

A Handbook for Criminal Justice Practitioners on Trafficking in Persons

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Federal/Provincial/Territorial
Working Group on Trafficking in Persons



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Chapter 1: What is Trafficking in Persons

Trafficking in persons (TIP) is a serious crime. TIP involves an act committed for the purpose of exploiting someone's labour or services. Victims are compelled to provide their labour or services under circumstances which would be reasonably expected to cause them to fear for their own safety — or for the safety of someone known to them — if they refuse to provide that service or labour. Unlike most other offences, TIP violates the autonomy of its victims, often through repeated acts of violence or threats of violence, manipulation and psychological control. These acts or threats of violence will frequently, in and of themselves, constitute separate criminal acts.

1.1 Purpose of this Handbook

The purpose of this Handbook is to provide criminal justice practitioners with guidance in the investigation and prosecution of human trafficking cases. While much of the conduct that forms the basis of human trafficking offences is not new, the particular way that the law has criminalized this conduct is relatively recent, not only in Canada but also in countries around the world. Accordingly, this Handbook is designed to assist front-line personnel and improve the capacity of the criminal justice system to bring traffickers to justice while fully respecting the rights and needs of victims. It is further hoped that this Handbook will promote a consistent criminal justice response to this crime. As appropriate, the strategies contained in this Handbook may be adapted to respond to the particular needs of individual jurisdictions.

This Handbook supports a commitment by Federal, Provincial and Territorial (FPT) Ministers responsible for Justice and Public Safety to work more closely in addressing human trafficking. It was developed by a working group of FPT officials with expertise in criminal justice matters. It has been informed by promising practices developed around the world, as well as by Canadian successes in investigating and prosecuting human trafficking cases. FPT Ministers responsible for Justice and Public Safety endorsed this Handbook at their 2013 meeting.

1.2 Outline

The chapters in this Handbook provide information that is organized to be relevant at various stages of the criminal justice process. This first chapter provides baseline data including an overview of the phenomenon of human trafficking, what is known about TIP in Canada, the impact it has on victims, the profile of offenders, as well as information on the international community's response to this crime in recent years.

Chapter 2 provides an overview of the legislative history of human trafficking and other related offences used to address this crime. It further breaks down TIP-specific offences into their constituent elements.

Chapter 3 is directed at law enforcement. It includes information designed to assist in the interview of victims and other potential witnesses. Importantly, it identifies the relevant safety considerations in TIP cases and how to provide for the physical, psychological and social recovery of victims. It includes indicators of potential TIP cases as well as tips for crime scene examination. Among other things, it also provides guidance on laying charges, reliance upon peace bonds, and releasing an accused from custody. Lastly, it includes useful information for the investigation of TIP cases with international dimensions.

Chapter 4 is directed at Crown prosecutors. Interviewing victims, running a bail hearing and conditions of release, the use of testimonial aids, and proceeds of crime considerations are all canvassed in this chapter.

Chapter 5 focuses on sentencing considerations. It provides practical guidance to prosecutors on considerations that are likely to apply in human trafficking cases, such as relevant sentencing principles, and common aggravating and mitigating factors. It also provides information on preparing sentencing submissions and on the role that victims can play in the sentencing process.

Chapter 6 provides information on victim services available in Canada.

1.3 What is Trafficking in Persons?

Trafficking in persons involves the recruitment, transportation, harbouring and/or control of the movement of persons for the purpose of exploitation, typically for sexual exploitation or forced labour. Victims are required to provide (or offer to provide) their services or labour as a result of conduct that, in all the circumstances, could reasonably be expected to cause the victim to fear for their own safety — or for the safety of someone known to them — if they refuse to provide that service or labour. Victims suffer physical, sexual and/or emotional abuse and often live and work in horrific conditions.

The United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol)* articulates the most widely accepted international framework for addressing TIP and calls upon States Parties to take steps to prevent trafficking, protect victims and prosecute offenders. The *Trafficking Protocol* is the only globally binding international instrument which contains an agreed upon definition of trafficking in persons. Canada ratified the *Trafficking Protocol* and its parent convention, the *Convention against Transnational Organized Crime*, on May 13, 2002.

Article 3 of the *Trafficking Protocol* reads:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a

position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Article 5 the *Trafficking Protocol* obligates States Parties to criminalize trafficking in persons in accordance with the definition contained in Article 3. How Canada has implemented these obligations (and accordingly criminalized TIP) is discussed fully in **Chapter 2**.

1.4 Difference between Trafficking in Persons and Migrant Smuggling

Sometimes human trafficking and migrant smuggling cases are confused. They are, however, different crimes and involve different conduct. Understanding the differences between the two is critically important from an investigatory perspective and treating a trafficking case as a smuggling case can have significant implications for trafficked persons.

The main differences between trafficking in persons and migrant smuggling are as follows:

- a) Human smuggling is, by definition, a transnational crime whereas trafficking in persons is not;
- b) Human smuggling generally involves the consent of the person smuggled. Trafficked victims have either never consented or their consent has been rendered meaningless by the improper means used by the trafficker;
- c) Smuggled persons are generally free to do what they want once they arrive at their country of destination. In contrast, trafficked persons have their liberty curtailed and are compelled to provide their labour and/or services; and
- d) The source of profit for human smuggling is the fee associated with the smuggling act. In trafficking cases, profits are made through the ongoing exploitation of the victims.

Despite these differences, smuggled persons may become trafficking victims; therefore it is crucial to properly identify these crimes in practice.

1.5 Impact on the Victim

Trafficked persons may be subjected to repeated acts of physical, sexual and psychological violence resulting in significant and enduring ill effects on physical and mental health. Trafficked persons also face a number of health risks and diseases ranging from sexually transmitted infections such as HIV/AIDS to malnutrition. In many cases, unsanitary, crowded living conditions, poor nutrition and lack of adequate medical care also contribute to a host of adverse health conditions. While some of the physical damage from trafficking may be treated with appropriate medical care, the psychological consequences may endure. As noted by the United Nations Office on Drugs and Crime:

The trafficking experience may create a systematic disruption of basic and core attachments to family, friends and religious and cultural systems; the destruction of central values relating to human existence; and the creation of shame following brutal acts including torture and rape. Relationships may be changed, including those with the general community and authority figures, leading to a general sense of mistrust of others and a fear of forming new relationships. The capacity for intimacy may be altered, grief may be pronounced and depression may be overwhelming. The results of the experience can be everlasting, even with treatment.¹

Human trafficking has wide-reaching societal impacts including:

- Separating trafficked persons from their families and communities, including children from their parents;
- Impeding education, development and future productivity;
- Losing one's culture and language, especially for young children;
- Stigmatizing and ostracizing of victims; and,
- Reinforcing the cycle of poverty and illiteracy that stunts national development.

For more detailed information on the health effects on persons that have been trafficked, please see:

Caring for Trafficked Persons, Guidance for Health Providers, International Organization for Migration (2010)

http://publications.iom.int/bookstore/free/CT_Handbook.pdf

¹ United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons, 2nd edition* (United Nations, New York: 2008) at 352.

The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study, London School of Hygiene and Tropical Medicine (2003)

<http://www.lshtm.ac.uk/php/ghd/docs/traffickingfinal.pdf>

1.6 Profile of Offenders

Available information indicates that traffickers tend to fall into three broad categories: members of large criminal organizations, members of small criminal groups, or individual criminals.² Canadian prosecutions to date demonstrate that the majority of perpetrators of this crime in Canada are male, although female offenders have also been identified. Other characteristics about Canadian offenders and cases include:³

- Many human trafficking suspects have been linked to other organized criminal activities, such as conspiracy to commit murder, credit card fraud, mortgage fraud, immigration fraud, and organized prostitution, in Canada or abroad;
- Human trafficking suspects usually share similar ethnicity with their associates and have ethnic ties with source countries of their victims;
- Suspected transnational trafficking networks are believed to have operators based in source countries to facilitate the recruitment and transport activities of the trafficking process. Some organizers likely provide high-quality false travel documents for victims to travel illegally to Canada;
- Organized crime networks with Eastern European links have been involved in the organized entry of women from former Soviet states into Canada for employment in escort services in the Greater Toronto Area and possibly in massage and escort services in the Montreal area. These groups have demonstrated transnational capabilities and significant associations with convicted human traffickers in the Czech Republic, Germany, Belarus, and Israel; and,
- Domestic human trafficking victims have mostly been recruited through the Internet or by an acquaintance. The victims were groomed, manipulated and coerced into entering the sex trade.

1.7 Canada's experiences to date with Human Trafficking

Canada is believed to be primarily a destination country for human trafficking. Asia and Eastern Europe are believed to be the primary originating regions for persons trafficked into Canada for sexual exploitation. Trafficked women of Asian ethnicity, who may be recruited within Canada or abroad, have been identified in bawdy houses operated by Asian organized crime groups. The women may be foreign nationals, Canadian citizens or permanent residents.

² United States-Canada Bi-National Assessment of Trafficking in Persons, 2006 at 4.
<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/archive-ssssmnt-trffckng-prsns/archive-ssssmnt-trffckng-prsns-eng.pdf>

³ Royal Canadian Mounted Police, *Human Trafficking in Canada: A Threat Assessment*, 2011.
<http://205.193.86.86/pubs/ht-tp/hta-tpem-eng.htm>.

Although it is difficult to truly ascertain a comprehensive picture of the nature and scope of human trafficking in Canada, experience from human trafficking investigations to date suggests that trafficking for sexual exploitation is more prevalent in Canada than trafficking for labour exploitation, particularly in large urban centres. Labour trafficking does, however, occur in Canada as evidenced by a number of recent successful prosecutions. Cases of transnational human trafficking are particularly difficult to detect and investigate due to the challenges involved in conducting an international investigation and in obtaining victim cooperation. Victims are often reluctant to cooperate with investigators because of cultural issues, language barriers, lack of trust in police and a desire to simply return home and not reveal what they were forced to do in Canada. Those who are the most socially or economically disadvantaged or otherwise vulnerable, are often the most likely to become victims of this crime. Foreign nationals, permanent residents and Canadian citizens have all been victims of this crime.

The Royal Canadian Mounted Police (RCMP) concluded Canada's first national threat assessment on this crime in 2010. The Executive Summary, including its key findings can be accessed at: <http://www.rcmp-grc.gc.ca/pubs/ht-tp/htta-tpem-eng.htm>.

1.8 Canadian Prosecutions to Date

The RCMP's Human Trafficking National Coordination Centre endeavours to collect statistics on human trafficking charges and prosecutions in Canada. According to RCMP data, between 2004 and December 2014, human trafficking specific charges were laid in a total of 264 cases involving 431 accused. Of the total, 121 cases have been completed through the courts and their outcomes are as follows:

- 33 cases were completed with human trafficking specific convictions and involved 51 accused.
 - 38 accused were convicted of human trafficking specific offences (*Criminal Code* sections 279.01 to 279.03, *Immigration and Refugee Protection Act (IRPA)* section 118). Convictions were also secured, in these cases, for other *Criminal Code* offences, such as those related to prostitution (section 212), sexual interference (section 151), sexual exploitation (section 153), obstructing justice (section 139), assault (sections 266 to 268), sexual assault (sections 271 to 273), uttering threats (section 264.1), kidnapping (section 279(1)), forcible confinement (subsection 279(2)), robbery (section 344), extortion (section 346), possession of a weapon for a dangerous purpose (section 88), child pornography (section 163.1), firearms (sections 85 ff.), the *Controlled Drugs and Substances Act (CDSA)*, and *IRPA* offences, such as employing a foreign national (section 124(1)(c)), and misrepresenting facts (section 127(a)).
 - 9 accused were convicted of other *Criminal Code* offences, such as those related to prostitution (section 212), sexual interference (section 151),

- sexual assault (sections 271 to 273), invitation to sexual touching (section 152), and obstructing justice (section 139).
 - Charges against 4 accused were withdrawn or stayed.
- 52 cases were completed with convictions for other offences and involved 68 accused.
 - 62 accused were convicted of other *Criminal Code* offences, such as those related to prostitution (sections 210 and 212), breach (section 811), assault (sections 266 to 268), child pornography (section 163.1), forcible confinement (subsection 279(2)), criminal harassment (section 264), uttering threats (section 264.1), fail to comply (section 145), laundering proceeds of crime (section 462.31), extortion (section 346), sexual assault (sections 271 to 273), robbery (section 343), drug-related offences under the *CDSA*, and *IRPA* offences, such as organizing entry into Canada (section 117).
 - Charges against 6 accused were withdrawn, stayed, or the accused were acquitted.
- 36 cases were completed with other outcomes and involved 49 accused. The outcomes were as follows:
 - Charges against 48 accused were withdrawn, stayed, or the accused were acquitted.
 - One accused died before a judgement could be rendered.

Of the 264 human trafficking specific cases, 143 remain before the courts.

It is recognized that these statistics likely do not represent all trafficking cases processed by the criminal justice system. This is due to a variety of factors, including the difficulty of identifying data reported by police and by other sectors of the criminal justice system (e.g., courts) as "trafficking" cases. For example, charges and/or convictions in human trafficking cases may be laid and/or prosecuted under trafficking-specific or other non-trafficking-specific offences, such as kidnapping or aggravated sexual assault. In addition, the number and type(s) of charges laid and reported by police may subsequently change (either at the pre-court stage or during the court process) by the time of conviction.

1.9 Global Considerations

The challenges in identifying and estimating the extent of human trafficking in Canada are not unique to this country. It is equally difficult to provide an accurate global estimate of this activity. Factors contributing to this lack of accurate information include:

- The reluctance of victims to come forward due to fear for their life or for the life of someone known to them, or because they lack faith in justice systems;

- Challenges in distinguishing between trafficking and other offences; and,
- Definitions of trafficking differ from one country to another.

Despite these factors, some general observations can be made. A disproportionate number of women and children are victims of this crime. According to the United Nations (2014 Global Report), women and girls represent 49 and 21 percent of victims, respectively, while men and boys represent 18 and 12 percent. The UN has estimated that 700,000 people are trafficked each year.

Trafficking in persons is often characterized as a “low risk, high-reward” activity because of the practical difficulties of identifying, investigating and prosecuting cases and the enormous profits available to those who commit this crime. The UN has estimated that trafficking in persons generates approximately \$32 billion annually in illicit revenue.

1.10 Global Strategies to Combat Human Trafficking

Human trafficking, and responding to it, has been and continues to be viewed from different perspectives including: (a) human rights, (b) migration, (c) violence against women, (d) crime/organized crime, and (e) labour and development. Regardless of perspective, however, the globally accepted response paradigm, as reflected in the *Trafficking Protocol*, is a multi-disciplinary framework involving prevention, victim protection, offender prosecution and broad partnership. This broad framework provides the flexibility required to incorporate and implement a variety of strategies to advance and defend core human rights, gender equality and economic security, and to prevent crime. Indeed, a variety of strategies have been developed by the international community in an effort to advance these goals in the context of responding to human trafficking. See, for example:

United Nations, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*

<http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons (2nd edition)*

[http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook\[1\].pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook[1].pdf)

United Nations Office on Drugs and Crime, *First Aid Kit for use by Law Enforcement Responders in addressing Human Trafficking*

<http://www.unodc.org/unodc/en/human-trafficking/2011/first-aid-kit.html>

United Nations Office on Drugs and Crime, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*

http://www.unodc.org/documents/human-trafficking/Needs_Assessment_Toolkit_ebook_09-87518_June_2010.pdf

United Nations Office on Drugs and Crime, *International Framework for Action to Implement the Trafficking in Persons Protocol*
http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

International Organization for Migration, *Handbook on Direct Assistance for Victims of Trafficking*
http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf

Chapter 2: The Law

2.1 Prohibition of Trafficking in Persons

Trafficking in persons (TIP) continues to garner significant attention, both domestically and internationally. Despite the recent attention, TIP, often referred to as the new global slave trade, is not a new phenomenon. Slavery, servitude, forced labour and similar practices have existed in one form or another for thousands of years. The scope, incidence and impact of TIP has galvanized international interest in recent years and has made combating it a priority for the international community. One way this has been done is through the enactment of new criminal offences to address this complex and evolving culpable behaviour.

Prior to the enactment of specific criminal offences, Canada's criminal laws addressed TIP through offences of general application including but not necessarily limited to kidnapping (subsection 279(1)), forcible confinement (subsection 279(2)), aggravated sexual assault (section 273) and extortion (section 346) and the organized crime (sections 467.11-467.13) and prostitution-related offences (in particular, section 212).⁴ These offences continue to be relevant to TIP cases, depending on the relevant facts.

Canada's first specific offence targeting TIP was enacted in 2002 as part of the *Immigration and Refugee Protection Act (IRPA)*. In addition to its role in fostering and reinforcing the legislative objectives in section 3 of the *Immigration and Refugee Protection Act*, the enactment of this offence also reflected Canada's implementation of its international obligation to criminalize trafficking in persons under the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (see chapter 1 for more information) Section 118 of the *IRPA* prohibits trafficking in persons and is punishable by life imprisonment and/or a fine not exceeding \$1 million. This offence is limited to the trafficking of persons into Canada.

Subsequently, in 2005 Canada enacted additional *Criminal Code* offences to more comprehensively address TIP in all its manifestations, as well as to target related culpable conduct. Bill C-49, *An Act to amend the Criminal Code (trafficking in persons)* (S.C. 2005, c. 43) entered into force on November 25, 2005 and created three indictable offences to strengthen the criminal-law response to TIP: section 279.01 (main TIP offence), section 279.02 (financially benefiting from TIP) and section 279.03 (withholding or destroying documents to commit or facilitate TIP). Further, in 2010, the new offence of trafficking in children was enacted, which is substantively the same as the main TIP offence (section 279.01), but imposes a mandatory minimum penalty of five or six years, depending on circumstances.⁵

⁴ It should be noted that on December 6, 2014, amendments to the *Criminal Code* came into force (S.C. 2014, c. 25) and which reformed Canada's criminal law responses to prostitution. For more information, please see: <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>.

⁵ Bill C-268, *An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years)* (S.C. 2010, c. 3), in force on June 29, 2010.

In 2012, the TIP provisions of the *Criminal Code* were further amended in the following ways:

- (1) Created a new subsection 7(4.11) which enables the Canadian prosecution of Canadian citizens or permanent residents who commit, outside Canada, any *Criminal Code* trafficking in persons offence; and,
- (2) Enacted an interpretive provision to clarify the meaning of “exploitation” as defined in section 279.04. This change is discussed in more detail in section 2.6, which explains the elements of TIP offences.⁶

Further amendments were made in 2014 which added mandatory minimum penalties of four and five years, depending on circumstances, to the main TIP offence in the *Criminal Code* (section 279.01). In addition, these amendments increased the maximum sentences and added mandatory minimum penalties to the material benefit offence as well as to the documents offence when they involve the trafficking of children (subsections 279.02(2) and 279.03(2)).⁷

2.2 Specific Trafficking in Persons *Criminal Code* Provisions

279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of five years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of a term of four years in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

279.011 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

⁶ Bill C-310, *An Act to Amend the Criminal Code (trafficking in persons)*, assented to June 28, 2012 (S.C. 2012, c. 15).

