

Sharing



experience across borders



As a recipient of an Australian Defence Force Prince of Wales Award, Federal Agent and Royal Australian Navy Reserve (RANR) Lieutenant Andrew Warton* has just returned from Canada on a one month sponsored visit to the Royal Canadian Mounted Police (RCMP) and Canadian Maritime Forces, the Canadian Navy.

*LLB(Hons)(Mon.),BA(PolSt)(Hons)(Mon.),GradDipCrim(Mel.)
,GradDipLegalPrac(ANU),GradCertIndonStudies(NTU),MRMIA,
AIMM. Admitted as a Legal Practitioner in the Supreme
Court of the Australian Capital Territory. The views expressed
in this paper are those of the author and do not necessarily
reflect the position of the Australian Federal Police, Royal
Australian Navy, Australian Defence Force, Canadian Forces,
Canadian Government or Australian Government.

The Prince of Wales Awards Scheme

The Prince of Wales Awards (POWA) Scheme was established in 1984 to enhance community and business support for Australian Defence Force (ADF) Reserves and to encourage employers to support their Reservist employees by releasing them for Defence training and service.

The POWA Scheme recognises individual excellence in both the civilian and military workplaces by allowing selected Navy, Army and Air Force Reservists to travel overseas to Canada, the United Kingdom (UK) or the United States of America (USA) for training and placement with their civilian and military counterparts.

The Defence Reserves Support Council (DRSC) manages the POWA Scheme, whose patron is His Royal Highness, the Prince of Wales. It enhances employer association with the Reserves and Reserve service by establishing effective communication links with the ADF through the DRSC.

Each award allows the recipient to undertake a two-week placement with a civilian employer and a two-week training attachment to a military unit aligned with the member's military employment and rank.

With a primary focus on *People Smuggling, Border Security and Transnational Crime*, the first part of this POWA assignment involved visits to the Royal Canadian Mounted Police (RCMP) Immigration & Passports Section for Quebec province in Montreal, RCMP National Headquarters in Ottawa, the Canadian Border Services Agency (CBSA) and an attachment to the RCMP Border Integrity Program and Integrated Border Enforcement Teams (IBETs) in Vancouver.

The second part of the assignment involved attachment to Canadian Forces Base (CFB) Esquimalt in Victoria British Columbia (BC) and culminated in a one week maritime patrol deployment on board Maritime Coastal Defence Vessel (MCDV) and warship, HMCS Whitehorse.

Background

This is an extract from ongoing research into federal law enforcement and people smuggling and examines people smuggling issues common to Canada and Australia noting that both Commonwealth countries are responsible for policing geographically vast borders.

The paper highlights developments in law enforcement and the need for continued international cooperation between law enforcement agencies with respect to policing organised crime. It addresses the trend of further criminal offences committed against asylum seekers during people smuggling ventures, and discusses advances in Canadian and Australian legislation relevant to these offences.

As members of the Commonwealth, Australia and Canada share many similarities. Both countries are net importers of production technology, possess an abundance of natural resources, share a similar economic and political structure and have been trading partners for more than 100 years. Canada shares the world's longest non-militarized land border between two countries, spanning over 6000km, with more than 200,000km of coastline. At the same time, Australia is surrounded by more than 25,000km of coastline. Similarities between the two countries also extend to the realm of federal policing and like the AFP, recognition and response to the challenges posed by globalisation and technology and the subsequent impact on organised crime features high in the RCMP's strategic priorities.

A further shared experience over the past five years is an overall increase in the number of people smuggling vessels transporting unlawful non-citizens to Canadian and Australian shores. Although air arrivals in both countries still outweigh boat arrivals on an annual basis, in recent years the arrival of unlawful non-citizens by boat sparked community and an associated political reaction in both countries. Accordingly, alongside Australia, Canada has taken decisive action to recognise the crime of people smuggling and the criminal activity associated with it. As a result, both countries ratified the *United Nations Convention against Transnational Organized Crime* and associated protocols.

At the height of Australia's most recent influx, it was noted that "Boat arrivals pose a dimension of urgency in that they involve the practical difficulties and costs, and human rights concerns, of detention. They represent a very public challenge in terms of government capacity to control who enters the country, and to manage our annual migrant and humanitarian intakes."

At the commencement of 2002 the United Nations High Commissioner for Refugees (UNHCR) estimated there were 19.8 million refugees and displaced persons of interest to the UNHCR world wide. Over the past decade in particular, this massive movement of people, coupled with the continuing effects of globalisation and world unrest, has resulted the world-

wide growth of the organised people-smuggling trade. Both Australia and Canada have experienced the impact of such organised crime and the associated need to detect, disrupt and dismantle criminal enterprises through federal law enforcement.

