, on a balance of probabilities, that pre-trial detention is justified; however, where certain circumstances arise, including a charge of criminal organization, this burden of proof is reversed.³⁷ Therefore, the reverse onus of proof was applied to this hearing, meaning that the burden of proof to establish *no* just cause for pre-trial detention was placed on the accused. Although this issue took minimal space in the argument and decision concerning detention, it is a critical factor to note since, unlike ‘typical’ pre-trial detention hearings, pre-trial detention was the ‘default result’ in this situation.

The outcome of the review also relied heavily on Justice Cavarzan’s decision to apply tertiary grounds in his assessment of whether a just cause for detention existed. Grounds to establish just cause for detention are listed under subsections 515(10)(a) – (c) of the *Criminal Code*. Relevant to this case were the tertiary grounds listed under subsection 515(10)(c): “if the detention is necessary to maintain confidence in the administration of justice [...]”.³⁸ To detain under tertiary grounds, the court will consider (i) the apparent strength of the prosecution’s case, (ii) the gravity of the offence, (iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and (iv) the fact that the accused is liable for a potentially lengthy term of imprisonment or, in firearm offences, a minimum imprisonment of three years or more.³⁹ In *Domotor*, the accused argued that use of the tertiary grounds provision was confined to cases involving murder, firearms and drug trafficking, and was therefore not applicable in this case.⁴⁰ However, Justice Cavarzan rejected this argument, citing precedent that supported the application of the tertiary grounds provision in many contexts.⁴¹

In evaluating the application for pre-trial detention, Justice Cavarzan relied on three primary findings: human trafficking is a “very grave offence”;⁴² there were numerous victims who suffered violence;⁴³ and, upon conviction, the accused were liable for potentially lengthy terms of imprisonment.⁴⁴ Beyond the ‘basic’ elements of human trafficking in this case, it is clear that the elaborate and organized criminal nature of the offences played a significant role in the decision. Justice Cavarzan commented on the “elaborate and complex scheme of deceit” carried out by the accused, and concluded that the organized criminal activities were a “systematic and cynical attack on Canada’s social safety network.”⁴⁵ Commenting further on the organized crime activities, Justice Cavarzan found that “[t]he reasonable and fully-informed member of society would have

35 *Domotor 2011*, *supra* note 1 at paras 2-3.

36 *Domotor 2011*, *supra* note 1 at para 27.

37 *Criminal Code*, *supra* note 19, s 515(6)(a)(ii). The reverse onus provisions under s 515(6) generally has been upheld on *Charter* challenge: see *R v Pearson*, [1992] 3 SCR 665.

38 *Criminal Code*, *ibid*, s 515(10).

39 *Ibid*, s 515(10)(c). This section has presented historical challenges for courts in its breadth and tension with *Charter* rights: see *R v Morales*, [1992] 3 SCR 711; *R v Hall*, 2002 SCC 64, [2002] 3 SCR 309. It remains a somewhat controversial provision to date, and has been criticized as too frequently and broadly applied: see Don Stuart and Joanna Harris, “Is the Public Confidence Ground to Deny Bail Used Sparingly?” (2004) 21 CR (6th) 232.

40 See *Domotor 2011*, *supra* note 1 at paras 36, 64.

41 *Ibid* at para 65, citing *R v BS*, 2007 ONCA 560 at para 10.

42 *Ibid* at para 61.

43 *Ibid* at para 62.

44 *Ibid* at para 63.

45 *Ibid* at para 61.

shaken confidence in the administration of justice⁴⁶ if the accused were released from custody. Thus, detention was justified under the tertiary grounds provision.

While *Domotor* may be viewed as setting new precedent by including the offence of human trafficking within the types of conduct and crimes captured by the tertiary grounds provision, it is also easily distinguishable in light of the circumstances of the case. In *Domotor*, the scale of the criminal organization and its operations, the ‘abuse’ of Canada’s social systems, the employment of violence, the number of victims, and the transnational elements together created a compelling argument for pre-trial detention review but also established the uniqueness of this case. Further, the criminal organization and conspiracy charges led to a reverse onus of proof situation. It is difficult to determine whether, in the ordinary course of proceedings, similar evidence tendered by the prosecutor would be sufficient to meet the burden of proof required. Therefore, there is cause to question the applicability of *Domotor* for future assessments of pre-trial detention review in human trafficking cases.