⁷ Bill C-36, the *Protection of Communities and Exploited Persons Act* (S.C. 2014, c. 25), in force on December 6, 2014.

(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

279.02 (1) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

(2) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.

279.03 (1) Everyone who, for the purpose of committing or facilitating an offence under subsection 279.01(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) Everyone who, for the purpose of committing or facilitating an offence under subsection 279.011(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year.

279.04 (1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused

(a) used or threatened to use force or another form of coercion;

(b) used deception; or

(c) abused a position of trust, power or authority

(3) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

2.3 Trafficking in Persons *IRPA* Offence

118(1) 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.

(2) For the purpose of subsection (1), “organize”, with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.

120 A person who contravenes section 118 or 119 is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both.

121(1) The court, in determining the penalty to be imposed under subsection 117(2) or (3) or section 120, shall take into account whether

(a) bodily harm or death occurred, or the life or safety of any person was endangered, as a result of the commission of the offence;

(b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;

(c) the commission of the offence was for profit, whether or not any profit was realized; and

(d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.

For the purpose of the criminal law provisions contained in the *IRPA*, “criminal organization” has the same meaning as in the *Criminal Code*; namely,

A group, however organized, that:

(a) is composed of three or more persons in or outside Canada; and,

(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

It does not include a group of persons that forms randomly for the immediate commission of a single offence.

2.4 Trafficking in Persons *Criminal Code* Offences: Key Elements

To date, there have been very few judicial interpretations of the specific trafficking in persons provisions, given their relatively recent enactment. Therefore, the majority of the case law referred to below interprets similar legal standards in related contexts.

Recently though, in the matter of *R. v. Stone and Beckford*,⁸ Miller J. of the Ontario Superior Court rejected a *Charter* application by the accused that s. 279.011, the provision targeting the trafficking of persons under eighteen, was unconstitutional on grounds of overbreadth or vagueness.

In dismissing the challenge, the Court observed that the offence requires a high level of *mens rea*, targeting people who intend to exploit others or who know that others intend to exploit.

The Court further found that s. 279.011 is not vague. Citing the Court of Appeal for Ontario's decision in the *Bedford*⁹ challenge to the *Code*'s prostitution provisions, where that Court found that the phrase "in circumstances of exploitation" was sufficiently precise, Mills J. rejected the accused's argument that the concept of "exploitation" was difficult to understand or apply.

As of writing, there has been no appellate consideration of the constitutionality of the TIP offences, though the above decision provides a persuasive foundation that they are compliant with the *Charter*.

As a general matter, it should be noted that the human trafficking offences were formulated in such a way as to capture the different actors along the trafficking continuum, including those who do not directly exploit the victim's labour or services. As will be set out in more detail below, a conviction for trafficking can be entered for conduct that involves one of the prohibited acts coupled with the intent to facilitate the exploitation of a person by someone else.

Although party-liability provisions could likely capture much of the conduct along the continuum if the offences had been more narrowly crafted, the offences consider as the principal anyone who does what is prohibited, without recourse to the concept of party liability. Party-liability provisions should be kept in mind, though, as individuals who may not have committed any of the prohibited acts may nonetheless assist others to do so, and could be targets for investigation and prosecution as well (providing that there is evidence to suggest that the assistance was rendered with the requisite level of intent to exploit).

2.5 Section 279.01 of the *Criminal Code* — Trafficking in Persons

Every person who recruits, transports, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence

⁸ [2013] O.J. No. 371, 2013 ONSC 653 [hereinafter *Stone and Beckford*]

⁹ *Bedford v. Canada (Attorney General)* (2012), 109 O.R. (3d) 1, 2012 ONCA 186.

Section 279.01 contains the following key elements:

1. Commission of one of the prohibited acts;
2. The mental elements of either (a) having the purpose of exploiting another person or (b) the purpose of facilitating their exploitation by another person.

2.5.1 Prohibited Acts

The accused must be shown to have engaged in one of the “acts” prohibited by section 279.01. Section 279.01 sets out a number of specific, itemized acts (*recruits, transports, receives, holds, conceals or harbours a person*), as well as a residual category for the *actus reus* element that characterizes rather than itemizes the prohibited conduct (*exercises control, direction or influence over the movements of a person*).

Recruits, transports, receives, holds, conceals or harbours

These acts reflect the various stages of trafficking in persons as described in the previous chapter: recruitment, transportation or harbouring. The offence captures the entire trafficking continuum; engagement in just one of these trafficking “stages” is sufficient.

Exercises Control, Direction or Influence over the Movements of a Person

The offence can also be made out where the accused “exercises control, direction or influence over the movements of a person”. Rather than itemizing specific actions, this residual aspect of the *actus reus* of the offence characterizes the nature of conduct in terms of the relationship between the accused and the victim in relation to the victim’s mobility.

This phrase appears in both the old procuring offence of the *Criminal Code* (paragraph 212(1)(h)) as well as in the modernized version of this offence (section 286.3),¹⁰ and has been judicially interpreted in that context as follows:

- “Control” refers to invasive behaviour which leaves little choice to the person controlled and therefore includes acts of direction and influence.
- Exercise of direction over the movements of a person exists when rules or behaviours are imposed.
- Exercise of influence includes less constricting actions; any action done with a view to aiding, abetting or compelling that person would be considered influence.¹¹

¹⁰ Bill C-36, the *Protection of Communities and Exploited Persons Act*, which came into force on December 6, 2014, repealed section 212 of the *Criminal Code* and replaced it with section 286.3.

¹¹ See: *R. v. Perreault* (1996), 6 C.R. (5th) 132, [1996] J.Q. No. 3825 (C.A.) [hereinafter *Perrault*]; *R. v. Rodney* (1999), 241 A.R. 318, [1999] A.J. No. 197 (P.C. (C.D.)); *R. v. Ng*, [2007] B.C.J. No. 1338, 2007 BCSC 880.

A 2010 Quebec case interpreting section 279.01 adopted the interpretation of “exercising control, direction or influence” found in *Perreault*.¹² The Quebec Court of Appeal upheld this approach in 2013.¹³

2.5.2 Mental Element: “For the Purpose of Exploiting or Facilitating the Exploitation”

Whichever aspect or element of the *actus reus* is alleged, it must be proved that the alleged action was done either for the specific purpose of exploiting another person or for the specific purpose of facilitating their exploitation by another. It is the exploitative purpose that sets TIP apart from other crimes. Reference must be made to the defined meaning of “exploitation” for the TIP-specific offences. Section 279.04 states a person exploits another person if they:

279.04 (1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused

- (a) used or threatened to use force or another form of coercion;*
- (b) used deception; or*
- (c) abused a position of trust, power or authority*

(3) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

It should be noted that the first way that “exploitation” can be proved (i.e., under subsection (1)) is expected to account for the majority of TIP cases. Organ or tissue removal as a form of TIP will be discussed separately below.

“For the Purpose of”

“For the purpose of” signifies the mental element for trafficking in persons offences (section 279.01 and 279.011). That is, an accused must be found to have committed one of the acts “for the purpose of” exploiting or facilitating the exploitation of another person. The Supreme Court of Canada has considered the meaning of “for the purpose

¹² *Perreault, ibid.*

¹³ *R. v. Urizar*, [2010] J.Q. No. 9186, 2010 QCCQ 4475 (C.C.& P.); *Urizar c. R.*, [2013] J.Q. No. 132, 2013 QCCA 46.

of” on various occasions. In *R. v. Hibbert*,¹⁴ for instance, the Court noted that it is impossible to ascribe a single fixed meaning to the term “purpose” and, therefore, interpreting this term in a particular statutory context requires consideration of Parliament’s intention in using the word in a particular context. However, it is clear that “for the purpose of” requires a subjective state of mind directed to the prohibited consequence (i.e., the exploitation or facilitation of exploitation of a person) — either an intention to have the prohibited consequence come about, or knowledge that its occurrence was a virtual certainty. This position was adopted in the *Stone and Beckford* case referenced above and also by the Supreme Court in *R v. Khawaja*.¹⁵

Exploiting or Facilitating Exploitation

“For the purpose of” must be combined with either “exploiting” or “facilitating the exploitation of.”

Exploiting: This branch of the offence would be used when the evidence indicates that the accused personally intended to exploit the victim.

Facilitating the exploitation: This branch of the offence would be used when the evidence demonstrates that the person charged did not personally intend to exploit the victim, but knowingly facilitated exploitation by another person.

“Facilitating” or “to facilitate” is used in several offences in the *Criminal Code*, including section 83.19, which prohibits the facilitation of terrorist activity; section 172.1, which prohibits the luring of a child; and section 467.11, which prohibits participating in the activities of a criminal organization. Generally speaking, in these contexts, “facilitation” has been interpreted to mean “to help bring about or to make it easier or more probable or to assist.”

See, for example, *R. v. Legare*¹⁶; *R. v. Lindsay*,¹⁷ *R. v. Khawaja* (2006)¹⁸

2.5.3 Exploitation

Cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

It is important to remember that the offence of trafficking in persons targets the accused’s specific intent that the victim will be caused to provide their labour or service through conduct which could reasonably be expected would cause the victim to fear for

¹⁴ [1995] 2 S.C.R. 973, [1995] S.C.J. No. 63.

¹⁵ *Supra*, note 4; *R v Khawaja* 2012 SCC 69, [2012] 3 SCR 555

¹⁶ [2009] 3 S.C.R. 551, [2009] S.C.J. No. 56.

¹⁷ [2005] O.J. No. 2870, [2005] O.T.C. 583(Sup. Ct. Jus.).

¹⁸ (2006) 42 C.R. (6th) 348, (2006), 214 CCC (3d) 399 (Ont. Sup.Ct. Jus.).

their safety, or for the safety of someone known to them, if they did not provide their labour or service. Thus, evidence which establishes the victim was actually caused to provide their labour or service (where such evidence exists) or would have been caused to provide their labour or service should be presented to help establish the specific intent of the accused to exploit or facilitate the exploitation of that victim.

To address concerns that the definition of exploitation was difficult to understand, subsection 279.04(2) was enacted and provides a non-exhaustive list of factors that a Court may consider in determining whether an accused exploits another person. These factors include the use or threatened use of force or another form of coercion, deception or abuse of a position of trust, power or authority.

Coercion is best thought of as an umbrella term encompassing the use of means for a specific purpose. Coercion need not be limited to physical force, and as the *R. v. Stone and Beckford*¹⁹ case recently demonstrated, extends to acts that emotionally or psychologically restrain a victim. This is consistent with the Supreme Court of Canada's interpretation of coercion in the context of freedom of religion, where in *R. v. Big M. Drug Mart*²⁰ the Court explained the term in the following manner:

Coercion includes not only blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others.

Labour or Services

The accused must be shown to have either caused another person to provide, or offer to provide, their labour or services, or to have done an act for the purpose of facilitating such conduct by another person.

“Labour or services” includes all forms of sexual and domestic services, and any kind of labour, such as work in the agriculture, restaurant, construction or any other industry. Labour or services provided toward criminal ends, such as participation in grow operations or transporting drugs, is also included.

In short, trafficking may occur within any industry, whether regulated by the state or not.

Means

The second step is proving the means by which the labour or service was extracted or intended to be extracted. More specifically, that the labour or service was provided as a result of conduct that, in all the circumstances, could reasonably be expected to cause the victim to fear for their safety or for the safety of someone known to them if they failed to provide their labour or service. This is drafted as an objective test — i.e., it is

¹⁹ *Supra*, note 4.

²⁰ [1985] 1 S.C.R. 295, 1985 S.C.J. No. 17.

not necessary to prove that the victim was fearful for their safety — only that the circumstances were such that a reasonable person in the victim’s position would have had such a fear.

The nature of the accused’s conduct that is alleged to have caused or been intended to cause another person to provide his or her labour or services, is not directly specified in the definition of exploitation, though as noted above, subsection 279.04(2) provides a non-exhaustive list of behaviours that a court may consider in determining whether an accused exploited another person including all forms of coercion, as well as deception or the abuse of a position of trust, power or authority. Ultimately, the focus is on the effect of the conduct in a given case on the hypothetical “reasonable” victim. Accordingly, it is both the nature of the conduct and the context in which the accused engages in that conduct that is integral to the determination of its expected effect on the complainant.

The prohibited conduct will be useful evidence for this purpose — the exertion of control over the victim’s movements and activities will certainly be relevant to demonstrating a reasonable apprehension of fear on the part of the victim.

Other forms of conduct that may be relevant include: Seemingly discreet instances that appear innocuous in isolation (*Bell*²¹), such as a warning that a foreign national victim might be deported if she/he fails to comply with the demands of his/her trafficker. For the relevance of the context of the accused’s conduct in determining its likely impact on the victim, see: *Kohl*, *Noble*, *Bell*²². Also, any history of abuse between the accused and the victim ought to be factored into the assessment of the effect of the accused’s conduct on the complainant (*Di Pucchio*²³).

Although the use of threats, force or other forms of coercion is not necessary to demonstrate exploitation, evidence to this effect would clearly assist.

Could reasonably be expected to cause the other person to believe

It must be established that the conduct, in all the circumstances, could reasonably be expected to cause the victim to believe that their safety or the safety of a person known to them would be threatened, if the victim failed to comply with the accused’s demands. This does not require the victim to assert that they feared for their safety (although this would be the strongest evidence, provided that their fear was shown to be reasonable) or for the safety of someone known to them. Instead, it requires evidence that demonstrates objectively that a reasonable person, standing in the shoes of the victim, would be afraid having regard to all of the circumstances including the age, gender and other considerations specific to the victim.

²¹ *R. v. Bell*, [2010] O.J. No. 6044, 2010 ONCJ 736 [hereinafter *Bell*]

²² See: *R. v. Kohl* (2009), 94 O.R. (3d) 241 (C.A.); *R. v. Noble*, [2009] 7 W.W.R. 113, [2009] M.J. No. 130 (Q.B.); *Bell*, *ibid.*

²³ *R. v. Di Pucchio*, [2007] O.J. No. 5239, 2007 ONCJ 643

This approach deliberately differs from the approach taken in the context of criminal harassment. Under section 264, the wording of the offence makes clear that the conduct causes the person reasonably, in all the circumstances, to fear for their safety. Under sections 279.01 and 279.011, the test is whether the conduct “could reasonably be expected to cause”. Whereas the harassment offences require proof of both a) subjective fear on the part of the victim and b) reasonableness of that fear, TIP requires only the latter — i.e., reasonableness of the fear, whether or not it is proved that the victim actually and subjectively experienced that fear.

Assessing reasonableness requires an objective foundation, based on a “reasonable person’s view” (*R. v. Sillip*²⁴). That said, the “reasonable person” standard must take into account all of the victim’s circumstances to effectively protect the most vulnerable members of society (*R. v. Gauthier*²⁵). This can include gender, age and circumstances surrounding the relationship which existed or which had existed, if any, between the accused and the victim.

Safety

The term “safety” has been judicially interpreted in the context of the criminal harassment offence (section 264) to include mental, psychological and emotional safety: *R. v. Hau*²⁶; *R. v. Skoczylas*²⁷; *R. v. Lafreniere*²⁸; *R. v. Hertz*²⁹; and *R. v. Gowing*.³⁰ *R. v. Goodwin*³¹ held that victims of harassment do not have to “suffer ill health or major disruption in their lives before obtaining the protection of section 264.”

Someone Known to the Victim

Someone known to them can include family members such as a mother, father, brother, sister, child or a friend: *R. v. Dupuis*³² and *R. v. Dunnett*³³.

Organ or Tissue Removal

Subsection (3) of the definition of exploitation in section 279.04 allows for an alternate way to prove exploitation, which applies where a victim has had organs or tissue removed by means of deception or the use or threat of force or of any other form of coercion.

²⁴ (1997) 11 C.R. (5th) 71, (1997), 120 C.C.C. (3d) 384 (Alta. C.A.)

²⁵ [1989] J.Q. No. 2232, No. 500-10-000376-879 (C.A.)

²⁶ [1996] B.C.J. No. 1047, (1996), 31 W.C.B. (2d) 50 (S.C.)

²⁷ (1997), 99 B.C.A.C. 1, [1997] B.C.J. No. 2706

²⁸ [1994] O.J. No. 437, (1994), 22 W.C.B. (2d) 519 (Prov. Ct.)

²⁹ (1995), 170 A.R. 139, [1995] A.J. 496 (Prov. Ct.)

³⁰ [1994] O.J. No. 1696 (Prov. Div.)

³¹ (1997), 89 B.C.A.C. 269, [1997] B.C.J. No. 954

³² [1998] O.J. No. 5063, (1998), 40 W.C.B. (2d) 330 (Gen. Div.)

³³ [1999] N.B.J. No. 122, (1999), 41 W.C.B. (2d) 477 (Q.B. (T.D.))

There have been no known cases of trafficking in persons for the purpose of organ removal in Canada. Canada's regulated health-care system may provide safeguards in this regard.

2.6 Section 279.011: Trafficking of a Person under the age of Eighteen Years

279.011 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable.

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or
(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Elements of the Offence

Establishing the offence at section 279.011 is exactly the same as proving the offence at section 279.01 except that it must also be established that the victim was under the age of 18 years. Where it is shown that the accused believed the victim was over the age of 18 years of age, they can nonetheless be convicted under the primary offence (section 279.01).

2.7 Section 279.02: Material Benefit

279.02 (1) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

(2) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.

Elements of the Offence

This offence requires proof, beyond a reasonable doubt, that:

- (1) the accused received a financial or other material benefit;
- (2) the benefit was derived from the commission of a trafficking in persons offence and the accused knew that fact; and,
- (3) the prohibited conduct in section 279.01 or 279.011 occurred (although a conviction under section 279.01 or 279.011 is not necessary).

The concept of “financial or material benefit” is also used in the definition of “criminal organization” contained in section 467.1 of the *Criminal Code*. In that context, the courts in Canada have interpreted the concept of material benefit broadly. In one decision, the Court noted that a material benefit specifically includes, but is not limited to, a financial benefit. Whether something amounts to a material benefit will always depend on the facts of a particular case.³⁴

2.8 Section 279.03: Withholding or destroying documents

279.03 (1) Everyone who, for the purpose of committing or facilitating an offence under subsection 279.01(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person’s identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) Everyone who, for the purpose of committing or facilitating an offence under subsection 279.011(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person’s identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year.

Elements of the Offence

This offence requires proof beyond a reasonable doubt that the accused:

- (1) concealed, removed, withheld or destroyed any travel or identity document; and,
- (2) that the accused concealed, or removed, or withheld or destroyed the travel or identity document with the intention of committing or facilitating the commission of an offence under either subsection 279.01(1) or 279.011(1).

³⁴ *R. v. Lindsay*, [2004] O.J. No. 845 (ON.S.C.J.).

It is not necessary to prove that an offence under either subsection 279.01(1) or 279.011(1) was actually committed.