Furthermore, both countries have recognised and accepted the inherent need to enforce sovereignty. Current Interpol literature suggests that people smuggling has become the preferred trade of a growing number of criminal networks worldwide showing an increased sophistication with regard to moving larger numbers of people at higher profits than ever. In many jurisdictions, people smuggling syndicates are still benefiting from weak legislation, huge profits and the relatively low risk of detection, prosecution and arrest compared to other activities undertaken by perpetrators of transnational organised crime.

After visiting Canada on exchange to the RCMP Border Integrity Team and Canadian Maritime Forces, this paper aims to briefly revisit the nature of the people smuggling issue in Australia and Canada, the law enforcement and legislative responses to the issue, and the way in which each country approaches border security as one element of curbing the people smuggling trade.

It will be concluded that Australian and Canadian federal law enforcement authorities adopt a proactive approach and that the need to continually anticipate changes in the criminal methods of organised people smugglers is ever present. It will also be concluded that a by-product of people smuggling, namely additional crimes occurring during the course of people smuggling ventures, deserve further consideration and attention. In this context, both Australia and Canada share an equally proactive approach to legislative reform, with particular reference to recently introduced aggravated people smuggling offences in both jurisdictions.



Unauthorised arrivals by boat

With over 25,000km of coastline, prosperity and proximity to adjoining regions in Asia and the Pacific represent two of many pull factors making Australia an attractive destination for those who utilise the service of people smugglers. Proximity and access to the USA represents one of the pull factors relevant to Canada and makes border security and control particularly challenging.

In Australia the latest wave of boat arrivals saw 9524 unlawful non-citizens arrive between 1999 and 2002 on 135 vessels. Although in lesser numbers, at the same time, in 1999 the arrival of unlawful non-citizens by boat dramatically increased in Canada with the majority of arrivals travelling from the Fujian province in Southern China. Over 600 unlawful non-citizens arrived in Canada on four vessels between 1 July and 10 December 1999.

Law enforcement developments

The late 1990s and early 2000s mark a common era in Australian and Canadian people smuggling experience, both countries encountering an increase in actual and attempted arrival of unlawful non-citizens by boat. Again, public, political and media responses in both countries resulted in considerable public debate, policy changes and increased federal law enforcement capabilities.

Integrated intelligence and investigation teams

One element of the Australian response to an increased level of people smuggling involved the creation of the joint Australian Federal Police (AFP) and Department of Immigration,



Multicultural and Indigenous Affairs (DIMIA) People Smuggling Strike Team (PSST). Along with other AFP Investigation Teams and the AFP International Network, the AFP continues to focus on criminal activity involving people smuggling in accordance with the Ministerial Direction of December 2000. This direction requires the AFP to counter and investigate organised people smuggling and contribute to a whole-of-government approach on unauthorised arrivals.

One element of the Canadian response also involved a multi-agency integrated approach to Federal law enforcement.

The concept of the Integrated Border Integrity Team (IBET) was created in 1996 through a multi-agency team operating between the Canadian province of British Columbia and Washington State in the USA. The main priorities of the IBET were national security, organised crime and other border-related criminality.

A mainstay of the USA and Canadian response to September 11, 2001 was the Canada-US Smart Border Declaration signed by both countries on 12 December 2001. The declaration comprises a comprehensive action plan based on four principle pillars – the secure flow of people, the secure flow of goods, secure infrastructure and continued information sharing. Point 23 of the action plan moved to expand IBET to other areas of the shared border. Accordingly, there are now fifteen IBET regions comprising teams devoted to land, air and sea operations with representatives from the Canadian Border Services Agency (CBSA), the RCMP, US Customs and Border Protection/Border Patrol (CBP/ BP), US Immigration and Customs Enforcement (ICE) and the US Coast Guard (USCG).

At both joint management and operational levels the IBETs represent a truly integrated approach to intelligence and law enforcement that combine resources, pool knowledge, share intelligence and achieve tangible results. The teams deal with a myriad of border-related crimes from the movement of narcotics, money and firearms through to people smuggling and human trafficking. The physical nature of the Canada/USA shared border means these crimes may occur on land, at sea, in the air or through a combination of all.

Defence Force involvement

The Royal Australian Navy (RAN) played a pivotal role in Australia's response to the most recent wave of unlawful arrivals by boat. Likewise, Canada's Navy plays a crucial role in the maintenance of national security and sovereignty. One Canadian author notes "Given the large size of Canada's coastal zones and areas of security responsibility, Canadian maritime security relies completely on a blend of military and civilian national resources".



