



Transnational Crime Brief

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Labour trafficking: prosecutions and other proceedings

In Australia, three defendants in two cases have been charged and prosecuted for 'slavery' or 'trafficking in persons' under the Criminal Code (Cth), in circumstances where the crimes have allegedly occurred in contexts other than the sex industry. These cases tend to be described as instances of 'labour trafficking', even though the parameters of this phrase are far from settled (see further AIC 2009). This brief describes the progression of these two cases through the Australian court system, with varying outcomes.

Case against Mr Rasalingam

In 2007, a restaurant owner, Mr Rasalingam, was prosecuted in New South Wales under s. 271.2(1B) of the Criminal Code (Cth) for allegedly trafficking a male Indian chef for exploitation in his restaurants (Transcript of Proceedings *R v Yogalingam Rasalingam*). Under the Criminal Code (Cth), 'exploitation' is defined to include 'forced labour' a term that is itself defined as:

...the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

- (a) is not free to cease providing labour or services; or
- (b) is not free to leave the place or area where the person provides labour or services. (dictionary and s. 73(2)(3) Criminal Code (Cth)).

A key issue in this case was whether or not there was sufficient evidence of 'forced labour'. The Crown case was that the accused had made an implied threat to the complainant that he would be deported should he leave his employment. Evidence included the testimony of the complainant that it was his understanding he had to stay and work for the accused for four years, on the basis that some money would be sent to his father and the complainant would get permanent residency at the end of this period. He said the accused had told him the story of another person who had left their employer and had subsequently been sent home (Transcript of Proceedings *R v Yogalingam Rasalingam*).

The defence argued that there was insufficient evidence to support a finding that a threat had been made or implied. They characterised the situation as more one where the complainant had a concern that he might have to go back to India should he change employers. The defence noted that this concern arguably arose simply as a matter of Australian law (Transcript of Proceedings *R v Yogalingam Rasalingam*).

The judge ruled that there was sufficient evidence of the elements of the offence for the matter to go to the jury. However, the jury returned a verdict that acquitted the accused on the 'trafficking in persons' charge. The jury did convict the accused on a lesser charge relating to misleading a Commonwealth official in the immigration process.

This case was separately pursued by the then Office of Workplace Services (OWS). The OWS became aware of the complaints made against Mr Rasalingam following a referral from the Department of Immigration and Citizenship, who had been made aware of the case by the Australian Federal Police. The subsequent OWS investigation showed that the company owned by Mr Rasalingam, Yoga Tandoori House Pty Ltd, had failed to pay the complainant in accordance with the relevant award.

The complainant alleged that Mr Rasalingam had told him he would not be paid for one year as Mr Rasalingam had paid for his flights from India. Mr Rasalingam alleged he was distracted during the complainant's employment by his mother's death in India. He noted that the complainant was provided with food and accommodation and would have been subsequently paid.

In March 2008, Federal Magistrate Cameron handed down his decision, finding 10 breaches of the relevant award. Although Mr Rasalingam had admitted the contraventions and had, by this stage, paid salary arrears to the complainant, Federal Magistrate Cameron ordered Yoga Tandoori Pty Ltd to pay \$18,200 in penalties into Commonwealth revenue. The penalty took into account Mr Rasalingam's lack of contrition, the need for specific and general deterrence and the fact that the entirety of the complainant's pay and entitlements had been deliberately withheld. His Honour also made reference to the criminal proceedings, noting that 'although not a slave', the complainant 'was at a considerable disadvantage in his dealings with Mr Rasalingam' (Office of the Workplace Ombudsman, interview 19 January 2009; see also *Fryer v Yoga Tandoori House Pty Ltd* especially paragraphs 20–21).

Case against Kovacs and Kovacs

In November 2007, married couple Zoltan and Melita Kovacs were tried before a jury in the Supreme Court of Queensland for offences relating to organising a sham marriage under the Migration Act 1956 (Cth) and slavery under the Criminal Code (Cth). The charges related to the alleged mistreatment of a young woman from the Philippines. The Crown case was that the Kovacs had arranged and paid for a male friend to travel to the Philippines in order to marry and return with a Filipino

woman, with the intention that she would work in their shop and home for some time. It was alleged that once in Australia, the young woman was sexually assaulted by Mr Kovacs and effectively enslaved by the Kovacs through a combination of unpaid labour, continued sexual assaults, verbal threats and abuse, exploitation of her situation of vulnerability, control over her movements and confiscation of her passport.