2.9 Immigration and Refugee Protection Act

In addition to the *Criminal Code* offences on human trafficking, the *Immigration and Refugee Protection Act (IRPA)* also contains an offence which prohibits the trafficking of persons into Canada:

118(1) 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.

Elements of the Offence

Act Elements

- (1) The accused organized the coming into Canada of one or more persons.
- (2) The accused, in so organizing, employed any of the following means: abduction, fraud, deception, the use or threat of force, or the use of coercion.

Organizing

Organizing the coming of persons into Canada extends not only to the means employed to bring persons into Canada, but also to acts related to the harbouring or receipt of persons once they arrive in Canada.

Moreover, other act elements from related offences in *IRPA*, such as s. 117 (organizing illegal entry into Canada), are also likely to apply to prosecutions under s. 118. For example, under s. 117, organizing has been found to mean to initiate or make arrangements for or to enlist a person or group to enter Canada (*R. v. Chen*³⁵).

Fraud and Deception

In *R. v. Ng*,³⁶ the Court confirmed that the means of fraud or deception as specified in subsection 118(2) are not constitutionally overbroad or vague. The Court agreed with the Crown that the inclusion of fraud and deception is consistent with and complies with the international instruments to which Canada is a party.

However, it should be noted that *Ng*³⁷ held that the Crown must show that the accused engaged in specified acts to cause the victim to act to their detriment. The Court relied on the following passage from *London & Globe Finance Corp. Ltd.*³⁸ to reach this conclusion:

³⁵ [1998] O.J. No. 5506 (Prov. Ct.)

³⁶ 140 CRR (2d) 224, [2006] B.C.J. No. 774 (Prov. Ct. Crim. Div.) [hereinafter *Ng*]

³⁷ *Ibid.*

³⁸ (1903) 10 Mans. B.C. 198

To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.

Coercion

As discussed above in the context of the *Criminal Code* TIP offences, coercion is an umbrella term encompassing the use of means for a specific purpose. Coercion need not be limited to physical force, and as the *R. v. Stone and Beckford*³⁹ case recently demonstrated, can also extend to acts that emotionally or psychologically restrain a victim.

Mental Element

(1) The accused knowingly organized the coming into Canada;

While there is minimal case law available on the mental element for section 118, in many cases, a strong inference may be drawn by a court that the accused has the requisite intent if the Crown is able to prove the act elements.

With respect to fraud and deception, it should be noted that the concept of fraud, from a criminal law perspective, includes a mental element of intent to deprive the victim. The notion of deception also implicitly requires some knowledge and/or intention regarding the accused's act being done in order to deceive.

³⁹ *Supra*, note 4.

Chapter 3: Guidelines for Police

3.1 Introduction

This chapter focuses on the role of the police in human trafficking investigations and prosecutions. It provides information on conducting interviews with victims of human trafficking, with a particular focus on the unique considerations that exist in these cases. Common indicators of human trafficking are also identified with a view to aiding in the identification of human trafficking and the collection of evidence. Guidelines on the assessment of risk in particular cases are also examined. Finally, information is provided on how to lay a charge and prepare a report for Crown counsel. Considerations related to international human trafficking cases are also discussed. The chapter's overarching objective is to supplement a police officer's expertise by providing information that is particularly relevant to human trafficking.

3.2 Victim Interview

The establishment of a good rapport prior to conducting interviews may help to avoid conflicting statements and may increase the victim's willingness to testify in court. Inconsistent statements are not uncommon and do not necessarily indicate that the victim lacks credibility.

A victim interview is not an interrogation. Victims of crime should be treated with respect, compassion and courtesy. The goal of the interview should be to gain the trust of the victim and instil in them a sense of security, while gathering the necessary facts related to potential criminal charges.

Always use proper interview techniques and, when possible, use an experienced interviewer. When appropriate, use an interpreter and provide any other victim services. Videotaping the interview is critically important. Videotaped statements may be admitted as evidence under either subsection 540(7) or the principled exception to the hearsay rule as well as, in the case of children, pursuant to section 715.1 of the *Criminal Code*.

3.2.1 Victim Mindset

Being sympathetic and attempting to understand the issues that affect the victim(s) will help establish a good rapport (e.g., by asking "What can I do for you?", "Is there anything I can do to help you to feel safer?" and even "Are you hungry?"). The officer is looking for ways to help remove the obstacles that trap the victim in their situation.

Some victims will not respond truthfully to questions, others will provide prepared and rehearsed responses, and others will not talk at all. Some reasons a victim may not respond or tell the truth are that she or he may:

- Believe their personal safety and/or that of person(s) known to them are being threatened;
- Believe they may have committed a criminal offence and are afraid of being prosecuted;
- Be part of the human trafficking chain;
- Be completely unaware of, or intentionally misinformed about, their rights in Canada;
- Feel better in their current situation than where they came from;
- Feel ashamed;
- Fear exposed and stigmatized;
- Face cultural or religious obstacles;
- Feel responsible for placing themselves in their current situation; and,
- Wish to maintain a relationship with the accused.

In cases of foreign national victims, they may worry about their immigration status in Canada and/or fear removal. They may be also concerned about the continued availability of social services due to their legal status in Canada.

3.2.2 Victim-Trafficker Mindset

To better understand the mindset of trafficking victims, it is important to be aware of the victim-trafficker relationship.

“Sometimes victims are referred or introduced to the trafficker by friends and relatives.”⁴⁰ This personal connection often results in the victims having an emotional bond with traffickers. In other cases, emotional bonds can be formed, including through a process of “grooming” victims, which can be used to successfully manipulate victims. In extreme cases, emotional bonding may be evidence of Stockholm Syndrome.

This Syndrome — where a victim emotionally bonds with an abuser — is a survival strategy for victims of abuse and intimidation, and has been exhibited in cases of human trafficking. Every syndrome has particular symptoms and behaviours, and Stockholm Syndrome is no exception. While a clear-cut list has not been established due to varying opinions of researchers and experts, several of these features are often present:

- Positive feelings of the victim toward the abuser/controller;
- Negative feelings of the victim toward family, friends or authorities trying to rescue/support them or win their release;
- Supportive behaviours by the victim, at times helping the abuser; and,
- Inability to engage in behaviours that may assist in their release or detachment.

⁴⁰ Jacqueline Oxman-Martinez et. al. (August, 2005) *Victims of Trafficking in Persons: Perspective from the Canadian Community Sector* at page 12.

It has been found that four situations or conditions are typically present and serve as a foundation for the development of Stockholm Syndrome:

- The presence of a perceived threat to one's physical or psychological survival and the belief that the abuser would carry out the threat;
- The presence of a perceived small kindness from the abuser to the victim;
- Isolation from perspectives other than those of the abuser; and,
- The perceived inability to escape the situation.⁴¹

For more information on this issue, please refer to chapters 3 and 4 of the United Nations Office on Drugs and Crime *Anti-Human Trafficking Manual for Criminal Justice Practitioners*.⁴²

3.2.3 Victim's Basic Needs

Whenever possible, ensure that the victim's basic needs are met before trying to interview them; this will usually be done with the assistance of service providers:

- Food;
- Medical attention;
- Housing;
- Clothing and other personal items; and,
- Security

3.2.4 Preparation for the Interview

When possible, carefully prepare for the interview by learning as much as you can about the victim beforehand. Be patient and wait until the victim is prepared for the interview; ensure that their needs have been met and concerns addressed, and that a level of trust and good rapport have been established. Law enforcement may have to meet with the victim on several occasions over a period of time to build trust and rapport prior to conducting a formal interview. This may not be possible when law enforcement must proceed quickly: for example, in cases where other victims are in danger, or where perpetrators may flee or evidence be destroyed. In these cases, follow-up interviews may be required.

Once the victim is ready for the interview, ensure that they understand:

- They are being interviewed as a victim/witness; that they are not accused of a crime;
- The interview is not a test;
- The interview is completely voluntary;

⁴¹ Dr. Joseph M Carver. PhD, Clinical Psychologist Southern Ohio.

⁴² <http://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>.

- The interview will be recorded, and that if charges are laid, the recording will not be confidential;
- They can say anything they believe to be true; and,
- Any risks the interview may pose and the support plans to mitigate these risks, and to protect their security and identity.

For more information about working with victims, see this guide from the Policy Centre for Victim Issues:

<http://canada.justice.gc.ca/eng/rp-pr/cj-jp/victim/res-rech/toc-tdm.html>.

3.2.5 Establishing Trust

Trust between investigator and witness is always required, particularly when the witness is also a victim. Officers may need to explain how policing works, and their role as police officers, to establish credibility and build trust.

Interviewers should keep in mind that establishing a rapport and earning a victim's trust will help victims to be more open and to feel more comfortable about providing information.

To establish trust, explain the purpose of the interview, as well as the roles of the interviewer and the victim. Ask the victim whether they would be more comfortable in the presence of a female or male interviewer.

3.2.6 Free Narrative

Most victims have trouble recalling and talking about particular events due to the impacts of trafficking. The main purpose of free narrative is to encourage the victim to recall and talk about relevant events in their own words. Avoid the temptation to jump in if the victim stops talking and a moment of silence occur. The victim may simply be attempting to gather their thoughts and trying to recount events in their own mind. Give them the time to do that. Often they will just start talking again without any further questions.

Open questions should be used, for example:

- "Can you tell me how you left your hometown?"
- "Then, what happened?"

3.2.7 Clarification Questioning

If further detail is needed following the free narrative, use clarifying questions.

- Ask short and simple questions;
- Use closed questions (can be answered by single words, such as yes or no);

- Do not repeat the same question unless the victim asks for it to be repeated – rephrase it instead; and,
- Summarize the interviewer’s understanding for the victim (i.e., repeat it back).

3.2.8 Closing

This phase gives the victim a chance to correct any misunderstandings during the interview.

- Ask the victim if they have any questions;
- Summarize the entire interview for the victim so that they can address further concerns or any misunderstandings; and,
- Explain what will happen next.

You may wish to offer a written or electronic resource to the victim as they may not recall all the information provided to them. Here is one example from the Policy Centre for Victim Issues: <http://canada.justice.gc.ca/eng/rp-pr/cj-jp/victim/guide/index.html>.

3.2.9 Interview Questions

As noted above, it may be necessary to conduct a number of interviews to obtain a complete picture of events. Be sure to ask the victim for information that could potentially corroborate other evidence or lead to the collection of corroborative evidence. Simple questions about the layout of the location where the victim worked, for instance, daily routines and other more general matters can help establish their credibility.

For a list of suggested questions, please contact the RCMP Human Trafficking National Coordination Centre at: 1-855-850-4640 or htncc-cnctp@rcmp-grc.gc.ca

3.3 Dealing with Children

Working with child victims of any crime is challenging. Children are particularly vulnerable due to their lack of experience and their dependence on and/or trust of adults. Traffickers use various methods of recruitment to lure vulnerable children into exploitative situations such as enticing them with a “glamorous” life-style and opportunities to make money.

Trafficking cases involving children are always complex. When working with any potential child victim, provincial and territorial ministries or child protection agencies must be contacted. Investigators should always videotape interviews with children (recall s. 715.1 of the *Criminal Code*). Try to use an officer trained to interview children and should consider:

- Obtaining information regarding accompanying adult(s);
- Referring the child to specialized medical and psychological counseling;

- Verifying whether the child has been reported missing;
- Limiting the number of interviews where possible;
- That the child probably fears retribution by the trafficker(s);
- That the child may worry about being taken away from familiar people or places, despite the abuse; and,
- That a child victim's cultural or religious beliefs may make it difficult for them to talk about their experiences.

3.3.1 Runaway children are vulnerable to traffickers:

- They leave home/group homes because of intolerable situations with their families, schools or peers and need to make money to survive;
- They view running away as the only solution, however risky or dangerous it might be;
- Their need for food, clothing and shelter makes trading sex for favours a means of survival; and,
- Children who are drug addicted can be controlled by their addiction.

3.3.2 Recruitment locations can include anywhere that youth hang out:

- Group homes;
- Schools;
- Parties/bars;
- Youth centres/shelters;
- Shopping malls;
- Internet; and,
- Bus shelters.

3.3.3 Specific Concerns regarding Children Brought to Canada

Everyone, including a child, who arrives in Canada from abroad must appear for an examination by an officer to determine whether they have a right to enter Canada or whether they are authorized to enter and remain in Canada. Citizenship and Immigration Canada has developed a procedures manual entitled *Recovering Missing, Abducted and Exploited Children*. Officers are instructed on the proper procedures to follow during primary inspection and, when suspicions arise to refer the child and any accompanying adult for secondary inspection. Where there is suspicion of a criminal offence, officers are instructed to immediately contact law enforcement.

For more information on the measures in place at Canadian Ports of Entry to ensure that exploited children, or children at risk of exploitation, are identified and protected, please see: <http://www.cic.gc.ca/english/resources/manuals/enf/enf21-eng.pdf>.

3.3.4 Suggested Tips for Investigators

As an investigator involved in human trafficking related investigations it is important that you:

- Be aware: Human trafficking may be present in any type of police investigation (e.g., domestic disputes, traffic stops, drug investigations, etc.);
- Be proactive, compassionate and patient: Victims will rarely approach law enforcement on their own initiative and are rarely forthcoming in providing information. It may take numerous attempts to make contact with a victim before any form of trust can be established;
- Be honest about the processes and sensitive towards the victim's needs: This will assist with bonding and building the trust required to obtain relevant information;
- Be aware throughout the investigation: The safety of the victim or witness is of paramount concern. See the section on Risk Assessment. A victim may feel they have no choice but to go back to the exploitive situation, or they may want to go back to the trafficker as a result of manipulation and the cycle of violence or fear from threats made against family members or others known to them; and,
- Attempt to obtain as much corroborating evidence as possible.

3.3.5 Support to the Victim

It is important for law enforcement to develop and maintain partnerships, and work with local service providers and non-governmental organizations (NGOs), to ensure that victims' needs are met; this can include access to food, shelter and medical attention, as well as addressing their safety concerns.

If you are not aware of local services, you can search here in the Policy Centre for Victim Issues' Victim Services Directory:

<http://canada.justice.gc.ca/eng/cj-jp/victims-victimes/vsd-rsv/schp1-rchp1.asp>

Ensuring that good partnerships are in place in your community ensures that victims' needs are met by those qualified to do so, while allowing police resources to be used for investigations.

If the victim does not speak English or French, ensure an accredited interpreter/translator is available.

3.4 Access to Services

In Canada, responsibility for the protection of victims of crime is shared between the federal and provincial/territorial governments. Numerous programs and services are available to victims of crime, including trafficking. These range from health care to emergency housing, and social and legal assistance. Legal-aid programs are administered separately by each province and territory, and eligibility is based primarily

on financial need. Similarly, social services such as emergency financial assistance, including food allowances and housing, are administered at the provincial and territorial levels and are available to those in need.

For more information on available victims services, please see Chapter 6. Law enforcement may also contact the RCMP Human Trafficking National Coordination Centre at: 1 855 850-4640 or htncc-cnctp@rcmp-grc.gc.ca.

If interpretation services are required and an interpreter/translator is not available for the initial meeting, consider utilizing the Victim-Translation-Assistance (VITA) tool. VITA is a unique tool using audio messages that enables law enforcement or service providers to provide a level of basic assistance to victims of human trafficking in 44 languages. The VITA tool is not meant as a substitute for proper translation/interpretation. The VITA tool can be downloaded from the United Nations Global Initiative to Fight Human Trafficking website at: www.ungift.org.

3.5 Working with Traumatized Victims⁴³

Trauma occurs when a victim lives through an experience so extreme that they cannot completely comprehend or accept it. Consequently, it falls so far outside the victim's own system of values for human behaviour that they cannot rationalize it and may even deny that it ever happened. Key symptoms of trauma likely to have serious implications include:

- Denial of being trafficked, even in the face of contradictory evidence;
- De-personalization of the abusive experience and coming to regard it as having happened to another person;
- Fragmentation of memory, perception, feeling, consciousness and sense of time;
- Difficulty in providing a clear and consistent statements to investigation; and,
- Tendency to fill in memory blanks by making up plausible elements of a traumatic situation.

Due to these types of trauma, one of the optimal methods for working with victims is to help them feel stable by providing security and assistance. Another method is to start the investigation after the victim feels that they are in a stable situation.

Expert support may be required in several different forms. Victims of trafficking often require a lot of support following their ordeal. Support for victims can be provided by non-governmental organizations to meet victims' practical needs for food and shelter. They can also arrange psychological support, translations services, immigration information, etc. Often, the NGO community has more of the expertise needed to provide these services than law enforcement does. Some communities also have government programs and services available to victims.

⁴³ Working with Traumatized Victims Section, sourced: *Kevin Bale, The Social Psychology of Modern Slavery (April 2002)*.

3.6 Foreign National Victims

Foreign national victims brought to Canada may be more vulnerable to exploitation because they may have little or no knowledge of Canadian customs, laws and human rights, and this lack of knowledge may be used by the trafficker to compel the victim to provide their labour or service. Victims may react with fear, suspicion, scepticism, distrust, hesitation and/or hostility towards outsiders, especially law enforcement. They may worry about their immigration status in Canada and/or fear deportation. They may also be concerned about the continued availability of services in Canada.

Foreign national victims brought to Canada may have different needs than Canadian citizens or permanent residents. Under normal circumstances, a person who does not have status in Canada does not have access to services. Citizenship & Immigration Canada has developed a Temporary Residence Permit (TRP) for foreign nationals who are believed to be victims of human trafficking. TRP status provides access to Interim Federal Health Care, counselling services and the opportunity to apply for a work permit. There are both short-term (valid for up to 180 days) and long-term TRPs. To be eligible for a short-term TRP, a person must be a suspected trafficking victim; to be eligible for long-term a TRP, reasonable evidence of trafficking is required. Victims are not required to collaborate with law enforcement agencies or testify against their traffickers to obtain TRPs. Law enforcement should notify the Canada Border Services Agency when dealing with a foreign national victim without status.

3.7 Collecting Evidence

3.7.1 Indicators: Sexual Exploitation or Forced Labour

- Evidence of control, intimidation, physical or sexual violence, or fear for their safety or the safety of someone known to them:
 - The opposite may also be true, where due to desensitization there is an absence of fear — often the case in domestic situations. Violence and control have become so commonplace for the victim that they do not exhibit normal fear.
- Unable to expand, or build upon an original story.
- No baggage or few bags, clothing or funds for the trip.
- Unable to locate identity documents (e.g., passport, driver's licence, health or social insurance card).
- Unaware of local surroundings, even though they have lived in the area for an extended period of time.
- Deceived about the nature of the job, location or employer.
- Deceived about the content or legality of their work contract.
- Excessively long workdays and hours and/or very bad or hazardous working conditions.
- No days off, low or no salary.
- Bad living conditions.

- Isolation, confinement or surveillance.
- Forced to lie to authorities or to commit a crime.
- Always in the company of a “friend, or family member,” (male or female) who seems to monitor and or control the victim’s moments.
- Seeks approval and/or answers from the “friend, or family member” before responding to questions; especially during the early stages of field interviews and during search warrant interview(s).