As is the case with IBETs, the maintenance of national security and sovereignty relies upon an integrated and multi-agency approach. The present relationships between federal law enforcement and defence organisations in both Canada and Australia exemplify this approach.

Increased focus on identity document fraud

One product of the 1999 – 2000 public focus on people smuggling in both Canada and Australia was an increased focus on the role of fraudulent documentation, as a precursor or necessary ingredient in people-smuggling incidents.

Both jurisdictions have recognised that the production and sale of false identity documents represents a fundamental component of the people smuggling trade. As a result of the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002*, the *Criminal Code (Cth) 1995* now contains criminal offences for making, providing or possessing false travel or identity documents for use in securing the unlawful entry of a person into a foreign country. These amendments reflect the fact that much of the fraudulent documentation produced world-wide is of high standard and readily serves as a key ingredient in most forms of transnational crime.

International Liaison Networks

The fundamentals of transnational crime, like the fundamentals of federal law enforcement, rely upon international working relationships. Both the AFP and RCMP rely upon an extensive network of international liaison officers to facilitate overseas enquiries and intelligence sharing in order to fight transnational crime. To combat people smuggling and human trafficking the Airport Liaison Officer (ALO) concept has been adopted in both Canada and Australia. These initiatives rely on working relationships between local immigration, law enforcement agencies and airlines to interdict illegal entrants

before they depart the source or transit country. A focus on document and identity fraud represents a key element of such initiatives. In 2003, of all attempted illegal entries to Canada by air, 72 percent (or over 6,000 individuals) were stopped before they reached Canada.

Further crimes in the course of people smuggling

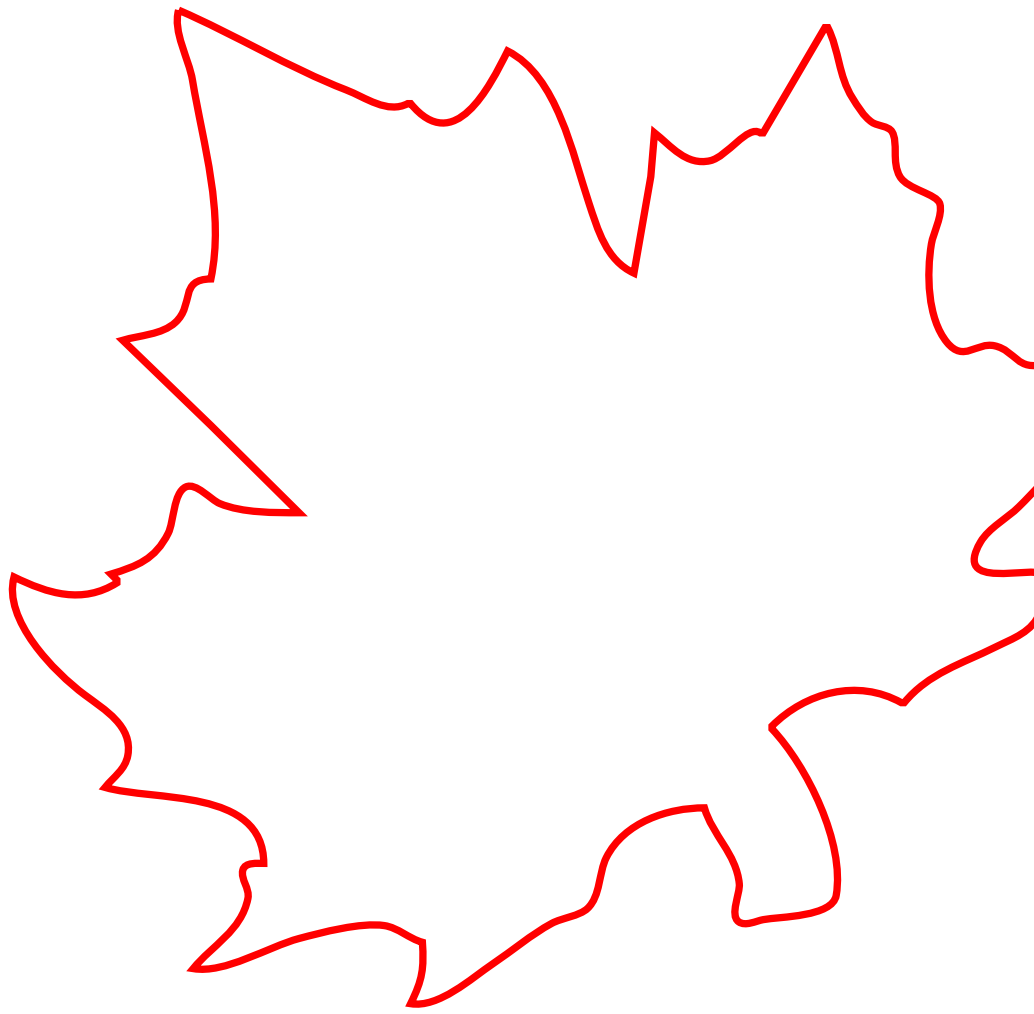
In August 1999 the third of four boats carrying 190 unlawful non-citizens from the Fujian Province in China was apprehended in the Esperanza Inlet off the Canadian West coast. In sentencing the accused, the Supreme Court of British Columbia made particular reference to the unsafe, unseaworthy, and unsanitary condition of the vessel, the deplorable conditions on board, the navigation of treacherous waters in the dark, and evidence that a gun was used to force compliance from at least one passenger. In passing sentence of four years imprisonment on all accused, the judge stated that "the aggravating features loom large" in reflecting the nature and gravity of the offence. Similar reference was made in another of the August 1999 landings when 129 unlawful non-citizens arrived at Kunghit island in the Queen Charlotte Islands, also on Canada's west coast. In this case the evidence showed that a female died on board, it being impossible to provide her with medical aid.