At trial, the young woman gave evidence that while she was in Weipa, a remote town in Far North Queensland, she had tried to escape the situation, seeking the assistance of a woman she worked with at the shop. However, the Kovacs located her shortly after she left their house, confiscated her passport and returned her to the family home. The young woman also gave evidence that while in theory she had access to a pay phone at the shop, the only person she knew who owned a telephone was her aunt in the Philippines—the same person who had suggested she work for Mrs Kovacs. According to her evidence, the young woman remained in the situation until she managed to escape with the assistance of the woman who worked in the shop and Mr Kovacs' estranged daughter (Transcript of Proceedings *The Queen v Zoltan John Kovacs and Melita Kovacs*).

The Kovacs, both of whom pleaded not guilty to all charges, declined to give evidence or call witnesses in their defence (Transcript of Proceedings *The Queen v Zoltan John Kovacs and Melita Kovacs*). Accordingly, the defence case relied heavily on cross-examination of Crown witnesses. The defence sought to present the young woman as, among other things, a willing sex worker who had consented to have sex with Mr Kovacs in exchange for money, while also being housed and fed in the family home. The defence sought to present the Kovacs as hardworking people, noting that other guests and family members were expected to help out in the family home and business. The defence argued that if the young woman had really been exploited, she could have sought assistance from the police station, post office or other official services, either in Weipa or Napranum (a small Aboriginal community outside of Weipa where the Kovacs shop was located; Transcript of Proceedings *The Queen v Zoltan John Kovacs and Melita Kovacs*).

The Kovacs were found guilty on all counts by the jury. In sentencing, Justice Cullinane noted that the Kovacs developed and implemented a plan 'to obtain the labours of a young woman to work for you for extensive hours in the shop and in the domestic tasks associated with the home and care of the children'. The complainant:

...worked for something like 18 hours some days, 12 hours in the shop and a number of hours, five or six hours then of an evening, without any real recompense at all. In fact, the family in the Philippines received a small amount and she received little more than a pittance (Transcript of Proceedings *The Queen v Zoltan John Kovacs and Melita Kovacs*).

While the complainant was not physically restrained from leaving this situation, her ability to leave was constrained by a combination of factors including family pressures and the removal of her passport. Justice Cullinane noted that the complainant was under considerable pressure from her family to accept the offer of employment in Australia. For example,

evidence was given at the trial that prior to coming to Australia, the young woman had lived in a single room tin shack in the slums of Manila, with no running water, electricity or telephone. She shared these living quarters with eight other family members, including her son. In her evidence, the young woman stated that even though she did not want to come to Australia, her dying mother had pleaded with her to take this opportunity (Transcript of Proceedings *The Queen v Zoltan John Kovacs and Melita Kovacs*).

Justice Cullinane noted that the young woman was a foreigner living in Weipa, who was being 'constantly subjected to abuse and complaints' by the only people she knew, Mr and Mrs Kovacs. In sentencing, Justice Cullinane noted that while both defendants were equally implicated in these offences, Mr Kovacs had also sexually abused the complainant. According to Justice Cullinane:

...you met her and on the very first day that she was here, you, on her account, raped her. This was almost an act of contempt to impress upon her or to mark the dependent state that she was in and your exploitation of that. Her evidence of your giving her small amounts of money after the various acts of sexual intercourse suggest also a form of contemptuous behaviour to her (Transcript of Proceedings *The Queen v Zoltan John Kovacs and Melita Kovacs*).

Zoltan and Melita Kovacs were sentenced to a maximum of eight and four years imprisonment respectively.

The Kovacs appealed their convictions on various grounds and their appeal succeeded on grounds primarily relating to the judge's directions to the jury on certain evidential matters. In December 2008, the Queensland Court of Appeal overturned their convictions and a retrial was ordered.

Conclusion

These cases demonstrate the potential vulnerability of some migrant workers to exploitation, either through criminal victimisation, industrial breaches or both. In these cases, the workers had come to Australia from developing countries where their earning capacity was substantially less than what was apparently on offer in Australia. In both cases, family and community links were used in the recruitment and employment process. In both cases, the individuals involved were working in relative isolation, in situations where their bargaining power was limited by multiple factors including migration concerns, capacity to communicate with others in the workplace, financial and practical dependency and the pressures imposed by obligation to family.

References

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- Fryer v Yoga Tandoori House Pty Ltd* [2008] FMCA 288
- R v Kovacs* [2008] QCA 417
- Transcript of Proceedings, *The Queen v Zoltan John Kovacs and Melita Kovacs* (Supreme Court of Queensland, Cullinane J, 26 November–6 December 2007)
- Transcript of Proceedings, *R v Yogalingam Rasalingam* (District Court of New South Wales, Puckeridge J, 9 October–2 November 2007)