In addition to the above signs, child victims of human trafficking may:

- Provide rehearsed stories;
- Provide answers that seem unnatural or overly mature;
- Appear nervous around, or fearful of, accompanying adult(s); and,
- Travel with one or more adults who are not their parents or legal guardians.

3.7.2 Control Tactics Used by Traffickers

- Uttering threats to the victim or persons known to the victim.
- Emotional abuse.
- Physical violence.
- Sexual abuse.
- Intimidation.
- Branding, tattooing.
- Supporting a drug or alcohol dependency.
- Identification papers taken and withheld.
- Debt bondage.
- Exploiting a victim’s fear of police.
- Exploiting a victim’s vulnerability, such as immigration status or lack of education, language fluency, or knowledge of local customs and laws.
- Isolation from the public and/or within a group.
- Provides answers to the investigator on behalf of the victim or prompts the victim to answer questions during field interviews.
- Exploiting a victim’s cultural or religious beliefs.

3.8 Risk Assessment

Throughout human trafficking investigations and court proceedings, the safety of the victim or witness must be continually assessed based on all relevant facts and circumstances known to the officer.

When investigating incidents of human trafficking and working with victims:

- Consider potential harm to family members and persons known to them when evaluating risk;
- Conduct ongoing risk assessments as situations evolve;

- Take steps to ensure the safety of potential victims;
- Seek the assistance of victim services and/or non-governmental organizations; and,
- If necessary, contact the witness protection program.

When working with child victims, contact the relevant child protection agency.

The safety of victims and witnesses is the police's main priority. Ensure that victims are located where the trafficker cannot find them. Ensure the shelter has security measures in place; consider moving them to another city or province, if necessary.

Investigators conducting the assessment should consider the following questions:⁴⁴

1. What level of risk do the identified victim (s) and those known to them face?
2. Are other victims still being exploited? If so, what level of risk do they face?
3. Are others at risk of being trafficked? If so, what level of risk do they face?
4. Is the level of risk posed to any victim high enough that it demands some form of immediate intervention?

Investigators need to consider not only the existing level of risk posed to the safety and welfare of the victims and their loved ones, but also possible risks that may arise as a result of the police response — e.g., any additional risks arising as a result of a decision to launch a raid or investigation.

3.8.1 Levels of Risk⁴⁵

There are three levels of risk:

- Low — unlikely to occur
- Medium — more likely to occur than not
- High — highly likely to occur

Assessing the level of any given risk relies upon the professional judgment of the investigator, as well as all available information.

3.8.2 Considerations for International Victims⁴⁶

Foreign national victims should not be deported or repatriated if this places them at serious risk of harm; these risks need be identified and assessed.

⁴⁴ Trafficking in Human Beings, *Best Practice Guidance Manual for Investigators* (Interpol)

⁴⁵ Levels of Risk sourced: *Trafficking in Human Beings - Best Practice Guidance Manual for Investigators*, (Interpol)

⁴⁶ Considerations for International Victims sourced: *Trafficking in Human Beings -Best Practice Guidance Manual for Investigators* (Interpol)

It is important to consider any social, cultural or religious factors that may make repatriation dangerous. These issues need to be discussed with the victim and may inform considerations about whether the victim will remain in Canada.

The availability of support services in the victim's country of origin should also be considered. No details about a victim's situation should be shared with support agencies without the victim's consent. For example, the victim may not want any exploitation as a prostitute to be disclosed to an official body in his or her home country. Sharing this information may also create a risk of reprisal or re-trafficking when family members were implicated in the original trafficking.

If using victim support services within the country of origin, try to ensure that the agency has the capacity to assist the victim. The security and capacity of support organizations is variable and must be assessed in each case.

3.9 Witness Protection

Federal Witness Protection Program Act

The Federal *Witness Protection Program Act* (WPPA) is administered by the RCMP. It provides the legal framework to protect persons who are involved in providing assistance to law enforcement. This can include persons who are assisting the RCMP in law enforcement matters or those who are assisting another law enforcement agency, provided an agreement has been entered into between the RCMP and that agency. Services offered to witnesses/victims are decided on a case-by-case basis but can include relocation, accommodation, change of identity, counselling, and financial support to ensure the person's security and help them re-establish their life and become self-sufficient. Canadian law enforcement agencies refer and then work with the federal WPPA when a victim/witness of human trafficking is deemed eligible under the terms of the program.

In Canada, some provinces operate legislated (Alberta, Manitoba and Saskatchewan), policy-based (Ontario and Québec), or operationally structured (British Columbia, in an integrated team) witness protection programs. A victim of human trafficking could be deemed eligible under the terms of either the federal or provincial programs to receive protection in order to assist law enforcement and prosecution.

Canada's broad legal framework also includes a variety of provisions to assist a victim or witness to testify in a criminal proceeding against a trafficker. Research demonstrates that when victims are supported through the criminal justice process, there is an increased likelihood that they will support the prosecution.

In Canada, a victim is not required to assist with the investigation or prosecution of alleged traffickers, nor is victim access to support services and assistance dependent upon his/her cooperation or support of an investigation/prosecution. Nonetheless, victim support for criminal prosecution is encouraged through the provision of services

and assistance to victims throughout the criminal justice process. Toward this end, Canada's *Criminal Code* contains numerous provisions to facilitate a victim's/witness' participation in a criminal proceeding. These include:

- Exclusion orders (section 486 of the *Criminal Code*);
- Support persons (section 486.1 of the *Criminal Code*);
- Use of screens or closed circuit television while testifying (section 486.2);
- Restrictions on personal cross-examination by a self-represented accused (section 486.3);
- Publication bans (sections 486.4-486.5); and,
- Admissibility of video-recorded evidence for victims who were under the age of 18 at the time the offence was committed (section 715.1 of the *Criminal Code*).

As part of the investigative process, it will be important to understand the basis upon which these testimonial aids can be accessed. Victim-services organizations can provide information to victims on these provisions. For more information on these provisions, please see chapter 4. For more information on available victims services in your jurisdiction, please see chapter 6.

Canada has laws to protect victims against intimidation or retaliation if they report these criminal offences or testify against their trafficker. It is an offence to intimidate a justice system participant (a victim or witness) and is punishable by a maximum of 14 years imprisonment.

3.10 Laying a charge

Decisions to charge and prosecute criminal offences in Canada are made by the police force of a jurisdiction and/or relevant Attorneys General. The vast majority of criminal offences are investigated and prosecuted in Canada at the local/provincial level and charging and prosecutions practices vary by jurisdiction. In three provinces, British Columbia, Quebec and New Brunswick, decisions to lay *Criminal Code* charges must first be approved by provincial prosecutors; in other jurisdictions, charges can be laid directly by the police. Prosecutions under the *Immigration and Refugee Protection Act* are carried out by the Attorney General of Canada.

Despite the differences in charging practices, all decisions to prosecute in Canada are guided by a two-stage test⁴⁷: (1) whether there is a reasonable prospect of a conviction in proceedings to be instituted and or continued; and, (2) if so, does the public interest require a prosecution to be pursued. Police officers are encouraged to liaise with crown counsel during their investigations. It is recommended that a prosecutor be identified early on in the investigation or as soon as investigations have identified the case as a human trafficking event. The prosecutor shall be consulted throughout the investigation

⁴⁷ It is acknowledged that the precise wording for this test may vary slightly from jurisdiction to jurisdiction. For example, in British Columbia, moving forward with a prosecution requires evidence that there is a "substantial likelihood of conviction."

and be part of the decision-making process regarding the speed, flow and direction of the investigation. Ideally a second prosecutor should be identified to review all relevant applications to obtain search and/or productions warrants.

Charges are laid based on the evidence in each individual case. Other charges that might be considered could include prostitution-related offences, such as procuring a person to provide sexual services, assault, forcible confinement, uttering threats, etc.

Samples of the wording for laying the information are shown below:

Criminal Code Section 279.01

- John DOE, between the 1st day of December, 2005, and the 8th day of March, 2006, at or near the City of Halifax, in the Province of Nova Scotia, did unlawfully recruit, transport, receive, hold, conceal or harbour, or exercise control, direction or influence over the movements of Joseph WONG for the purpose of exploiting or facilitating the exploitation of that person, contrary to Section 279.01 of the *Criminal Code*.
- Jane DOE, between the 21st day of November, 2006, and the 24th day of May, 2007, at or near the City of Calgary, in the Province of Alberta, did unlawfully recruit, transport, receive, hold, conceal or harbour, or exercise control, direction or influence over the movements of Tiffany SMITH for the purpose of exploiting or facilitating the exploitation of that person, contrary to Section 279.01 of the *Criminal Code*.

Section 279.02

- Jane DOE, on April 24th, 2006 at or near the City of Winnipeg, in the Province of Manitoba, did unlawfully receive a financial benefit or other material benefit, to wit the sum of \$25,000, knowing that it results from the commission of an offence under Subsection 279.01(1) of the *Criminal Code*, contrary to Section 279.02 of the *Criminal Code*.
- John DOE, on April 24th, 2006 at or near the City of Winnipeg, in the Province of Manitoba, did unlawfully receive a financial or other material benefit, to wit sexual services, knowing that it results from the commission of an offence under Subsection 279.01(1) of the *Criminal Code*, contrary to Section 279.02 of the *Criminal Code*.

Section 279.03

- John DOE, between May 1st, 2006, and May 30th, 2006, at or near the City of Toronto, in the Province of Ontario, did unlawfully conceal, remove, withhold or destroy a travel document belonging to, or a document that establishes or purports to establish the identity or immigration status of Galyna NIKONENKO, to

wit a Russian passport no. 65468768546354,◇ for the purpose of committing or facilitating an offence under Subsection 279.01(1) of the *Criminal Code*, contrary to Section 279.03 of the *Criminal Code*.

- Jane DOE, on October 3rd, 2006, at or near the City of Fredericton, in the Province of New Brunswick, did unlawfully conceal, remove, withhold or destroy a travel document belonging to, or a document that establishes or purports to establish the identity or immigration status of Cheryl SMITH, to wit a driver's license issued by the Province of Alberta no. 878465,◇ for the purpose of committing or facilitating an offence under Subsection 279.01(1) of the *Criminal Code*, contrary to Section 279.03 of the *Criminal Code*

IRPA — Section 118

- John DOE, between the 5th day of June, 2005 and the 30th day of June 2007, at or near the City of Vancouver, in the Province of British Columbia, and in the country of Thailand, did organize the coming into Canada of Ms. Y, by means of abduction, fraud, deception, or use of threat of force or coercion, thereby committing an offence contrary to s.118 of the Immigration and Refugee Protection Act.

How or whether the document is particularized will depend on the facts of the case.

3.11 Report to Crown Counsel

A report to Crown Counsel will come in different formats throughout the country; it is essentially a written document outlining the details of the investigation. It provides the evidence of the accusations in the case, including evidence that establishes the elements of the offence. In preparing the Report, include all evidence in support of the recommended charges, as well as witness lists and statements, and exhibit lists. As is well known, the Crown is required to disclose, in a timely manner, all relevant information in the possession of the police and the Crown to the accused to permit them to make full answer and defence.

3.12 Pre-Bail and Post-Bail Considerations

A police officer's assistance at the pre-bail and post-bail stage is critical. Assistance in building the case for pre-trial detention, investigating possible sureties or associates while also engaging in proactive monitoring of an accused to ensure that they are complying with their conditions, are all important aspects of an officer's role at this stage. More information on these matters is contained in Chapter 4.

Accused will often be released from custody with conditions imposed upon them by the courts. Depending on the release conditions, they may be monitored to confirm that they are abiding with their restrictions. This can be a vulnerable time for victims if

accused do not abide by their conditions, specifically “no contact” conditions. A breach of conditions is chargeable under a separate offence.

3.13 Sureties to Keep the Peace

Investigators should also keep in mind the possibility of seeking a “peace bond” against an individual. Peace bonds require an individual to agree to specific conditions to keep the peace. These instruments are available to police to protect the public by **preventing** a criminal offence from being committed. A peace bond may be issued when it is feared, on reasonable grounds, that another person will commit certain offences.

Every peace bond includes an order to keep the peace. In addition, the judge may impose any other reasonable condition necessary to secure the good conduct of the defendant. This is important because it enables the judge to craft the order to respond to the particular circumstances of the defendant and the particular risks that they pose to public safety.

3.14 Obtaining Foreign Evidence/Assistance

Where evidence relevant to a Canadian criminal investigation is located abroad, the laws and procedures that exist in that country will determine the mechanism through which to seek the evidence. In many cases, foreign states will share evidence with Canadian police through direct agency-to-agency channels, including through Interpol.

Examples of the types of materials and assistance that are generally accessible through agency-to-agency channels are the following: public records, including records of business incorporation, records in a court file that is not sealed, interviews of cooperating witnesses or accused/suspects, copies of criminal records, assistance in locating a suspect/witness, copies of information in foreign police files or in the possession of the foreign police, assistance in conducting police surveillance or undercover measures that do not require court authorization, passport, border and immigration records.

Where the foreign state declines to assist a Canadian investigator through informal agency-to-agency channels, but is able to assist through the formal mutual legal assistance process, the following considerations apply:

- (1) Is there a mutual legal assistance treaty or convention in place between Canada and the foreign state that covers the type of assistance sought?
- (2) If not, will the foreign state assist pursuant to a non-treaty letter of request (i.e., a formal request for assistance that is transmitted by the Department of Justice Canada to its foreign counterpart in accordance with international comity)?

Canada is party to 35 bilateral mutual legal-assistance treaties and many multilateral conventions that contain provisions for mutual legal assistance, including the UN *Convention against Transnational Organized Crime* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.

Although practices vary from country to country, most jurisdictions require a formal mutual legal-assistance request where court authorization is required to obtain the evidence or provide the assistance (e.g., search and seizure; compelling witness statements and/or testimony, including by video-link, obtaining Internet Service Provider records, obtaining bank or telephone records, enforcing criminal fines or orders of restraint or forfeiture). Some countries will also require that Canadian authorities pursue evidence through a mutual legal-assistance request where the evidence is sought for prosecution purposes.

Investigators should also be mindful of the following:

- (1) Caveats on the use that can be made of foreign evidence may be imposed by the foreign state as preconditions to the sharing of the evidence. In the mutual legal-assistance context, foreign evidence may only be used for the purpose for which it was gathered/seized, unless the foreign state consents to its use for other purposes.
- (2) If the execution of a request will attract extraordinary expenses, Canada may be required to pay those costs before the assistance will be granted.

As a general rule, investigators should exhaust all agency-to-agency avenues of cooperation before resorting to the mutual legal-assistance process.

Investigators and/or prosecutors are encouraged to contact the International Assistance Group (IAG) at the Department of Justice Canada before drafting a mutual legal-assistance request. The IAG's contact information is the following:

International Assistance Group
Litigation Branch, Criminal Law Division
Department of Justice Canada
284 Wellington Street, 2nd Floor
Ottawa, ON K1A 0H8
Telephone: 613-957-4832
After hours number: 613-851-7891
Fax: 613-957-8412
e-mail: cdncentralauthority@justice.gc.ca

In addition, investigators may wish to consult Chapter 43 of the Public Prosecution Service of Canada's Deskbook Policy on the Mutual Legal Assistance process:
<http://www.ppsc-sppc.gc.ca/eng/fps-sfp/fpd/ch43.html>

3.15 Extradition to Canada

Canadian prosecution and correctional authorities may seek, from foreign states, the extradition of persons accused or convicted of Canadian criminal offences. In urgent and time-sensitive circumstances (e.g., where the person is a flight risk or an imminent threat to security), a provisional arrest request may be pursued with the foreign state, followed by a formal extradition request.

All extradition requests and provisional-arrest requests are submitted to the foreign state through the International Assistance Group (IAG) at the Department of Justice Canada. The IAG acts on behalf of the Minister of Justice as the Central Authority for Canada in all extradition matters.

In general, extradition may only be sought from treaty partners. Canada is currently party to 51 bilateral extradition treaties and several multilateral conventions containing provisions on extradition, including the *UN Convention against Transnational Organized Crime* and its *Protocol on Trafficking in Persons*.

The relevant treaty or convention, along with the law of the foreign state, will determine the criminal conduct that is considered to be extraditable, as well as the procedural and evidentiary requirements to be met when seeking extradition. These may vary significantly from state to state.

Prosecuting and investigating authorities should consult with the IAG in all cases where extradition is being contemplated. Consultation should be pursued at the earliest possible opportunity. The IAG's contact information is the following:

International Assistance Group
Litigation Branch, Criminal Law Division
Department of Justice Canada
284 Wellington Street, 2nd Floor
Ottawa, ON K1A 0H8
Telephone: 613-957-4832
After hours number: 613-851-7891
Fax: 613-957-8412
e-mail: cdncentralauthority@justice.gc.ca

In addition, investigators and prosecutors may wish to consult Chapters 40 and 41 of the Public Prosecution Service of Canada's Deskbook Policy on the Extradition Process in Canada: <http://www.ppsc-sppc.gc.ca/eng/fps-sfp/fpd/ch40.html> and <http://www.ppsc-sppc.gc.ca/eng/fps-sfp/fpd/ch41.html>

Chapter 4: Guidelines for Prosecutors

4.1 Introduction

The purpose of this chapter is to provide practical guidance to prosecutors involved in the prosecution of trafficking in persons cases. Crown practices and procedures will vary from one jurisdiction to another. This chapter should be considered in conjunction with existing practices and procedures.

4.2 Victim Interview

In addition to the formal interview, involve the victim throughout the process. For example, regularly consult and provide the victim with timely information, particularly with respect to the release of the accused on bail and to the results of the trial and sentencing. Engage victim services early in the process to assist you in liaising with the victim. The role of victim services is more fully canvassed in Chapter 6.

Conduct an informational meeting with the victim as soon as is practicable and ensure that victim services are involved in the case.

At the stage where you are set to interview the victim, it will be important to help prepare them to testify in court. Many victims of trafficking in persons offences will not have any knowledge of the Canadian criminal justice system. Avoid making assumptions, and take the time to introduce yourself and explain the role of the Crown, the purpose of the interview, and what will happen next before asking about the circumstances of the offence.

Throughout the interview, remain sensitive to the victim's personal situation and state of mind, including the psychological and emotional distress he or she is likely experiencing. Bear in mind that no two victims are alike, and may react in different ways to Crown counsel and law enforcement; some may be cooperative, though in many instances, they will not trust the justice system and may decline to meaningfully participate.

Notwithstanding this type of initial reaction, the victim will not necessarily remain adverse or hostile throughout the interview or the proceedings, as such a response may be a tactic that he or she has adopted to survive their ordeal, and is not directed specifically at the justice system.

To maximize the effectiveness of the interview, it is thus important to avoid challenging or directly questioning the victim's story too early in the process. Confronting the victim about discrepancies or weaknesses in his or her evidence too early in an interview may provoke recollections of the defensive position that he or she held during the trafficking, greatly reducing the potential for cooperation. While difficult questions may need to be asked to obtain an accurate and complete account of relevant events, all efforts should be made to build a rapport with the victim before delving into such controversial matters.