An examination of boat-related international people-smuggling incidents over the past decade lends weight to the proposition that further criminal acts involving the passengers may occur during the course of a people-smuggling venture. It is submitted in this paper that additional crimes committed in the course of people-smuggling enterprises ranging from assault to homicide, represent a prevailing and potentially increasing trend. In introducing this practical observation, it is relevant to note that criminology recognises instrumental homicides, in situations where the death of the victim is subsidiary to the primary goal in an unrelated crime.

People-smuggling enterprises attract desperate customers, and the people, or more properly the commodity, are of little concern

to the criminals facilitating the ventures. While documented cases of instrumental homicide already exist in relation to various people-smuggling cases, a range of other crimes may occur during the course of the venture.

Contemporary death in the course of people smuggling include June 2000 when 58 people died by asphyxiation in the United Kingdom, October 2001 when 353 people died by drowning en-route to Australia from Indonesia on the vessel *Siev-X*, and in 2001 when 222 people died by various means including dehydration, exhaustion and exposure entering the United States from Mexico. In May 2003, 85 people from Somalia and Ethiopia died travelling by boat to Yemen en-route to Saudi Arabia, and in January 2004, 21 people died when their vessel capsized in the Adriatic Sea. Both Australia and Canada have recently recognised criminal activity occurring in the course of a people-smuggling enterprise and enacted legislation in support of the *United Nations Convention against Transnational Organized Crime*.





Legislative developments

The central component of Canada's legislative response to people smuggling as form of organised crime was the C-11 Bill, devised to introduce severe penalties for those involved in people smuggling and human trafficking. Following Royal Assent, the C-11 Bill commenced operation on 28 June 2002 as the *Immigration and Refugee Protection Act 2001*. The amendments reflected the *United Nations Convention against Transnational Organized Crime*, by adding provisions to address aggravated circumstances arising during the course of a people smuggling or human trafficking offence. In essence, the Canadian legislature recognised that further crimes may be committed during the course of a people-smuggling venture.

The criminal charges instituted by Canadian authorities relating to the landings in the summer of 1999, were laid and heard under the Canadian Immigration Act. The principle people smuggling offences exists under Section 117 of the Immigration and Refugee Protection Act and provides penalties up to \$1,000,000, 14 years imprisonment or both. However the reformed people smuggling legislation goes one step further, by providing a specific offence for people smuggling by means of abduction, fraud, deception, use of force or coercion. This provision introduces a maximum

penalty of a fine not more than \$1,000,000, life imprisonment, or both. The Act compels a court, in sentencing, to take aggravating factors into account in determining penalty. The reforms also focus on the role of document and identity fraud in the commission of people smuggling offences, something that recent amendments to Australian legislation also capture.

Amendments to the Australian *Criminal Code (Cth) 1995* through the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002*, also address incidents of aggravated people smuggling. Similar to the Canadian legislation, the provisions address exploitation after entry into the foreign country, subjecting victims to cruel, inhuman or degrading treatment, engaging in conduct giving rise to a danger of death or serious harm, and being reckless to the danger of death or serious harm. These offences give rise to maximum sentences of 20 years imprisonment, 2,000 penalty units, or both.

