

## PART IV

# Conflation

*Human smuggling is often conflated with human trafficking, but they are not the same. In Canada, this confusion permeates society and the media, and even politicians use the terms interchangeably. The significance of the error cannot be underscored enough. The act of smuggling involves the procurement, for financial or other material benefit, of the illegal entry of persons into a nation where they are not nationals or residents. This is characterized by a consensual agreement between the customer (the person to be smuggled) and the smuggler that terminates upon arrival at the destination. In contrast, human trafficking involves an act of recruiting, transporting, transferring, harboring, or receiving a person through the use of force, coercion, or other means for the purpose of exploiting them. Of course, the exchange between customer and smuggler is rarely clear-cut. Smugglers often charge exorbitant fees, and the act of smuggling is a dangerous endeavor that can result in death. For example, in some cases the containers used to transport people lack sufficient oxygen, resulting in suffocation. Additionally, smuggled persons are extremely vulnerable to abuse, exploitation, and human trafficking. While smuggling can turn into human trafficking, the distinction is important: not all persons who are smuggled experience human trafficking. Confusing these terms can result in an inadequate response that is not tailored to the specifics of each issue. In the Canadian media, the two terms are often used interchangeably, and smugglers are frequently labeled as human traffickers, furthering the general population's misunderstanding on the subject. The government also conflates the two, and as a result it has been difficult to determine the*

*extent of human trafficking because statistics often combine both trafficking and smuggling.*

*Without knowing the scope of human trafficking in Canada, it is difficult to know how best to address it. Likewise, using the two terms interchangeably places the focus on movement, specifically movement into Canada. The emphasis on movement can be seen in the nation's Immigration and Refugee Protection Act, the only anti-trafficking law in existence in Canada until 2005, when Canada amended the Criminal Code to include the offense of trafficking in persons. Under the act, both the offenses of smuggling and human trafficking include "coming into Canada" as an element. It makes sense that movement is discussed in the immigration act, but its inclusion also illustrates why the act was not sufficient in addressing human trafficking. Movement is not a necessary element of human trafficking, and making it such diminishes the focus on other forms of trafficking, such as internal trafficking. Though movement is not a necessary element of the offense of human trafficking in the Criminal Code, the government of Canada continues to focus on movement into the nation. This can be seen in the 2012 adoption of the Protecting Canada's Immigration System Act, which included the controversial Bill C-4 (formerly Bill C-49), initially purported by the government to be an anti-trafficking bill when in fact it primarily focused on limiting the rights of refugees smuggled into the nation, illustrating once again that the conflation of the terms smuggling and human trafficking continues.*

## CHAPTER 9

# Canada

Some cases are like charging someone with assault when they murder someone. We should be charging someone with the most serious charge that their conduct warrants.

—BENJAMIN PERRIN, FOUNDER OF THE NGO FUTURE GROUP

All forms of human trafficking and associated offenses, such as receiving material or financial gain as a result of trafficking, are prohibited in Canada. Child sex tourism is illegal, as is transnational trafficking. Destroying or withholding a person's travel documents or identification to assist human trafficking is also prohibited. The government prosecutes all forms of trafficking, including offenses such as forcible confinement, sexual assault, extortion, kidnapping, threats, and prostitution-related crimes (U.S. Department of State, 2007a, 2007b). Some advocates state that while the anti-trafficking laws are sufficient, the resources allotted to services—such as long-term assisted housing—and the monitoring of labor conditions are not. Experts also point to a need for stronger anti-trafficking training of local law-enforcement personnel, who are often the first to come into contact with trafficking victims (U.S. Department of State, 2007a, 2007b, 2012; Akin, 2010).

The Canadian government has recently amplified its efforts to keep out illegal immigrants. An anti-illegal immigrant agenda can often counteract a nation's ability to properly protect and provide services to victims of human trafficking because it tends to overpower the need to protect trafficking victims who are commonly violators of immigration law by the nature of their trafficking experience. Until recently, because of international treaty obligations, Canada accepted anyone who arrived on its shores and claimed refugee status (Akin, 2010). The issue of refugee status was raised most recently in response to the arrival of 492