B. Sentencing Decision

Criminal sentencing in Canada is based on fundamental principles set out in the *Criminal Code*, which include denunciation of unlawful conduct, specific and general deterrence, isolation, rehabilitation, reparations to victims and communities, promotion of responsibility, and accountability in offenders.⁴⁷ These principles aim to develop a tradition in criminal sentencing that contributes “to respect for the law and the maintenance of a just, peaceful and safe society.”⁴⁸ In line with these general principles and aims, an appropriate sentence accounts for specific considerations, including: relevant aggravating or mitigating circumstances; precedent; proportionality; global length of sentence for multiple offences; the liberty interests of the offender; and available alternatives to imprisonment, particularly as concerns aboriginal offenders.⁴⁹

The *Domotor* decision has been hailed, in part, as a new precedent on sentencing for the crime of human trafficking, having handed down the most stringent sentence in Canadian history to date.⁵⁰ The sentencing decision of three high-level actors in the criminal trafficking ring will be considered: Ference Domotor Sr.; Ferenc Domotor Jr.; and Gyongyi Kolompar.⁵¹ Domotor Sr. and Jr. pled guilty to conspiracy to traffic in persons, participation in a criminal organization, and counseling misrepresentation under the *Immigration and Refugee Protection Act*.⁵² Kolompar also pled guilty to counseling misrepresentation under the *Immigration and Refugee Protection Act*, and to a charge of fraud in excess of \$5,000.⁵³ In relation to Domotor Sr., who was regarded as the “kingpin” of the criminal organization in Canada, the court determined a global sentence of nine years imprisonment before credits for pre-trial custody and the guilty plea.⁵⁴ Domotor Jr. was given a sentence of five years imprisonment before credits for

46 *Domotor* 2011, *supra* note 1 at para 73.

47 *Criminal Code*, *supra* note 19, s 718.

48 *Ibid.*

49 *Ibid.*, s 718.2; as regards proportionality, see s 718.1.

50 Natalie Stechyson, “Few aware of human trafficking in Canada” (4 April 2012) *Nanaimo Daily News*, A10: “[...] the kingpin of Canada’s largest human trafficking case to date was handed a nine-year sentence Tuesday – the toughest Canadian sentence for human trafficking yet [...]”; see also O’Reilly, “Couple”, *supra* note 2.

51 The analysis in this section will focus on the reasoning and sentences handed down to Domotor Sr and Jr as Kolompar’s case did not include charges of human trafficking and participation in a criminal organization.

52 *Domotor* 2012, *supra* note 1 at paras 1-2.

53 *Ibid* at para 2.

54 *Ibid* at para 53.

pretrial custody and the guilty plea.⁵⁵ Kolompar, given the lesser charges in her plea, was sentenced to time served by an agreement between counsel.⁵⁶

The accused in this case were foreign nationals, and their criminal enterprises targeted institutions that are part of Canada's social fabric. Justice Glithero clearly emphasizes the concepts of Canadian values and 'fairness' in setting out the reasons for judgment. In addition to the idea that "[m]odern day slavery is disgusting to us and [...] offends our core values,"⁵⁷ the 'abuse' to both social assistance programs and immigration clearly underpinned the reasoning of the court: "[...] when our values are abused, flagrantly, as they were by these three individuals, we are offended [...]"⁵⁸ Justice Glithero further emphasizes the gravity of the welfare fraud scheme, finding it a "breach of society's trust" that must be "treated as being a serious matter."⁵⁹ Justice Glithero notes that such abuses "have to be dealt with severely"⁶⁰ in order to preserve the integrity and fairness of our social assistance and immigration systems.⁶¹ This reasoning sets a clear stage for the remainder of the decision, and provides valuable insight into the perspective of the court in coming to its conclusions on sentencing.