Pay close attention to the victim's body language and any comments about the accused in particular, as the victim may continue to legitimately fear for his or her safety as well as those of others known to them, even if the accused is in custody. Remain vigilant to spotting these issues and inform the victim of the protections that are available to him or her, though particular care should be taken to avoid making promises that cannot be kept (i.e., guaranteeing that the victim will be able to testify via close-circuit video or behind a shroud, when such a procedure requires an application that has not yet been determined by a court).

The victim may likewise require the assistance of a support person and/or an interpreter. Like other vulnerable victims, such as survivors of domestic abuse or sexual assaults, Crown counsel should also be prepared to arrange for frequent breaks, or even terminate an interview if necessary, and seek immediate assistance for the individual. If the victim has not yet been referred to victim services, help the person contact victim services for support and assistance as soon as practicable.

As with any witness interview, Crown counsel should always ensure that another person is present, such as the officer assigned to the matter. The presence of a familiar officer, particularly if a positive relationship has already been established, may help the victim feel more at ease and increase his or her willingness to participate.

Lastly, an observer can help ensure that an accurate record of the interview is kept, in order to fulfill the Crown's disclosure obligations.

For more information on interviewing victims of human trafficking, please see:

- Chapters 8 and 9 of the United Nations Office on Drugs and Crime *Anti-Human Trafficking Manual for Criminal Justice Practitioners*.⁴⁸
- *Human Trafficking: Canada is Not Immune, an online training course for Canadian front line service providers on how to recognize, protect and assist a person who may have been trafficked*.⁴⁹

4.3 Charge Approval/Charge Review

In Canada, the responsibility to lay charges rests with the police in every province except for British Columbia and Quebec, where the responsibility to lay charges rests with the Crown. In New Brunswick, the police lay charges after receiving advice from the Crown.

Despite the differences in charging practices, all decisions to prosecute in Canada are guided by a two-stage test:⁵⁰ (1) whether there is a reasonable prospect of a conviction

⁴⁸ <http://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>

⁴⁹ <http://www.pssg.gov.bc.ca/octip/training.htm>

⁵⁰ It is acknowledged that the precise wording for this test may vary slightly from jurisdiction to jurisdiction. For example, in British Columbia, moving forward with a prosecution requires evidence that there is a "substantial likelihood of conviction."

in proceedings to be instituted and or continued; and, (2) if so, does the public interest require a prosecution to be pursued.

Incidents of human trafficking often occur alongside other criminal offences. Accordingly, consideration should also be given to the laying of additional charges, when evidence supports it. For example, consideration should be given to the following other offences:

- Uttering threats (section 264.1);
- Assault (section 265);
- Assault with a weapon/causing bodily harm (section 267);
- Aggravated assault (section 268);
- Sexual Assault (section 271);
- Sexual assault with a weapon (section 272);
- Aggravated sexual assault (section 273);
- Kidnapping (subsection 279(1));
- Forcible confinement (subsection 279(2));
- Prostitution-related offences (sections 286.1-286.4);
- Extortion (section 346);
- Intimidation (section 423); and,
- Criminal organization offences (sections 467.11-467.13).

4.4 Obtaining Foreign Evidence/Assistance

Mutual legal assistance may be critically important to the successful prosecution of a human trafficking case. Canada is party to 35 bilateral mutual legal assistance treaties and many multilateral conventions that contain provisions for mutual legal assistance, including the *UN Convention against Transnational Organized Crime* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*.

Canada may also require extradition of an accused in a human trafficking case. Currently, Canada is party to 51 bilateral extradition treaties and several multilateral conventions containing provisions on extradition, including the *UN Convention against Transnational Organized Crime* and its *Protocol on Trafficking in Persons*. For more information on mutual legal assistance and extradition, please see chapter 3.

4.5 Pre-trial Detention/Release

4.5.1 Grounds for Detention

All three grounds of detention in subsection 515(10) are potentially applicable bases for seeking the detention of an accused charged with trafficking in persons offences. While the factors relevant to the three grounds of detention are well known, the following considerations are particularly germane to trafficking in persons cases.

With respect to the **primary grounds**, pay special attention to the mobility of the accused. Often they will have methods of moving from one country to another or across the country without being observed, which may mean they can leave the jurisdiction easily. Ensure passports are surrendered.

With respect to the **secondary grounds**, given the violence and threats inherent with the offence of trafficking in persons, victim/witness protection and safety is a prime consideration. Human trafficking is a business and traffickers have great motivation (money) to continue the offence. Moreover, the victim's *perception* of their safety is critical to maintaining the cooperation of the victim in the prosecution.

With respect to the **tertiary ground**, the gravity of the offence and the potential for the accused to receive a lengthy term of imprisonment are key factors for consideration (sub-paragraphs 515(10)(c)(ii) and (iv)). In this regard, it is significant that every trafficking in persons offence, by definition, has exploitation at its core. Further, with respect to the potential for a lengthy sentence, the maximum penalty for trafficking in persons in its aggravated form is life imprisonment and in its non-aggravated form is 14 years (paragraphs 279.02(1)(a) and (b)). Moreover, where the victim is under 18, there is a mandatory minimum penalty of five or six years imprisonment, depending on the circumstances of the offence (subsection 279.011(1)). In a bail review decision in *R. v. Domotor et al.*, the first labour trafficking prosecution in Canada, which involved a criminal organization, the Ontario Superior Court allowed the Crown's application and detained Ferenc Domotor on the secondary and tertiary grounds. Cavarzan J. concluded that "[h]uman trafficking is a very grave offence indeed" and that the accused was liable to a potentially lengthy term of imprisonment. He also concluded that the tertiary ground for detention was not limited to murder, serious firearm and drug trafficking offences.⁵¹

4.5.2 Onus

While the trafficking in persons offences do not *per se* trigger a reverse onus on a bail hearing, even where a firearm is involved, there may be features of a case that do trigger the reverse onus. In particular, if the accused is charged with a criminal organization offence under ss. 467.11, 467.12, or 467.13, or a serious offence (i.e., an offence punishable by five years or more or as prescribed by regulation)⁵² alleged to have been committed for the benefit of, at the direction of, or in association with a criminal organization, the onus is on the accused to show cause why his/her detention is not justified (sub-paragraph 515(6)(a)(ii)). Given that trafficking in persons offences are usually financially motivated, if the offence appears to have been committed by or in conjunction with three or more persons, prosecutors should consider the definition of "criminal organization" in section 467.1 of the *Criminal Code*, and the potential application of sub-paragraph 515(6)(a)(ii).

⁵¹ [2011] O.J. No. 6357, 2011 ONSC 626 (Sup. Ct.), at ¶¶ 61-64. See generally *R. v. Hall*, [2002] 3 S.C.R. 309, [2002] S.C.J. No. 65, and *R. v. B.S.* (2007), 49 C.R. (6th) 397, [2007] O.J. No. 3046 (C.A.).

⁵² <http://canadagazette.gc.ca/rp-pr/p2/2010/2010-08-04/html/sor-dors161-eng.html>.

4.5.3 Preparation for the Bail Hearing

Good preparation for the bail hearing can help secure the detention of the accused in appropriate cases. Therefore it may be helpful for the prosecutor to seek an **adjournment** of up to three days pursuant to subsection 516(1) of the *Criminal Code*, either prior to the commencement of the hearing or once it is underway and the need for further investigation, such as of proposed sureties, becomes apparent. In such cases, the prosecutor will need to articulate the reasons for supporting the application.

If the prosecutor does obtain an adjournment, the prosecutor should generally request a **non-communication order** for that period of remand, pursuant to subsection 516(2).

Below are some relevant considerations or steps:

- **Consider having the officer attend and testify at the bail hearing.** This can be helpful in more complicated cases. The officer will likely have additional relevant information, including about the victim, than may be in the brief.
- **Be aware of the possibility that one or more of the accused may actually also be a victim.** Some traffickers create a hierarchy for their trafficking/criminal activities, and use some of the victims they have previously recruited to help recruit and control new victims. If the accused is also a victim/former victim, it may be that they will be more likely to be released on the basis that they are a “lesser” player. There is a concern that if they are released, they may continue to commit offences at the direction of their “recruiter”, even if the recruiter is charged and detained. The proposed surety can be asked in cross-examination how they would keep the accused from communicating with the recruiter.
- **Have the proposed sureties investigated.** As a general matter, the cross-examination of proposed sureties can serve as an important opportunity to demonstrate the weaknesses in the defence case for bail as well as in the defence case at trial. Some of the proposed sureties may be witnesses at the trial. The bail hearing is an opportunity to get witnesses’ stories on the court record.
 - **Is the proposed surety involved in the accused’s alleged trafficking activity or related criminal activity?** In addition to the usual lines of inquiry regarding the suitability of a proposed surety, the prosecutor should be aware of the possibility that the proposed surety is involved in the accused’s criminality and should request police to investigate this, recognizing that to do this effectively can take time and police resources.
 - **Does the proposed surety have a conflict of interest?** Even if they are not directly involved with the accused’s criminal activity, certain proposed sureties (such as family members) may be indirectly living off the avails of that activity and may in effect have a conflict of interest. The prosecutor

should explore the proposed surety's income and employment situation in cross-examination in order to get at any conflict that would disincline the surety to genuinely seek to keep the accused out of lucrative criminal activity or to turn the accused in, in the event of a bail violation. The prosecutor can ask the surety to provide documentation, such as an income tax return, to substantiate their evidence.

- **Did the proposed surety testify at a previous bail hearing?** In organized-crime cases or where the accused has other charges, the same surety may have been put forward in other proceedings. A transcript of the surety's evidence at the previous bail hearing could be useful during cross-examination at this bail hearing. But the prosecutor may not know that the surety has previously been proffered as a surety, particularly if the other proceeding took place in another jurisdiction. The prosecutor can ask the surety during cross-examination. Even if it is not possible to obtain the transcript of the previous bail hearing, if there is going to be a bail review, it could be obtained for that proceeding.
- **If the accused had outstanding charges at the time of the offence, take steps to have the earlier release revoked pursuant to section 524.** In this situation, the onus will be on the accused to show cause why detention is not justified in relation to the old charges, as well as the new charges if the old charges were in relation to an indictable offence (subparagraph 515(6)(a)(i)).
- **Where the accused is not from Canada, the police should try to determine if the accused has a criminal record or outstanding charges in his/her home country or elsewhere.** In addition to checking with INTERPOL, police should ideally make direct inquiries with local police in the home country to ensure that the information is up to date.
- **Contact the Canadian Border Services Agency (CBSA) if the accused is not a Canadian citizen.** Clearly, if the accused has foreign citizenship, that is relevant to the primary grounds of detention. Also, the accused's statements and declarations to the CBSA may be useful during cross-examination at the bail hearing.
- **Consider preparing a package of material to file with the court.** Where the accused does not have a criminal record and detention may turn on the tertiary grounds, it can be very helpful to file with the court a package of material that helps demonstrate "the apparent strength of the prosecution's case," which is one of the specified considerations regarding the tertiary ground (subparagraph 515(10)(c)(i)). The package could include items such as:
 - the victim's statements or summaries thereof;
 - the accused's statements or summaries thereof;
 - the background of the accused;

- the background of the victim; and,
 - corroborative material such as debt lists and ledgers, immigration documents, cell-phone records to show the accused's movements, surveillance videos or photos, before and after photos of the victim, and past occurrence reports.
- Where bail supervision programs are available, seek conditions regarding reporting and residency. Bail supervisors can play an instrumental role in monitoring an accused and forward breaches to the Crown.

4.5.4 Non-Communication Order upon Detention

Where the accused is ordered detained, the prosecutor should generally seek a direction, pursuant to subsection 515(12), that the accused abstain from communicating, directly or indirectly, with any victim, witness or other identified person.

4.5.5 Conditions of Release

Mandatory Conditions or Considerations

Where an accused is charged with “an offence in the commission of which violence against a person was used, threatened or attempted” (which would presumably include virtually every charge of trafficking in persons under sections 279.01 and 279.011), the *Criminal Code* requires the inclusion or consideration of certain conditions in any release order:

Mandatory firearms and weapons prohibition: Paragraph 515(4.1)(a) *requires* the *inclusion* of a condition prohibiting the accused from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things “unless the justice considers that such a condition is not required in the interests of safety of the accused or the safety and security of a victim of the offence or any other person.” Where such a condition is included, the justice must specify the manner and method by which those items will be surrendered, disposed of, detained, stored or dealt with, and by which any authorizations, licences and registration certificates will be surrendered (see section (4.11)).

Non-communication condition: Paragraph 515(4.2)(a) requires the justice to consider whether it is desirable, in the interests of the safety and security of a victim, witness, justice system participant, or any other person, to include a condition that the accused not communicate, directly or indirectly, with any such person identified in the order. The prosecutor should urge such a condition in respect of the victim, family of the victim, witnesses, and associates of the accused.

Remain away condition: Paragraph 515(4.2)(a) also requires the justice to consider whether it is desirable, in the interests of the safety and security of a victim, witness,

justice system participant, or any other person, to include a condition that the accused refrain from going to any place specified in the order. If the address of the person to be protected is already known to the accused, it should be the subject of such a condition. If the address is not known, care must be taken in setting conditions not to reveal information that could enable the accused to locate the person. In a sexual-exploitation trafficking case, the following types of remain away conditions may be appropriate:

- Not to attend an establishment where adult services or entertainment is provided, such as strip clubs or X-rated video shops with entertainment in the back:and,
- Not to attend any hotel or motel unless in the presence of a surety.

Optional Conditions

The type of optional conditions to seek will depend very much on the type of trafficking case at hand. As a general matter, the prosecutor must balance the objective of keeping appropriately tight control of the accused with the fact that overly strict conditions may require building exceptions into them, which in turn can be difficult to enforce.

In most cases, the prosecutor should consider asking for conditions that the accused:

- Report;
- Remain within a particular territorial jurisdiction;
- If the accused lives outside of the region where the offence occurred and/or the victim is living, that he/she remain away from that region except for necessary court attendances and meetings with counsel;⁵³
- Reside with the surety at a named address;
- If there is no “reside with” condition, consideration should be given at least to a “reside at” condition; this would require the accused to seek the permission of the court should he/she wish to move and would enable the police to check that the proposed address is not near that of the victim or places the victim frequents;
- Be under house arrest and/or keep a curfew; if any exceptions are built in to this, consideration should be given to making them dependent on the accused obtaining written permission from a designated person before exercising the exception;
- Not possess any telecommunications devices and not access the Internet; it is through these means that victims and witnesses are often contacted and threatened; and,
- If relevant to the facts of the case, a condition that the accused abstain from the consumption of alcohol and not possess any intoxicating substances or drugs except in accordance with a medical prescription.

⁵³ More specific “remain away” conditions should also be considered where appropriate. See Section 3.3.4.1, entitled “Mandatory Conditions” for examples of remain away conditions for sexual exploitation trafficking cases.

4.5.6 Publication Bans During Bail Proceedings

Section 517 of the *Criminal Code* enables a prosecutor to apply for a publication ban covering the bail proceedings in order to ensure the proper administration of justice.

4.6 Post-Bail Hearing Considerations

Post-bail hearing meeting and investigation of evidence: Soon after the bail hearing, it can be fruitful for the prosecutor and the police to meet to discuss the evidence at the bail hearing. Any evidence that sounded suspicious can be flagged for investigation as can matters raised in defence cross-examination of the investigating officer, if he/she testified at the bail hearing. Transcripts of defence evidence can be ordered to assist in follow-up and for potential use at trial.

Possible bail review: Where an accused has been released over the opposition of the prosecutor, the prosecutor may want to consider bringing a bail review application pursuant to section 521 of the *Criminal Code*. Where post-bail hearing investigation contradicts evidence given on the bail hearing, this can obviously strengthen a Crown bail review application.

Pro-active investigation of interference with witnesses or continuing offending: Whether the accused has been detained or released, it is realistic to assume that the accused in a trafficking in persons case may, either directly or indirectly, attempt to threaten or intimidate the complainant or other witnesses, or persons close to the complainant and witnesses, including in their home country if they are from elsewhere,⁵⁴ even if a non-communication order is in place. Similarly, the accused may continue to run the trafficking business, even if he or she was detained. Police should be proactive in determining whether there has been such conduct. If the accused was released after the bail hearing, any such conduct would warrant having the accused arrested pursuant to paragraph 524(1)(a), charging the accused with additional offences, and/or bringing an application pursuant to subsection 524(8) to have all previous releases cancelled.

4.7 Preliminary Hearings

Consideration should be given to using subsection 540(7) of the *Criminal Code* to avoid having the victim testify at the preliminary hearing. Subsection 540(7) states as follows:

(7) A justice acting under this Part may receive as evidence any information that would not otherwise be admissible but that the justice considers credible or trustworthy in the circumstances of the case, including a statement that is made by a witness in writing or otherwise recorded.

⁵⁴ This will be more likely where the accused and the victim are from the same place.

This section may be used so that the statement of the victim, generally an audio-video recorded statement, can be entered as evidence without the necessity of calling the victim at the preliminary inquiry.

*R. v. Vaughn*⁵⁵ is a 2009 decision from the British Columbia Provincial Court that summarizes a number of decisions in this area and is therefore a good starting point for research on subsection 540(7). Obviously, each case will need to be evaluated on its own facts with reference to the jurisprudence dealing with subsection 540(7) before any decision is made to bring such an application. The primary benefit of a successful application is that the victim will not be required to testify at the preliminary inquiry therefore limiting the number of times that he or she will have to testify.

The foregoing, with respect to the victim testifying, is tempered by subsection 540(9) of the *Criminal Code* which states as follows:

(9) The justice shall, on application of a party, require any person whom the justice considers appropriate to appear for examination or cross-examination with respect to information intended to be tendered as evidence under subsection(7).

*Vaughn*⁵⁶ also summarizes the principles and jurisprudence that apply when a court is faced with an application pursuant to subsection 540(9). An application under subsection 540(7) may be futile if the conclusion is drawn that an application under subsection 540(9) will be successful thereby requiring the victim to attend the preliminary inquiry and be cross-examined.

Other methods of testimony

In situations where the victim is under the age of 18, prosecutors should consider using section 715.1 to tender the victim's videotaped statement as evidence at the preliminary inquiry and trial.

s.715.1 (1) In any proceeding against an accused in which a victim or other witness was under the age of eighteen years at the time the offence is alleged to have been committed, a video recording made within a reasonable time after the alleged offence, in which the victim or witness describes the acts complained of, is admissible in evidence if the victim or witness, while testifying, adopts the contents of the video recording, unless the presiding judge or justice is of the opinion that admission of the video recording in evidence would interfere with the proper administration of justice.