In its people-smuggling history to date, Australia has already witnessed threats and injury to asylum seekers utilising people smugglers to reach Australia. The most recent incident involved the tragic death of more than 350 people on the ill-fated *Siev-X* (Suspected Illegal Entry Vessel) which sank en-route to Australia in October 2001. The criminal business of people smuggling is unequivocally a dangerous enterprise, and the Australian and Canadian law now reflects this established fact.

In addressing recent trends in people smuggling, Interpol noted that "this has now become a sad reality in the daily news. Vessels with some hundreds of migrants



crammed on board are frequently reported. Hygiene is often impossible on board, as no toilet facilities exist. The vessels are mostly insufficiently equipped with drinking water and food. The treatment of the migrants by the crew and guards can be extremely violent and often sick people are thrown overboard." It is now time to accept and consider that additional crimes committed in the course of people smuggling enterprises, ranging from assault through to homicide have, and will continue to occur.

While the flow of people smuggling vessels to Australia has clearly been slowed since the peak in the early 2000's, it would be naive to suggest that the supply and demand factors do not sit actively in the background. Unfortunately, world unrest will always equate to opportunity for transnational criminals. To this end, the Canadian and Australian legislation addressing aggravated people smuggling makes it clear to organised criminals that, in addition to the actual criminal act of people smuggling, humanitarian abuses will not be tolerated by the community or the law.

Conclusion

Despite increased efforts by both the Canadian and Australia jurisdictions, people smuggling remains a high gain, low-risk criminal enterprise. Such enterprises will only be curbed by continuing to influence the supply and demand factors through advances in federal law enforcement, through a whole-of-government approach, backed by legislative and judicial support.

As commodities in the criminal enterprise, asylum seekers utilising the services of people smugglers are involved in the venture as passengers up until the point at which they are delivered. Although the initial embarkation is usually voluntary, and effected for consideration or financial payment, ample room for further incident exists between embarkation and disembarkation. For this reason alone, the legislative reforms progressed by Canada and Australia acknowledging aggravated people smuggling represent a significant step forward in combating a crime type far from extinguished.

References

Millbank, A, *Boat People, Illegal Migration and Asylum Seekers: in Perspective*, Current Issues Brief 13 1999-2000, Social Policy Group, 14 December 1999.

United Nations High Commissioner for Refugees (UNHCR) & the Victorian Foundation for the Survivors of Torture (VFST), *Refugee Resettlement: An International Handbook to Guide Reception and Integration*, UNHCR & VFST, Melbourne, 2002, pp 2.

Interpol, "People Smuggling" at <http://www.interpol.int/Public/THB/PeopleSmuggling/Default.asp>

Department of Immigration & Multicultural Affairs (DIMIA), 'Unauthorised arrivals by air and sea', Fact Sheet No.74 at <http://immi.gov.au/facts/74unauthorised.htm#boat>

Australian Federal Police, *Annual Report 2002-2003*, pp 64.

Fred W Crickard & Peter T Haydon, *Why Canada Needs Maritime Forces*, Napier Publishing Inc. for the Naval Officers' Association of Canada, 1994, pp 29.

Smart Border Action Plan, Status report dated 17 December 2004 at <http://www.dfait-maeci.gc.ca/can-am/menu-en.asp?act=v&mid=1&cat=1&did=2465>

HTMQ v. Li, Lin and Lin, 2001 BCSC 458 at 2 per Stromberg-Stein J.

HMTQ v. Chen et al, 2001 BCSC 1865 at 15 per Williamson J.

Mouzos, J, *Homicide in the Course of Other Crime in Australia*, Trends and Issues in Crime and Criminal Justice No.252, Australian Institute of Criminology, Canberra, 2003, pp 1.

Interpol, 'People Smuggling : Challenge and Response' at <http://interpol.int/Public/ICPO/FactSheets/FS15.asp>

Section 118(1) of the *Immigration and Refugee Protection Act 2001* states "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".

Section 121(1) of the *Immigration and Refugee Protection Act 2001* compels a court to take into account, inter alia, death or bodily harm, benefits to a criminal organization, profit, the subjection of persons to humiliating or degrading treatment including health conditions or sexual exploitation, when determining sentence.

Section 122 *Immigration and Refugee Protection Act 2001*.

Parliament of Australia, *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004*, Bills Digest No. 96, 2004-05.

Interpol, 'People Smuggling' at <http://www.interpol.int/Public/THB/PeopleSmuggling/Default.asp>