The severe conditions of exploitation and human trafficking, and the criminal organization and fraud activities appeared to be significant factors leading to the particular outcome of the sentencing decision. Discussing the general nature of the case, Justice Glithero notes that the facts go beyond the "essentials" of the offence: "[t]hese offences are by no means impetuous or ill considered, rather they are deliberate and calculated and represent a criminal scheme that was very much premeditated, and was intended to and did last over a long period of time."⁶² Here, the court signals that both the criminal organization element and the time period of exploitation are important aggravating factors. Building on the elements of the crime, Justice Glithero finds that "[t]he control exerted over these victims [...] involved more greed, more nastiness, than was required to simply accomplish the legal purpose."⁶³ It is arguable that the facts of this case mirror commonly used tactics of control in cases of human trafficking such as limited provision of food and basic services, prohibition against contacting family members, and use of gratuitous physical abuse.⁶⁴ However, the use of the trafficked men to assist in and commit the extraneous criminal activities associated with the refugee and welfare fraud schemes certainly go beyond the basic elements of labour trafficking. Thus, it may be the connection to the exceptional criminal elements that takes primary importance over the conditions of exploitation the men experienced.

III. ASSESSING THE IMPACT OF *DOMOTOR* ON FUTURE RESPONSES TO HUMAN TRAFFICKING IN CANADA

While the *Domotor* case has been hailed as a significant step forward in the criminal justice response to human trafficking in Canada, its application and use as a precedent for future human trafficking cases must be approached with caution. For cases more closely representative of the dominant trends seen to date in Canada, *Domotor* would,

55 *Ibid* at para 58.

56 *Ibid* at paras 44 and 60.

57 *Ibid* at para 50.

58 *Ibid*.

59 *Ibid* at para 40.

60 *Ibid* at para 52.

61 *Ibid* at paras 51-52.

62 *Ibid* at para 37.

63 *Ibid* at para 39.

64 See *ibid* at paras 12-13.

if anything, provide a ceiling—not a benchmark—for sentencing outcomes. Further, while *Domotor* may have illuminated important gaps in Canada’s response to human trafficking cases, this issue has remained relatively under-discussed beyond the criminal justice realm. As such, this final section will examine the potential legacy of *Domotor*, both within and beyond the criminal justice arena, in shaping Canada’s future response to human trafficking within its territory.

A. *Domotor* as Criminal Law Precedent: A Case about Human Trafficking or Organized Crime?

Although *Domotor* is, in one way, a clear case of human trafficking, the scale and type of criminal schemes uncovered in this case clearly overshadow the more ‘typical’ portrait of human trafficking. Most of the cases seen to date in Canada, unlike *Domotor*, have involved small-scale operations of human trafficking for sexual exploitation;⁶⁵ further, these cases have primarily involved Canadian women and girls whereas the trafficked persons in the *Domotor* case were all men. In addition, the criminal organization and conspiracy, elaborate fraud schemes, and abuse of Canada’s immigration and welfare systems were clearly at the forefront of the particular outcomes in this case, as discussed in Part II.

The *Domotor* case, in fact, occupies an extremely unique space being that it is highly stereotypical of human trafficking as represented in social and political landscapes, and yet is a significant departure from identified trends of actual human trafficking cases. While the facts of *Domotor* represent an image of human trafficking commonly propagated, it does not align to the dominant trends established in the body of existing cases in Canada. Further, the outcomes of exploitation in this case went well beyond ‘typical’ targets of trafficking, procuring not only forced labour but also facilitating numerous fraud schemes. While in one way this case may “suggest a greater awareness of the importance of enforcing human trafficking laws among Canadian law enforcement officers and prosecutors, and a great willingness to take aggressive measures to protect victims and punish perpetrators,”⁶⁶ from another perspective it can be viewed not as a case with human trafficking at its core but as one primarily concerned with organized crime.