⁵⁵ [2009] B.C.J. No. 912, 2009 BCPC 142 (Prov. Ct.) [hereinafter *Vaughn*]

⁵⁶ *Ibid.*

4.8 Direct Indictments

Pursuant to section 577 of the *Criminal Code*, the Attorney General or the Deputy Attorney General are permitted to send a case directly to trial without a preliminary inquiry, when the preliminary inquiry has commenced but not concluded, or after an accused has been discharged at a preliminary inquiry. It is important to note that the accused does not have a constitutional right to a preliminary inquiry⁵⁷.

In trafficking in persons cases, prosecutors should consider obtaining a direct indictment when the benefits of the removal of a preliminary inquiry from the process to the case, such as avoiding pre-trial delay, preserving evidence, protecting vulnerable witnesses, and other public-interest factors are present.

4.9 Responding to Common Defence Strategies

The most significant defence challenge to the Crown case in TIP cases is often attacks on the credibility and reliability of the prosecution's witnesses, and especially the complainant. To raise reasonable doubt, the defence may attack inconsistencies in prior statements, and call into question the complainant's credibility (e.g., by suggesting a motive to fabricate, such as avoiding deportation).

Prior Inconsistent Statements

There may be discrepancies between a complainant's current testimony and prior testimony or written statements. Inconsistent statements may be provided prior to the trial and, unfortunately, in some cases the complainant may provide evidence at trial which is inconsistent with previous accounts. Inconsistencies may be inadvertent, as the material facts may have occurred a considerable time in the past. Complainants may also deliberately choose to withhold information or lie if they still fear for their safety or for that of others. Another reason may relate to the level of trauma suffered by the complainant, which may affect their ability to clearly recall the facts of the case. In some instances, the trauma may even cause the complainant to experience a variant of "Stockholm syndrome" and display a positive affinity for the accused, and consequently act as an adverse or hostile witness to the Crown. In other cases, the victim may also have willingly or unwillingly participated in other trafficking activities themselves, and will thus withhold information or lie in order to minimize their own involvement.

For more information on the effects of trauma on a victim, please refer to Chapter 3.

All of these above scenarios may generate prior inconsistent statements. To overcome the associated challenges and ensure that the trier of fact has a fair view of the complainant's evidence, the following practices may be of assistance:

⁵⁷ *R. v. S.J.L.*, [2009] 1 S.C.R. 426, 2009 SCC 14

- Corroborate the complainant’s evidence through the use of additional evidence, including testimony of other witnesses, along with flight information, immigration documents, or surveillance footage, provided it is relevant to an issue at trial;
- Identify the various accounts provided by the witness, as well as the sequence in which they were given, as the timeline and who the statements were provided to may help explain inconsistencies;
- Determine whether certain inconsistencies are actually material to the complainant’s overall account, or are just innocent variations that can be explained by the passage of time or stressful circumstances the complainant was facing when he or she experienced the offence;
- When interviewing the complainant, as well as during examination-in-chief, ensure that he or she has an opportunity to confront and address inconsistencies. Addressing deficiencies and conceding weaknesses in the case head-on is more persuasive than allowing the defence to control the narrative by raising the issues for the first time on cross-examination;
- For complainants who recant or are uncooperative, be aware of the evidentiary means by which prior, and possibly more truthful evidence, can be put before the trier of fact (e.g., applying to cross-examine the complainant under subsections 9(1) or 9(2) of the *Canada Evidence Act*, or admitting eligible prior statements under the principled exception to the hearsay rule pursuant to the Supreme Court of Canada decisions in *B.(K.G.)*⁵⁸ and *Khelawon*⁵⁹; and
- Consider calling expert-witness evidence regarding the psychological reactions and behaviours of victims of severe trauma in the context of trafficking and/or sexual exploitation, as applicable, to explain inconsistencies.

General attacks on credibility

Defence counsel may also attack the general credibility of the complainant and/or their motives to lie by raising matters such as his or her immigration status, criminality, and benefits received during the time frame of the allegations, or prior relationships with the accused or other witnesses in the case. Strategies for countering these tactics may be similar to those described immediately above. In addition, consider the following possible responses:

- Challenge the relevance of the issue raised by the defence;
- Consider applying to admit evidence under the “narrative” and/or similar fact evidence exceptions regarding the character of the accused, in order to demonstrate any pattern of abusive behaviour towards the complainant or similar individuals. The purpose for introducing these types of evidence is generally to ensure that the trier of fact has a complete picture of the events at issue, or to rebut an unfair characterization of the complainant’s behaviour or reactions to certain events;

⁵⁸ *R. v. B.(K.G.)* (1993), 12 L.W. 1244-002 (SCC) (Lawyers Weekly)

⁵⁹ *R. v. Khelawon*, [2006] 2, S.C.R. 787, [2006] S.C.J. No. 57

- Consider introducing expert evidence regarding human trafficking techniques, such as the use of gifts or money as a means of controlling or manipulating victims, in order to show that these “benefits” are often a means of continuing the offence;
- If possible, attempt to illustrate the difference between the value of the “benefits” received by the complainant to the actual market value of the labour or services he or she provided, to demonstrate exploitation and refute suggestions that the complainant was properly compensated;
- If supported by the facts, lead evidence to show that the complainant’s residency status was obtained independently of any cooperation with the investigation. If there was a link between the complainant’s cooperation and residency status, be transparent in showing the details of any such arrangement, and normalize it by leading evidence to demonstrate that such acts are an international best practice and should not reflect badly on the integrity of the victim’s testimony; and
- If the complainant has a criminal record, address the situation candidly in examination-in-chief, and pre-emptively rehabilitate his or her credibility by pointing to any relevant circumstances surrounding prior convictions or dispositions (e.g., record is dated, is not related to crimes of deceit/falsehood, complainant was suffering from addictions or mental health issues at the time of any offence, etc.).

4.10 Testimonial Aids and Other Measures

The *Criminal Code* includes provisions which allow judges to order testimonial aids and other measures which make it easier for vulnerable victims and witnesses, such as trafficking victims, to provide testimony during criminal proceedings. These provisions recognize that some victims and witnesses, such as trafficking victims, may be more vulnerable because of their age or other factors, such as the nature of the crime. One of the objectives associated with these provisions is to help reduce the trauma which may result from testifying and to help ensure that, in the case of victims, they are not re-victimized by their participation in the criminal justice system.

Testifying in criminal proceedings can be a difficult and frightening experience for any witness, but may be particularly difficult for a person who has been exploited through trafficking. Because trafficking is inextricably linked to coercive practices such as violence (physical, sexual or emotional) and threats of violence to the victim or to someone known to the victim, trafficking victims may require the use of testimonial aids in order to provide their testimony. Witnesses may also require the use of such aids

Testimonial aids and other measures which assist victims and witnesses measures include:

- Allowing a witness to provide testimony outside of the courtroom by **closed-circuit television** or behind a **screen** so that the witness may avoid seeing the accused (s.486.2)⁶⁰;
- Allowing a **support person** to be present during the witness’s testimony to make the victim or witness more comfortable (s.486.1); and,
- **Appointing a lawyer to conduct the cross-examination** of a victim when the accused is self-represented (s.486.3).

These measures are available upon application for all witnesses **under the age of 18 years** or any witness with a disability that makes it difficult for them to communicate unless the judge believes they would interfere with the administration of justice.

Other vulnerable adult witnesses may receive such measures, upon application, if the judge feels it is necessary for the witness to give a full and candid account of the acts complained of. The judge will consider factors such as the witness’s age, whether the witness has a mental or physical disability, the nature of the offence, the nature of any relationship between the witness and the accused and any other circumstance that the court considers relevant.

In addition to the testimonial aids and other measures mentioned above, the judge may, pursuant to section 486 of the *Criminal Code*, issue an **exclusion order** requiring some or all members of the public to leave the courtroom during some or all of the criminal proceedings. A judge may make such an order if they are of the opinion that it is:

- In the interest of public morals;
- In the interest of the maintenance of order;
- In the interest of the proper administration of justice; or,
- Necessary to prevent injury to international relations or national defence or national security.⁶¹

Making an order on the basis that it is necessary for the “proper administration of justice” includes, pursuant to subsection 486(2), ensuring that “the interests of witnesses under the age of 18 are safeguarded” (paragraph 486(2)(a)) and “justice system participants are protected” (paragraph 486(2)(b)).

The courts have recognized the importance of making an exclusion order in appropriate cases. The courts however, will only make such an order where it is necessary (on the basis of the above considerations) and where reasonable alternatives have not been

⁶⁰ For an example of where this provision has been relied upon in a human trafficking case, and the types of considerations the court took into account in making an order under this subsection please see: *R. v. Urizar, supra*, note 8.

⁶¹ It should be noted that the constitutionality of this provision has been upheld on different occasions. See, for example: *Canadian Broadcast Corporation v. New Brunswick (Attorney General)*, [1996] 3 SCR 480, [1996] S.C.J. No. 38 [hereinafter *Canadian Broadcast Corporation*]; *French Estate v. Ontario (Attorney General)* (1998), 38 O.R. (3d) 347, [1998] O.J. No. 752 (C.A.), leave to SCC refused.

identified that could nonetheless accomplish the same results (*Canadian Broadcast Corporation v. New Brunswick (Attorney General)*⁶²).

It should also be noted that where a judge refuses to grant an exclusion order in cases where an accused has been charged with one of the four specific human trafficking offences, they must give reasons for refusing to do so (subsection 486(3)).

4.11 Publication Bans

The *Criminal Code* provides for both mandatory and discretionary publication bans which prevent the publication, broadcast or transmission in any way of any information that could identify the victim or witness.

Section 486.4 of the *Criminal Code* provides that a judge, upon application, must order a publication ban to withhold the publication of the identity of, or any information that could identify, any witness under the age of 18 years or a complainant, in respect of a number of enumerated offences, including the four specific human trafficking offences contained in the *Criminal Code*. In proceedings in respect of such cases, the judge must inform the complainant, witness or Crown Attorney, at the first reasonable opportunity that they may apply for a publication ban.

Section 486.5 of the *Criminal Code* provides a judge with the discretion to order a publication ban to withhold the publication of the identity of, or any information that could identify, any witness or victim in all other criminal proceedings if the judge believes it is “necessary for the proper administration of justice.”

In deciding whether or not to order a publication ban, the judge is directed by subsection 486.5(7) to consider the following factors:

- the right to a fair and public hearing (paragraph 486.5(7)(a));
- whether there is a real and substantial risk that the victim or witness would suffer significant harm if their identity were disclosed (paragraph 486.5(7)(b));
- whether the victim or witness needs the order for their security or to protect them from intimidation or retaliation (paragraph 486.5(7)(c));
- society’s interest in encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process (paragraph 486.5(7)(d));
- whether effective alternatives are available to protect the identity of the victim (paragraph 486.5(7)(e));
- the salutary and deleterious effects of the proposed order (paragraph 486.5(7)(f));
- the impact of the proposed order on the freedom of expression of those affected by it ((paragraph 486.5(7)(g)); and,
- any other factors the judge considers relevant (paragraph 486.5(7)(h)).

⁶² *Canadian Broadcast Corporation, ibid.*

For more information on understanding trauma and human trafficking, please see chapter 3 or visit *Human Trafficking: Canada is Not Immune*, an online training course for Canadian frontline service providers on how to recognize, protect and assist a person who may have been trafficked. This training is available in French and English and can be accessed at: <http://www.pssg.gov.bc.ca/octip/training.htm>

4.12 Proceeds of Crime/Offence Related Property

Globally, it is estimated that human trafficking is amongst the most lucrative of criminal activities, rivalled only by drug and firearms trafficking and generating billions of dollars annually for sophisticated criminal organizations. Estimates by the International Labour Organization put the profits for human trafficking at approximately \$32 billion.⁶³

Whenever possible, parallel proceeds-of-crime investigations should be conducted alongside human-trafficking investigations and initiated at an early stage.

The *Criminal Code* includes a comprehensive criminal-forfeiture scheme dealing both with proceeds of crime, including through the use of a reverse onus of proof provision, and forfeiture of offence-related property (i.e., goods used to commit crime).

Part XII.2 of the *Criminal Code* provides for forfeiture of “proceeds of crime” as part of the sentencing of the offender upon application by the Crown after conviction for a designated offence, including human trafficking offences.

4.12.1 What are Proceeds of Crime?

Section 462.3 of the *Criminal Code* defines “Proceeds of crime” to mean:

any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of the commission in Canada of a designated offence, or an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

In the case of persons convicted of a criminal organization offence (which can include a human trafficking offence committed for the benefit of, at the direction of or in association with a criminal organization), the *Criminal Code* provides for the forfeiture of proceeds of crime unless the offender can show that it is not derived from criminal activity. In other words, the onus is on the convicted party, rather than the Crown, to demonstrate why the forfeiture of property should not be ordered.

Extensive provisions of Part XII.2 also allow for the seizure and restraint of property pending resolution of criminal proceedings.

⁶³ See, for example: <http://www.fatf-gafi.org/media/fatf/documents/reports/Trafficking%20in%20Human%20Beings%20and%20Smuggling%20of%20Migrants.pdf>.

As part of special procedures and powers in Part XV, the *Criminal Code* also provides for the forfeiture of property used to commit offences and other offence-related property. Offence-related property is defined in section 2 of the *Criminal Code* to include any property, within or outside Canada, by means or in respect of which an indictable offence under the *Criminal Code* is committed, that is used, or intended to be used, in any manner in connection with the commission of such an offence.

It should also be remembered that numerous jurisdictions across Canada have enacted civil forfeiture legislation. This legislation sets out the framework by which the state can seek the forfeiture of proceeds of unlawful activity. Proceeds of unlawful activity can be defined broadly to include property acquired, directly or indirectly, in whole or in part, as a result of unlawful activity. Civil-asset forfeiture is characterized principally by the fact that the forfeiture can occur in the absence of a criminal conviction.⁶⁴

4.12.2 Forfeiture under the *IRPA*

In addition to the penalty provided for in section 120, an order for the forfeiture of offence-related property may also be made under subsection 137 (1) of the *IRPA*.

s. 137 (1) A court that convicts a person of an offence under this Act may, in addition to any other punishment imposed, order that any offence-related property seized in relation to the offence be forfeited to Her Majesty in right of Canada.

(2) The regulations may define the expression “offence-related property” for the purposes of this section, may provide for any matter relating to the application of this section, and may include provisions respecting the return to their lawful owner, disposition, or disposition of the proceeds of disposition, of offence-related property that has been seized.

⁶⁴ James McKeachie and Jeffery Simser, *Civil asset forfeiture in Canada*, Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime (Simon N.M. Young).

Chapter 5: Sentencing for Human Trafficking Offences

5.1 Introduction

General objectives and principles of sentencing will, of course, guide sentencing outcomes in human trafficking cases. Under both the *Criminal Code* and the *Immigration and Refugee Protection Act*, the maximum sentences for human trafficking offences are at the very high end of the penalties prescribed by Canadian law. These penalties reflect a normative statement by Parliament about the nature and severity of these types of crimes. At the same time, courts must be guided by the fundamental principle of sentencing; that is, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Crafting an appropriate sentence in any case, let alone a human trafficking case, is no easy task. This chapter provides a brief overview of the factors that may be relevant in sentencing in human trafficking cases.

5.2 Principles of Sentencing

The fundamental purpose of sentencing is to contribute, along with prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and,
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.⁶⁵

5.3 Denunciation

The objective of denunciation mandates that a sentence should communicate society's condemnation of that particular offender's conduct.⁶⁶ A punishment which reflects the objective of denunciation should also be thought of as a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values enshrined within our substantive criminal law.

- See, for example, *R. v. Downey*⁶⁷ which is a case involving an acquittal for trafficking in persons but convictions for a range of other offences including kidnapping and aggravated sexual assault where the Court notes:

⁶⁵ Section 718 of the *Criminal Code*, R.S.C. 1985, c. C-46

⁶⁶ *R. v. M.(C.A.)*, [1996] 1 SCR 500, [1996] S.C.J. No. 28 at paragraph 80.

⁶⁷ *R. v. Downey*, [2010] OJ No. 1038, 2010 ONSC 1531 at para. 29 [hereinafter *Downey*]

In this case, society would wish to denounce in the strongest terms the extreme and degrading violence undertaken by these offenders. The kidnapping and torture of a young girl over a period of 24 hours obviously warrants a severe sentence to express the denunciation of this court.⁶⁸

5.4 Deterrence

General deterrence is meant to deter other potential offenders from committing crime by making clear that appropriate penalties will be imposed for violations while specific deterrence is meant to convey a message to the particular offender such that they will not be inclined to commit the offence again in the future.

- See *R. v. Downey*⁶⁹ where the Court noted:

General and specific deterrence are fundamental sentencing goals that are generally common to virtually all sentences imposed by our courts. A sentence must send a strong and clear message to other like-minded individuals who may be inclined to engage in conduct similar to that of the offender. The offender must also understand that a repetition of his conduct will draw a similar or even harsher penalty. Again, this objective is achieved by the duration of the sentence imposed.

In cases of human trafficking where victims are brought to Canada to be exploited, specific considerations with respect to deterrence may arise including, for example, ensuring the integrity of Canada's borders, protecting Canada's reputation internationally and that criminals are not using the immigration system to their advantage.⁷⁰

5.5 Separation

Separation ensures that the threat posed by a particular offender, who might not otherwise be rehabilitated or deterred, to society is removed as such individuals will be unable to commit crimes in the community.

Human trafficking involves violence, intimidation and exploitation, and as such, separation from society will often be a necessary component of sentencing:

“Where it is apparent that the offender is a dangerous person, who is likely to compromise public safety if released, he should be detained for a period of time sufficient to reasonably conclude that such danger has subsided. The duration of the sentence must be sufficient to give the correctional authorities the necessary

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ See *R. v. Soysavanh*, [2000] OJ No. 5979.

time to properly treat the offender and for the National Parole Board to assess the risk of his reoffending.”⁷¹

5.6 Rehabilitation

The objective of rehabilitation recognizes that a sentence should be responsive to the needs of the particular offender so that they can be rehabilitated and cease to be a threat to public safety.

Given that human trafficking offences are coercive and violent, it is still in the public interest for the offenders to participate in rehabilitative programming, even if the programming is offered to an incarcerated offender:

Achieving the rehabilitation of an offender in custody necessarily involves programs, courses and activities designed to educate, retrain and counsel him/her to choose a productive lifestyle after release, rather than to continue on the destructive path he/she was on when convicted.⁷²

5.7 Reparation and Responsibility

Because of the nature of the harm to the victims, there is often little that can be done by the offender by way of reparation. That said, the *Criminal Code* provisions dealing with restitution, section 738, provide a mechanism that can contribute to returning the victim, in some manner, to the place they were before the offence took place. As noted by the Supreme Court of Canada:

It [restitution] can be an effective means of rehabilitating the accused because this order quickly makes him directly responsible for making restitution to the victim. [...] The order also benefits the victim by providing a speedy and inexpensive manner of recovering the debt. [...] Society as a whole benefits from the order since its imposition may reduce the term of imprisonment and provides for the reintegration of the convicted person as a useful and responsible member of the community at the earliest possible date. The practical efficacy and immediacy of the order will help to preserve the confidence of the community in the legal system.⁷³

Through programming, education and community initiatives, the offender may take responsibility for his/her actions. Such an approach is closely linked with the sentencing objective of rehabilitation as well.