Regarding its use as a precedent for future cases of human trafficking, the *Domotor* case is distinguishable in many ways. First, and perhaps most important, is the weight attributed to the criminal organization elements of this case, as evidenced in the outcomes discussed in Part II. No other case of human trafficking in Canada, to date, has included a conviction on charges of criminal conspiracy or participating in a criminal organization, which immediately sets *Domotor* apart from the apparent trends in Canada. Further, activities associated with the criminal organization in *Domotor*, such as the welfare and refugee fraud schemes, were discussed at length in both decisions, also suggesting that these unique circumstances played an important role in the courts’ analyses. Other notable facts from *Domotor* may have further influenced the unique outcomes in this case, including the international scope of the crime, the number of victims, the type of exploitation, and the length of exploitation. All these facts are substantially different from the dominant trends in Canada to date. Thus, in trafficking cases without sufficient evidence to lay charges of criminal conspiracy and organization, *Domotor*’s influence may be limited.

65 See generally Perrin, *supra* note 2; RCMP, *supra* note 2; CISC, *supra* note 6.

66 Kaitlin Brush et al, “International Legal Updates” (2011) 18:3 Human Rights Brief 42 at 42.

B. Beyond Criminal Justice: *Domotor* and the Future Impact for Trafficked Persons in Canada

Despite the critical approach taken to the *Domotor* case in this article, there are important lessons to learn from the case which can have a positive impact on the future response to human trafficking in Canada. As a case full of ‘firsts,’ *Domotor* illuminated significant gaps in Canada’s response to trafficked persons in its territory. Though Canada has taken steps to ensure that services and assistance for trafficked persons are improved and realized, the experience of the trafficked men in this case established many areas in which the response can improve. First, as the first case involving trafficked men, *Domotor* revealed the inadequacy of community services directed towards men. Finding appropriate shelter in this case—both being appropriate for men and appropriate for a recently trafficked person—was a significant challenge. Further systemic issues with respect to services such as adequate funding, translation, and interpretation aids were also present for the trafficked men in this case. Given its political and media notoriety, however, it is perhaps surprising that this case did not spur on more immediate, concrete action.

Shortly after the final determination in the *Domotor* case, the federal government released its much-anticipated National Action Plan to Combat Human Trafficking (“Action Plan”).⁶⁷ In the forward to the Action Plan, then Minister of Public Safety, Vic Toews, writes:

Human trafficking is one of the most heinous crimes imaginable, often described as modern-day slavery. This crime robs its victims of their most basic human rights and is occurring in Canada and worldwide.

[...]

While many initiatives are underway, both at home and abroad, the time has come to consolidate all of the activities into one comprehensive plan with an unwavering pledge to action. The Government of Canada’s National Action Plan to Combat Human Trafficking *proposes strategies that will better support organizations providing assistance to victims and helps to protect foreign nationals*, including young female immigrants who arrive in Canada alone, from being subjected to illegitimate or unsafe work.⁶⁸

Despite this emphasis on the ‘victims’ of human trafficking, the Action Plan, in substance, focuses nearly entirely on a crime-control approach to addressing the issue, and makes no commitments in respect of service provision and protection for trafficked persons. For example, while the government pledges over \$5,000,000 to various law enforcement projects and agencies in the Action Plan, it promises only “up to” \$500,000—one tenth the funding for law enforcement—to “enhanced victim services.”⁶⁹ Further, while the Action Plan specifies particular projects and outcomes for law enforcement, such as the development of an enhanced border team,⁷⁰ it does not specify or recommend any particular practices or projects for victim services under the ‘Protection’ section.⁷¹ This silence is a disappointing result for many individuals and agencies engaged with the issue of human trafficking at a service provision level.

67 *National Action Plan to Combat Human Trafficking* (Ottawa: Government of Canada, 2012), online: Public Safety Canada <<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-ctn-pln-cmbt/index-eng.aspx>> [National Plan].

68 *Ibid* at 1 [emphasis added].

69 *Ibid* at 10.

70 *Ibid* at 17-18.

71 *Ibid* at 13-15.

In addition to highlighting the existing gaps in service provision, the outcomes for the trafficked men in *Domotor* have also raised issues with respect to Canada's Temporary Resident Permit (TRP) program for trafficked persons. The TRP program provides temporary regularized immigration status to trafficked persons in Canada with the goal of providing time for reflection and recovery, and immediate assistance with basic needs in the aftermath of exiting a trafficking situation. The TRP program provides an initial permit of one hundred and eighty days to individuals who an immigration officer considers *may* be a victim of human trafficking.⁷² A TRP can be further extended up to three years for individuals positively identified as trafficked persons, and where other specific criteria are met:

- Whether it is reasonably safe and possible for the victims to return to and to re-establish a life in the country of origin or last permanent residence;
- Whether the victims are needed, and willing, to assist authorities in an investigation and/or in criminal proceedings of a trafficking offence; and
- Any other reason that the officer may judge relevant.⁷³

Despite the guidelines produced to regulate the issuance of TRPs to trafficked persons, numerous problems have been highlighted in practice with respect to accessing the program, and successfully navigating it. For example, confusion surrounding the requisite criteria to issue an initial 180-day TRP has been noted, and may be a factor in reported inconsistency in the discretionary authority of immigration officers, which has resulted in reports of denial of TRPs where advocates felt a TRP should be issued.⁷⁴ In addition, advocates report that immigration officers recommend alternative remedies for TRP applicants to regularize their status,⁷⁵ despite the fact that these avenues may not be well-suited to the applicant's circumstances as was the case for at least one trafficked man in the *Domotor* case who had his refugee claim denied.⁷⁶

The *Domotor* case presented an excellent opportunity to consider revision and improvement of the TRP program, yet it does not appear that such efforts have been undertaken. For example, one of the trafficked men denied refugee protection stated that he had "never been told about this [TRP] program" and did not know how to apply.⁷⁷ His circumstances brought further light to concerns about systemic issues within the immigration system regarding knowledge and access to the TRP program, and inter-departmental communication between agencies like the Immigration and Refugee Board, which processes refugee applications, and other branches that may be more involved in, or responsible for, TRP applications.⁷⁸ An opportunity to evaluate and improve the TRP program from the *Domotor* experience seems to have been missed.

72 Citizenship and Immigration Canada, "IP 1: Temporary Resident Permits" (19 June 2007) at 25-6, online: Citizenship and Immigration Canada <www.cic.gc.ca>.

73 *Ibid* at 27.

74 Canadian Council for Refugees, "Temporary Resident Permits: Limits to protection for trafficked persons" (June 2013) at 2, online: Canadian Council for Refugees <<http://ccrweb.ca>>.

75 *Ibid*.

76 Nicole O'Reilly, "Human-trafficking victim faces deportation to Hungary" (9 February 2013) *The Hamilton Spectator*, online: The Hamilton Spectator <www.thespec.com>.

77 *Ibid*.

78 See *ibid*.

CONCLUSION

A decade after the development of the international *Protocol* on human trafficking, Canada—like many other countries—continues to struggle in creating and implementing effective responses to human trafficking within its territory. Prior to the *Domotor* case, a significant majority of known human trafficking cases and trends in Canada involved the domestic sexual exploitation of women and girls. *Domotor* thus presented a stark contrast from which to evaluate the domestic response to human trafficking. Though the case has been hailed as a significant victory within the criminal justice system, it appears to have served more as a symbolic success than a concrete step forward with respect to human trafficking. While the criminal justice outcomes in *Domotor* were significant, the actual impact the case will have on future criminal justice responses in Canada is uncertain at best when considering the exceptional and complex criminal elements of this case. *Domotor* has presented the potential for a critical, in-depth inquiry into the effectiveness of Canada's response to human trafficking from a service and protection perspective; however, this potential has yet to be realized by legislators and policy makers, perhaps marking a missed opportunity. Despite the shortcomings and cautionary remarks outlined in this article, *Domotor* has brought a significant increase in awareness of human trafficking in all its forms, and thus has the potential to act as a catalyst for real and meaningful changes that improve the response to human trafficking in Canada.