⁷¹ *Supra*, note 62 at para 31.

⁷² *Ibid* at para 32.

⁷³ *R. v. Fitzgibbon*, [1990] 1 SCR 1005, [1990] S.C.J. No. 45.

5.8 Other Sentencing Considerations - Offences against Children

Section 718.01 of the *Criminal Code* makes clear that for any offence involving abuse of a child, a court must, in imposing a sentence, give primary consideration to the sentencing objectives of deterrence and denunciation. Through enacting such a provision, Parliament has recognized the inherent seriousness of offences of this nature and has directed the courts, through this provision, to recognize this fact through the imposition of sentences that are proportionate to the seriousness of the offence and to the degree of responsibility of the offender.

5.9 Aggravating and Other Factors

Section 718.2 sets out a number of additional sentencing principles including the principle that a sentence should be increased or reduced to reflect aggravating and mitigating factors. Of the aggravating factors listed, those which are most likely to be present in human trafficking cases include:

- Evidence that the offender, in committing the offence, abused a person under the age of 18 years (subparagraph 718.2(a)(ii.1));
- Evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim (subparagraph 718.2(a)(iii));
- Evidence that the offence was committed for the benefit of, at the direction of, or in association with a criminal organization (subparagraph 718.2(a)(iv));

Other Aggravating Factors⁷⁴

In addition to those aggravating factors which a court must take into consideration, other factors which may be relevant in a human trafficking case include:

5.9.1 Those who prey upon vulnerable victims

The courts are quick to recognize as an aggravating factor those who prey on vulnerable groups including: those with precarious immigration status, women, children, those with different language or culture; those who are marginalized or isolated; and those who are financially destitute.

- “It is very aggravating that the illegal scheme in which the accused participated preyed on vulnerable people. They were victims in dire circumstances. They were faced with the decision to either pay enormous sums of money or see their requests denied by the appeal board, causing them to agonize over their decision to accept or refuse such a life saving offer.”⁷⁵

⁷⁴ See, for example: *Anti-Human trafficking manual for criminal justice practitioners*, module 14, (United Nations: New York, 2009), <http://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>.

⁷⁵ *R. v. Wong*, [2005] QJ. No. 22795, No.: 500-01-002702-048 (CQ) at para. 25.

5.9.2 The offence involved planning and deliberation or a level of organization

The courts have been quick to recognize planning and deliberation as an aggravating factor for sentencing. See for example:

- *R. v. Tang*⁷⁶, discussing the level of deliberation involved in running a brothel involving 14-year old girls.
- *R. v. Tynes*⁷⁷ involving persons found guilty of procuring related offences and where the Court found the fact that the operation was well-organized to be an aggravating factor for sentencing.

5.9.3 Previous convictions or involvement with the judicial system

Evidence that an offender has a previous criminal record and/or committed the crime while on parole can also be treated as an aggravating factor for sentencing.

- *R. v. Sturge*⁷⁸ discussing the offender's lengthy criminal record and the fact that he was on parole while committing the offence.
- *R. v. Harme*⁷⁹ for a discussion on the effect of a lengthy criminal record on sentencing.
- See also, however, *R. v. Preymak*⁸⁰ for a discussion on the impact of a previous criminal record and the lengthy time between a previous conviction and the current offence.

5.9.4 Continuation over a period

Human trafficking cases are not like other crimes in that they often occur over a protracted period of time, involving the ongoing exploitation of the victim. Continuation of a crime over a period of time is an aggravating factor for sentencing.

- See *Sentencing, 7th edition*, Clayton Ruby⁸¹ where he notes "the fact that criminal activity can be shown to have continued over a lengthy period of time will, in many cases, indicate that there has been a conscious and deliberate choice to engage in criminality. The courts will be less inclined to show leniency in such cases."
- *R. v. Downey*⁸²: "These offences did not occur on the spur of the moment, for example, as a spontaneous reaction to an assault or an insult. They took some deliberation and planning and they were carried out over a period of 24 hours."

⁷⁶ (1997), 51 Alta. L.R. (3d) 23, [1997] A.J. No. 460 (C.A.).

⁷⁷ [2010] Q.J. No. 13355, 2010 QCCQ 11298, Nos.: 500-01-035485-108, 500-01-034231-099 (C.P.).

⁷⁸ [2001] O.J. No. 3923, (2001), 17 M.V.R (4th) 272 (C.A.).

⁷⁹ [2007] B.C.J. No. 2254, 2007 BCPC 333.

⁸⁰ [2003] B.C.J. No. 1033, [2003] BCCA 260.

⁸¹ (LexisNexis Canada Inc.: 2008) at pages 202-203.

⁸² *Supra*, note 62.

They were nothing short of the planned and executed torture of a small, vulnerable young woman involving elements of sadism.”

- *R. v. Nakpang*⁸³ where the Court noted that the lengthy period of time the offender exercised control over the victims was egregious.

5.9.5 Offence was motivated by financial or material gain

Trafficking in persons cases centre on the exploitation of victims for the financial or material gain of the offenders. In all cases, this factor will be relevant as aggravating the offence and justifying a higher penalty.

- *R. v. Kandola*⁸⁴ where the Court treated the fact that the offenders were motivated by greed as an aggravating factor.

5.9.6 Violence and/or the use of weapons

Violence, threats of violence and other conduct engaged in by an offender to coerce the victim to provide their labour or services will be present in all trafficking cases and should aggravate the sentence:

- *R. v. Pakoo*⁸⁵ involving a home invasion type offence where a loaded firearm was discharged and violence was present. See also: *R. v. Best*⁸⁶ for a similar discussion on the role of gratuitous violence as aggravating a sentence.

5.9.7 Whether the offender was in an intimate relationship with the victim

In cases of sex trafficking, so-called “lover-boy scenarios,” where an offender seduces his victim and once an intimate relationship has formed begins to use the emotional bond as a way to manipulate and control his victim:

- *R. v. Wallace*:⁸⁷ “It is an aggravating factor that the complainant was in an intimate relationship with the appellant. As the Court has noted, there are fiduciary duties owed to intimate partners, and they are entitled to expect protection from their partners, not exploitation...”

5.9.8 Use of drugs or alcohol to maintain control over the victim or as inducements

The use of drugs or alcohol to help maintain control over the victim can be viewed as an aggravating factor.

⁸³ [2008] O.J. No. 6022 (Ont. Ct. Jus.).

⁸⁴ [2012] B.C.J. No. 1471, 2012 BCSC 1042.

⁸⁵ (2004), 25 C.R. (6th) 277, [2004] M.J. No. 409 (C.A.).

⁸⁶ (2005), 235 N.S.R.(2d) 123, [2005] N.S.J. No. 347 (S.C.).

⁸⁷ [2009] A.J. No. 986, 2009 ABCA 300.

- See, for example, *R. v. Byer*⁸⁸ but note also that section 246 of the *Criminal Code* makes it an offence to administer or cause to be administered a stupefying or overpowering drug, matter or thing with the intent to enable or assist oneself or another person to commit an indictable offence.
- See also *R. v. Tang*⁸⁹.

5.9.9 Exposure to serious illness or injury

Victims of human trafficking can face a number of health risks and diseases including exposure to sexually transmitted infections such as HIV/AIDS. Malnutrition, unsanitary and/or crowded living conditions and a lack of adequate medical care can all foster a lifetime of adverse health conditions.

- *R. v Tang*⁹⁰ considers the living conditions and availability of health safeguards as relevant considerations as aggravating for sentencing purposes.

5.10 Mitigating Factors

5.10.1 First-time Offender

The fact that an offender has no previous criminal record will often result in the courts focusing on the sentencing objective of rehabilitation.

5.10.2 Remorse or conduct following arrest/early guilty plea/cooperation with the police and prosecutor

Conduct of the offender after the commission of the offence can mitigate a sentence where the court is satisfied that an offender has taken steps to move away from crime. An early guilty plea as an expression of remorse for commission of the crime is viewed as a mitigating factor for sentencing. It means that the victim does not have to testify in a trial. The extent that an early guilty plea is viewed as a mitigating factor will, of course, vary with the facts of each case.

- See *R. v. St. Vil*⁹¹ where the Court took into account the fact that the accused pleaded guilty early to human trafficking offences as evidence of remorse.
- *R. v. St. Vil*⁹², where the Court also took into account the fact that the accused used his time in custody to turn his life around through educational and religious programs.

⁸⁸ [2004] O.J. No. 5888, (2004), 67 W.C.B. (2d) 358 (Ont. Sup. Ct. Jus.), appeal dismissed [2007] O.J. No. 3957, 2007 ONCA 694.

⁸⁹ *Supra*, note 71.

⁹⁰ *Ibid.*

⁹¹ [2008] O.J. No. 6023 (Ont. Sup. Ct. Jus.).

⁹² *Ibid.*

5.10.3 Offender was previously a victim of human trafficking

In some cases of human trafficking, offenders may themselves have been victims of human trafficking. For example, a victim of trafficking may be told that if they become involved in the recruitment of persons, with the knowledge that these persons will be exploited, that they can, themselves, be “free” from the exploitation that they have suffered. While the reasons why a victim subsequently becomes a trafficker can vary, these circumstances and past history of victimization may be relevant as mitigating factors for sentencing.

- See, for example, *R. v. Byrd*⁹³ where a woman pleaded guilty to manslaughter involving the death of her partner and where the Court took into consideration as a significant mitigating factor that the offender had suffered previous instances of domestic violence and that during the death of her partner she was under attack.

5.10.4 Age

The fact that an offender is a young person is generally treated as a mitigating factor. It should be noted, however, that the courts have recognized that in case involving serious violence, the fact that an offender is young may not be relevant in sentencing. See, for example, *R. v. Porsch*⁹⁴.

5.11 Specific Sentencing Considerations in respect of human trafficking cases under the *Immigration and Refugee Protection Act*

In addition to the principles of sentencing of general application discussed above, a court sentencing an offender for the commission of an offence under the *Immigration and Refugee Protection Act (IRPA)* should take into account the objectives of the legislation which seek to balance the promotion of immigration with the need to maintain the security of Canadian society.

3. (1) The objectives of this *Act* with respect to immigration are

- (a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;
- (b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;
- (b.1) to support and assist the development of minority official languages communities in Canada;
- (c) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;
- (d) to see that families are reunited in Canada;

⁹³ [2006] M.J. No. 102 (Q.B.).

⁹⁴ [2008] B.C.J. No. 2553, 2008 BCCA 488.

- (e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;
- (f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;
- (g) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;
- (h) to protect the health and safety of Canadians and to maintain the security of Canadian society;
- (i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and
- (j) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

Aggravating Factors under the *IRPA*

The *IRPA* also has its own aggravating factors that must be taken into consideration by a court when sentencing an offender for certain offences, including human trafficking. Section 121: The court, in determining the penalty to be imposed under section 120, shall take into account whether:

- (a) bodily harm or death occurred, or the life or safety of any person was endangered, as a result of the commission of the offence;
- (b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;
- (c) the commission of the offence was for profit, whether or not any profit was realized; and
- (d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.

5.12 Preparing for a sentencing hearing

5.12.1 Prepare throughout investigative stage

- Have investigators prepare for the sentencing hearing at the investigative stage. Consider factors that will relate to sentencing such as: facts which lend themselves to establishing aggravating/mitigating factors and obtain evidence for the proof thereof, including:
 - documents;
 - photographs/video;
 - witness statements;
 - victim impact statements; and,

- reports from financial, medical and/or psychological experts.

5.12.2 Submissions and Evidence at the Sentence Hearing

The rules regarding submissions and evidence permitted at a sentencing hearing are set out in sections 723-726 of the *Criminal Code*:

- **Submissions:** the prosecutor and defence may make any submissions on facts relevant to sentencing.
- **Evidence:** any relevant evidence may be presented by the prosecutor, defence, or as requested by the court.
- **Witnesses:** the court may compel the appearance of a compellable witness.
- **Hearsay:** is admissible but a witness may be compelled if he/she has personal knowledge, is available and is compellable.
- **Facts:**
 - agreed statement of facts, agreed to by prosecutor and defence, may be relied on by the court;
 - facts, express or implied, used by jury to determine guilt may be accepted as proven;
 - any other relevant fact disclosed by evidence at trial accepted as proven; and,
 - may hear further evidence with respect to disputed facts
 - party wishing to rely on fact has burden of proof
 - either party may cross-examine any witness called by other party
 - court must be satisfied on balance of probabilities of existence of disputed facts
 - prosecutor must establish, by proof beyond a reasonable doubt, the existence of any aggravating fact, or any previous conviction by the offender.
- **Other offences:** may be considered if possible and appropriate to do so, and if consented to by both parties.
- **Offender:** the court shall ask if the offender has anything to say before imposition of sentence.
- **Relevant information:** the court shall consider any relevant information placed before it by prosecutor and defence.

5.13 The Role of the Victim at the Sentence Hearing

5.13.1 Victim impact statements

One of the important aspects of prosecuting a human trafficking case is properly conveying to the court the extent of the harm that is caused to victims of human trafficking. Victims are often repeatedly traumatized, abused (physically and mentally), exploited and assaulted while under the control and direction of the traffickers. This aspect of the offence is one that should be the subject of submissions to the court in

order to address the relevance of the sentencing objectives of both general and specific deterrence.

One of the ways in which this information may be presented to the court is through a victim impact statement, which allows a victim to describe the harm experienced or loss suffered as a result of the commission of the offence. Each province and territory has created a victim impact statement form, and all provincial/territorial victim-services organizations offer assistance to victims in preparing victim impact statements. The assistance provided by victim services ensures that victims are made aware of appropriate content for victim impact statements and that they receive assistance and support during the process. This support is particularly important for trafficking victims as preparing a victim impact statement may be an emotionally difficult experience due to the nature and severity of the harm they have suffered.

5.13.2 Harm to the victim

While a victim impact statement can provide an opportunity for the court to hear firsthand how the crime impacted the victim, not all victims of trafficking will wish to prepare a victim impact statement or may simply be reluctant to deliver it in court. In such cases, subsection 722(2.1) of the *Criminal Code* provides discretion to the court to have a victim impact statement presented in any manner the court considers appropriate.

This could include, for example, having a third party read the statement in court or to simply have it filed with the court.

The welfare of the victim should be a primary consideration in any human trafficking case including during sentencing proceedings. For this reason, it is essential that the victim be provided with support through provincial/territorial victim-services and victim-serving organizations and agencies.⁹⁵ When approaching a sentencing hearing, the health, welfare, and privacy interests of the victim should be safeguarded to the greatest extent possible. Trafficking victims should be consulted regarding their desire to prepare a victim impact statement. They should be informed that the judge is required to consider the information in their victim impact statement when determining the appropriate sentence for the offender, that they may read their victim impact statement aloud at the sentencing hearing if they wish, and that that they may be cross-examined on their victim impact statement.

Some victims may be so traumatized by the human trafficking events that they are unwilling or unable to assist the prosecution at the sentence hearing stage. In addition to obtaining the cooperation of the victim, there are other challenges related to presenting this evidence to the court. Properly quantifying the harm to the victim can be a difficult task. The harm may not be visible as is the case with psychological harm.

⁹⁵ See Chapter 6 on witness support for further information.

Victims may suffer from post-traumatic stress disorder in varying degrees and often will require counselling, support and psychological attention.⁹⁶ Reports from these experts, in some circumstances, may be used in the sentencing hearing to demonstrate the extent of the psychological harm to the victim.

The victim may also have been physically harmed. The medical reports demonstrating this physical harm should also be provided to the courts and consideration should be given to the immediate harm caused by the physical assault, the enduring or continuing rehabilitation required to restore the victim to health, medical costs, and the additional psychological trauma that the physical harm has caused.

Guidance for the use and procedures related to victim impact statements can be found in section 722 of the *Criminal Code*:

- The court shall consider a victim impact statement for the purpose of determining the sentence;
- A victim impact statement describes harm done to or loss suffered by the victim due to the commission of the offence;
- Victim impact statements must be prepared in writing in accordance with the procedures established by the province or territory; and,
- A victim may read their victim impact statement aloud if they wish.

In addition, provincial/territorial victim services should be consulted regarding their victim impact statement programs to ensure that victims are aware of assistance that is available for the preparation of victim impact statements.

Victim impact statement

722. (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 730 in respect of any offence, the court shall consider any statement that may have been prepared in accordance with subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

Procedure for victim impact statement

(2) A statement referred to in subsection (1) must be

(a) prepared in writing in the form and in accordance with the procedures established by a program designated for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction; and
(b) filed with the court.

⁹⁶ For more information, see Chapter 6 on victim support.

Presentation of statement

(2.1) The court shall, on the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (2), or to present the statement in any other manner that the court considers appropriate.

Evidence concerning victim admissible

(3) Whether or not a statement has been prepared and filed in accordance with subsection (2), the court may consider any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged under section 730.

Definition of “victim”

(4) For the purposes of this section and section 722.2, “victim”, in relation to an offence,

(a) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and

(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

Copy of statement

722.1 The clerk of the court shall provide a copy of a statement referred to in subsection 722(1), as soon as practicable after a finding of guilt, to the offender or counsel for the offender, and to the prosecutor.

722.2 (1) As soon as practicable after a finding of guilt and in any event before imposing sentence, the court shall inquire of the prosecutor or a victim of the offence, or any person representing a victim of the offence, whether the victim or victims have been advised of the opportunity to prepare a statement referred to in subsection 722(1).

722.3 Adjournment

722.4 (2) On application of the prosecutor or a victim or on its own motion, the court may adjourn the proceedings to permit the victim to prepare a statement referred to in subsection 722(1) or to present evidence in accordance with subsection 722(3), if the court is satisfied that the adjournment would not interfere with the proper administration of justice.

5.13.3 Victim Surcharge

A victim surcharge is an additional penalty automatically imposed on offenders at the time of sentencing. The charge is 30 percent of any fine imposed, or, if there is no fine, \$100 upon conviction for a summary offence and \$200 upon conviction for an indictable offence. The court has the discretion to increase the amount of the surcharge if it is appropriate in the circumstances and if the offender has the ability to pay. In the circumstances where human traffickers may have benefited substantially through the commission of the offence, this increase may be deemed appropriate. The victim surcharge is used by the province or territory where the crime occurred to help fund programs, services and assistance for victims. Offenders who are unable to pay the victim surcharge may discharge the amount owing through participation in provincial fine option programs where they are offered.

737. (1) An offender who is convicted or discharged under section 730 of an offence under this Act or the [Controlled Drugs and Substances Act](#) shall pay a victim surcharge, in addition to any other punishment imposed on the offender. (2) Subject to subsection (3), the amount of the victim surcharge in respect of an offence is

- (a) 30 per cent of any fine that is imposed on the offender for the offence; or
- (b) if no fine is imposed on the offender for the offence,

- (i) \$100 in the case of an offence punishable by summary conviction, and
 - (ii) \$200 in the case of an offence punishable by indictment.

(3) The court may order an offender to pay a victim surcharge in an amount exceeding that set out in subsection (2) if the court considers it appropriate in the circumstances and is satisfied that the offender is able to pay the higher amount.

(4) The victim surcharge imposed in respect of an offence is payable at the time at which the fine imposed for the offence is payable and, when no fine is imposed, within the time established by the lieutenant governor in council of the province in which the surcharge is imposed for payment of any such surcharge.

(5) and (6) [Repealed, 2013, c. 11, s. 3]

(7) A victim surcharge imposed under subsection (1) shall be applied for the purposes of providing such assistance to victims of offences as the lieutenant governor in council of the province in which the surcharge is imposed may direct from time to time.

(8) The court shall cause to be given to the offender a written notice setting out

- (a) the amount of the victim surcharge;
- (b) the manner in which the victim surcharge is to be paid;
- (c) the time by which the victim surcharge must be paid; and
- (d) the procedure for applying for a change in any terms referred to in paragraphs (b) and (c) in accordance with section 734.3.

(9) Subsections 734(3) to (7) and sections 734.3, 734.5, 734.7 and 734.8 and 736 apply, with any modifications that the circumstances require, in respect of a victim surcharge imposed under subsection (1) and, in particular,

(a) a reference in any of those provisions to “fine”, other than in subsection 734.8(5), must be read as if it were a reference to “victim surcharge”; and

(b) the notice provided under subsection (8) is deemed to be an order made under section 734.1.

(10) For greater certainty, the program referred to in section 736 for the discharge of a fine may not be used in respect of a victim surcharge.

5.14 Restitution Orders

Restitution is a payment which an offender is required to make to a victim to cover an easily quantifiable loss that a victim has sustained as a result of the commission of an offence. Restitution is a payment from the offender to the victim to reimburse expenses and must be distinguished from compensation which is a payment from the state to the victim to recognize the harm which they have suffered as a result of their victimization.

Restitution orders may be “stand alone” orders or ordered as a condition of probation or conditional sentence. **Paragraph 738(1)(a)** of the *Criminal Code* authorizes the imposition of a “stand alone” restitution order in three circumstances, however, only the first two are likely to apply in the sentencing of trafficking offences:

- To cover the cost of damage, the loss of or destruction of the property of any person as a result of the commission of an offence; and,
- To cover all readily ascertainable pecuniary damages, including loss of income or support, to any person who has suffered bodily or psychological harm as the result of the commission of an offence.

Restitution orders take priority over forfeiture orders if the offender has demonstrated an inability to pay (section 740 of the *Criminal Code*).

Restitution may also be ordered as a condition of a probation order (subsection 732.1(3.1)) or as a condition of a conditional sentence (paragraph 742.3(2)(f)).

Restitution is a discretionary sentence which can only be ordered when a loss or damage is easily quantifiable and is not in great dispute. Criminal courts are not an appropriate forum for awarding damages for pain and suffering or for determining complicated issues regarding the amount of the award. Additionally, while the offender’s ability to pay is not determinative, it must be taken into consideration by the sentencing court when determining if restitution is an appropriate sentence.

Although trafficking offenders have often profited greatly from the exploitation of those whom they have trafficked, restitution will often not be an appropriate sentence in trafficking cases due to the nature of the losses and harm sustained by trafficking victims. Victims who have suffered physical harm, loss of liberty and who have been forced to work without compensation have most certainly endured financial losses, however, these are not the types of financial losses contemplated under the restitution provisions in the *Criminal Code*.

There will, however, be cases where an application for restitution should be considered, such as when a person who has been trafficked is unable to perform paid work due to the lasting physical or psychological effects of the exploitation they endured. For example, if a person had to take a medical leave from a job due to injuries they had sustained as a result of being made to perform physical labour in dangerous working conditions or for excessive periods of time without adequate rest breaks, an application could be made for restitution to cover lost income.

5.14.1 Enforcement of Restitution Orders

If the offender fails to pay restitution as ordered, **section 741** allows a victim to whom restitution is owed to file the restitution order in civil court in order to have it enforced as a civil judgment. Saskatchewan and Nova Scotia have a restitution enforcement program which assists victims in collecting unpaid restitution orders. Some other provincial/territorial victims' service programs in Canada provide various kinds of assistance to victims in enforcing restitution orders whether through a simplified process for filing the restitution order with the civil court and waiver of fees or assistance in preparing the necessary documents.

Note that, all or any part of an amount that is ordered to be paid may be taken out of moneys found in the possession of the offender at the time of the arrest.

RESTITUTION

Restitution to victims of offences

738. (1) Where an offender is convicted or discharged under section 730 of an offence, the court imposing sentence on or discharging the offender may, on application of the Attorney General or on its own motion, in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows

(a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable;

(b) in the case of bodily or psychological harm to any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying

to the person an amount not exceeding all pecuniary damages incurred as a result of the harm, including loss of income or support, if the amount is readily ascertainable; (c) in the case of bodily harm or threat of bodily harm to the offender's spouse or common-law partner or child, or any other person, as a result of the commission of the offence or the arrest or attempted arrest of the offender, where the spouse or common-law partner, child or other person was a member of the offender's household at the relevant time, by paying to the person in question, independently of any amount ordered to be paid under paragraphs (a) and (b), an amount not exceeding actual and reasonable expenses incurred by that person, as a result of moving out of the offender's household, for temporary housing, food, child care and transportation, where the amount is readily ascertainable; and (d) in the case of an offence under section 402.2 or 403, by paying to a person who, as a result of the offence, incurs expenses to re-establish their identity, including expenses to replace their identity documents and to correct their credit history and credit rating, an amount that is not more than the amount of those expenses, to the extent that they are reasonable, if the amount is readily ascertainable.

(2) The lieutenant governor in council of a province may make regulations precluding the inclusion of provisions on enforcement of restitution orders as an optional condition of a probation order or of a conditional sentence order.

740. Where the court finds it applicable and appropriate in the circumstances of a case to make, in relation to an offender, an order of restitution under section 738 or 739, and (a) an order of forfeiture under this or any other Act of Parliament may be made in respect of property that is the same as property in respect of which the order of restitution may be made, or (b) the court is considering ordering the offender to pay a fine and it appears to the court that the offender would not have the means or ability to comply with both the order of restitution and the order to pay the fine, the court shall first make the order of restitution and shall then consider whether and to what extent an order of forfeiture or an order to pay a fine is appropriate in the circumstances.

741. (1) Where an amount that is ordered to be paid under section 732.1, 738, 739 or 742.3, is not paid without delay, the person to whom the amount was ordered to be paid may, by filing the order, enter as a judgment the amount ordered to be paid in any civil court in Canada that has jurisdiction to enter a judgment for that amount, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

(2) All or any part of an amount that is ordered to be paid under section 738 or 739 may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

741.1 Where a court makes an order of restitution under section 738 or 739, it shall cause notice of the content of the order, or a copy of the order, to be given to the person to whom the restitution is ordered to be paid.

741.2 A civil remedy for an act or omission is not affected by reason only that an order for restitution under section 738 or 739 has been made in respect of that act or omission.

Chapter 6: Victim Services

6.1 Overview of Victim Services in Canada

Every victim of crime in Canada, including victims of human trafficking offences, should be provided with information about available services. This principle is enshrined in the 2003 *Canadian Statement of Basic Principles of Justice for Victims of Crime*, which was endorsed by federal, provincial and territorial Ministers of Justice in recognition of the harmful impact of criminal victimization on individuals and on society. While not every victim will wish to receive services, it is important that each victim is made aware of the range of available services. This is particularly true for victims of trafficking offences, due to the exploitation inherent in such offences and the extreme conditions which victims of trafficking typically endure, often for prolonged periods of time.

While many victims of crime will benefit from services, victims of more serious and violent crimes such as human trafficking may be more vulnerable and therefore in greater need of appropriate services. However, victims of trafficking may be more reluctant to seek or accept services due to the mistrust and fear which results from their trafficking experiences.

Social and economic disadvantage create an increased risk of being trafficked. This vulnerability is exacerbated by the extreme conditions experienced by trafficking victims including isolation from family and social supports, manipulation, control, repeated assaults and/or sexual assaults or threats of such crimes to themselves and their families. For this reason, it is particularly important that all criminal-justice personnel are aware of available services to ensure that every opportunity is taken to make services available to victims of human trafficking.

Responsibility for victims of crime is shared by the federal, provincial and territorial governments with the majority of services for victims of crime provided by the provinces and territories. Each of the provinces and territories has established services for victims of crime in accordance with their provincial/territorial victims' legislation, and each has developed a model of service delivery that it considers most suited to the needs of victims in their jurisdiction. Models for the delivery of victim services include:

- **Court-based services**, which are provided to victims during their participation in criminal proceedings and can include providing information about the criminal justice process, the victim's role in criminal proceedings, the scheduling and outcomes of proceedings and testimonial aids as well as court preparation and assistance to victims with victim impact statements.
- **System-based services**, which include a range of victim services from the time of the offence through to the conclusion of court proceedings and their aftermath. Services include referrals for counselling, court preparation and support, and information about available compensation or financial benefits programs, the

outcome of criminal proceedings and how to register for information on offender release if the offender is incarcerated.

- **Police-based and community-based services**, which provide support, information, referrals and assistance to victims of crime through the RCMP and/or local police detachments, community agencies and non-governmental organizations. Police-based services often focus on providing assistance or referrals for assistance in the immediate aftermath of the crime, while community-based services may take many forms, including specialized services for victims of particular crimes such as sexual assault or domestic violence.

Further information on the types of services offered by each province and territory is provided below. Depending on the model of service delivery, services which may benefit victims of trafficking offences may be offered directly by the provincial or territorial government, or may be funded by the provincial/territorial government and provided by a community-based organization. Whatever the model of service delivery, the provincial/territorial victim-services organization should always be contacted to determine which services are available and most appropriate for a victim of a human trafficking offence. In addition, the Victims Services Directory, created and maintained by the Department of Justice, lists services available to victims of crime across Canada: www.canada.justice.gc.ca/eng/pi/pcvi-cpcv/vsd-rsv/index.html.

Collaboration among police, prosecutors and victim-services organizations is essential to ensuring that victims of trafficking know about and receive appropriate support. Victims who receive appropriate services are more likely to rebuild their lives and become fully functioning members of society, and are less likely to experience trauma when participating in criminal justice proceedings.

Provincial Victim Service Programs

6.2 British Columbia

In British Columbia, Victim Services and Crime Prevention in the Ministry of Justice provides funding and support to more than 160 police-based and community-based victim service programs, as well as a toll-free, provincial-wide, 24-hour multilingual victim crisis line (VictimLink BC). Funding and support is also provided to more than 250 programs that provide counselling and outreach services to women fleeing violence in their relationships and to children who witness abuse.

In addition, Victim Services and Crime Prevention deliver direct services to victims through:

- The **Victim Safety Unit** provides victims with ongoing and timely updates about their case and notification of changes to the custodial status of offenders.

- **Court Support Programs** in Vancouver, Port Coquitlam, and Surrey assist victims of crime through the justice process by providing information, court accompaniment, and referrals to other justice and community services.
- **The Crime Victim Assistance Program** provides financial assistance and benefits to victims of violent crime, members of their immediate families and some witnesses. Benefits include medical, dental and prescription drugs; counselling; protective measures; replacement of damaged or destroyed eyeglasses, clothing, disability aids; income support or lost earning capacity; transportation and related expenses; and/or funeral expenses. For further information on the Crime Victim Assistance Program please visit: www.pssq.gov.bc.ca/victimservices/financial/index.htm.

For further information on Victims Services in British Columbia and contact information please visit: www.pssq.gov.bc.ca/victimservices/.

The Office to Combat Trafficking in Persons (OCTIP)

British Columbia's Ministry of Justice also operates The Office to Combat Trafficking in Persons (OCTIP). Its mandate is to develop and coordinate B.C.'s response to human trafficking by:

- Supporting communities in building local capacity to address human trafficking — from prevention to service provision.
- Raising awareness and providing training and education about human trafficking in BC and Canada.
- Identifying gaps and barriers in services, policies and legislation that impede trafficked persons' internationally-protected human rights.
- Contributing to national and international efforts to combat human trafficking.

For further information, including access to British Columbia's online training course for first responders, please visit: www.pssq.gov.bc.ca/octip/index.htm.

6.3 Alberta

Alberta Justice and Solicitor General operates two core programs for victims of crime:

- A grant program that provides funding to police-based and community-based organizations offering information, support and referrals to victims throughout their involvement with the criminal justice process; and,
- A financial benefits program for eligible victims who have suffered injury or death as a result of a violent crime.

Police-based and community-based services

Alberta provides funding to 76 police-based victims programs operating out of 139 service delivery areas in the province. Services provided to victims include:

practical emotional support, information about their case and criminal justice proceedings; information about available medical, legal and social services; referrals to other community agencies; and courtroom orientation and accompaniment. Police-based programs also provide victims of crime with information about completing victim impact statements, requesting restitution, and applying for financial benefits. These programs provide a continuum of services to victims from the time of first response by police to the disposition of the case by the courts.

An additional 35 funding agreements with community agencies and organizations are in place to deliver specialized assistance and programming to address gaps for vulnerable victims such as children, and those subjected to human trafficking.

For further information on services for victims of crime in Alberta and contact information please visit: www.victims.alberta.ca.

Financial Benefits

The Financial Benefits Program provides a financial benefit to eligible victims of violent crime in Alberta as an acknowledgment of their victimization. Benefits are based on the victim's verified injuries. The injury benefit amounts are listed in the Victims of Crime Regulation. To be considered for a financial benefit, victims must report the crime to police within a reasonable period of time and cooperate with the investigation of the incident. Applications must be received within two years of the date of the incident; however, this time limit may be extended in extenuating circumstances. Charges do not have to be laid, or a conviction registered to apply for the program.

For further information on Alberta's Financial Benefits Program please visit: www.victims.alberta.ca.

6.4 Saskatchewan

Saskatchewan Justice Victims Services funds or delivers directly a range of services for victims of crime. These services include:

- **Police-based services** assist victims in the immediate aftermath of a crime or tragedy and throughout the criminal justice process. Services offered include crisis intervention, information, support, and referrals to other specialized programs and services.
- **Community-based specialized programs** meet the needs of specific victims, such as victims of domestic violence or sexual abuse.
- **Victim/Witness Programs** provide court orientation and support to children and other vulnerable witnesses required to testify in court.
- **Children Exposed to Violence Programs** assist children and youth who have witnessed or experienced interpersonal violence or abuse, with a goal of preventing them from becoming future victims or perpetrators of violence and abuse.

- **Services for Aboriginal families** offer many programs specifically developed to support Aboriginal victims of crime.
- **Victim impact statement program** provides information and assistance to victims regarding victim impact statements.
- **Victims Compensation Program** grants compensation to victims for reasonable expenses resulting from criminal acts of personal violence, such as physical and/or sexual assault, murder, robbery and kidnapping. Victims may apply for compensation for harm resulting from a *Criminal Code* offence listed in the *Victims of Crime Regulations*, including personal violence such as robbery, sex crimes, assault causing bodily harm, manslaughter, murder, attempted murder and kidnapping. The crime must have occurred in Saskatchewan and been reported to the police. Applications must be made within two years from the date of injury, or in the case of sexual assault, within two years from the date the offence was reported to police. Compensable expenses include medical costs such as ambulance and prescriptions not covered by another plan, counselling, including traditional Aboriginal healing methods, funeral expenses to a maximum of \$3,500 where not covered by other programs, loss of income where it is not covered by Employment Insurance, Workers' Compensation or an insurance plan; and clothing damaged as a result of the crime.
- **Restitution programs:** Saskatchewan Justice operates two restitution programs:
 - The **Adult Restitution Program** provides information to victims about restitution, monitors payments and works with offenders to help ensure payments are made, and works with probation officers and prosecutors to enforce restitution orders.
 - The **Restitution Civil Enforcement Program** assists victims with the civil enforcement of restitution orders.

For more information on the range of victim services offered by Saskatchewan Justice and contact information please see the following link:

www.justice.gov.sk.ca/victimsservices/.

6.5 Manitoba

Manitoba Justice provides services to victims of domestic violence, child victims and witnesses and victims of the most serious crimes as specified under *Manitoba's Victims' Bill of Rights Act* (VBR).

The VBR includes the offence of human trafficking as well as offences often committed against trafficking victims such as assault, aggravated assault, sexual assault and living off the avails of a prostitute under 18 years of age.

The VBR specifies the rights of victims of the most serious crimes in their dealings with police, prosecutors, courts and corrections officials. Victim-services workers help victims register for their rights and explain how and when they may exercise them.

The types of services provided to victims by Manitoba Justice Victim Services include providing information on court and the criminal justice system; information on what to expect when a victim receives a subpoena for court; court preparation; court support; safety planning and protection planning; counselling referrals; information on possible financial assistance that may be available to victims of crime; information about victim impact statements and guidance on how to prepare them; information on the offender's sentence once she or he is convicted, and how to contact the correctional facility if the offender receives a jail sentence; information on how to find out about the offender's release from a provincial jail; and information on how to register with the Parole Board of Canada, if the offender is sentenced to a federal institution.

Victim services may provide support to victims of human trafficking through a variety of programs. Victim services programs include:

- **Victim Rights Support Service (VRSS)**
- **Child Victim Support Service** helps victims and witnesses of abuse (up to 18 years of age), adult survivors of sexual abuse and other vulnerable victims (on a case-by-case basis) who are involved in the criminal court process.
- **Domestic Violence Support Service** helps victims of domestic violence when criminal charges have been laid, or may be laid against their partners. VSWs explain the cycle of violence, how the cycle may affect victims and their families and how to escape from it. They also help victims to develop protection plans to increase their personal safety. The DVSS also provides support to families who receive police services for domestic violence incidents that do not result in charges or arrests (Winnipeg only).
- **Protection Order Designates Service** *The Domestic Violence and Stalking Act* authorizes victims of stalking or domestic violence to apply for protective orders. Victim services provides training to community service agencies so that they may be designated to assist protection-order applicants.
- **Cellphone Emergency Limited Link-Up Program (CELL)**, a co-operative effort between MTS, social services agencies, police services and Manitoba Justice, provides cellphones on a short-term basis to victims of domestic violence and stalking who are deemed to be at very high risk of violence. A provincial coordinator, in cooperation with 27 social-service agencies throughout the province, manages the CELL program.
- The **Victim Witness Assistance Program** provides support services to crime victims and witnesses who are subpoenaed to appear in either Provincial Court or Court of Queen's Bench in Winnipeg. Services to victims and witnesses include: written correspondence with the Crown attorney about a victim's specific case concerns; information and guidance on how to prepare victim impact statements; court preparation; accompaniment to court; court cancellation notifications, and reimbursement of expense claims.

Further information about the programs offered by Manitoba Justice Victim Services and contact information may be found at: www.gov.mb.ca/justice/victims/index.html.

The **Compensation for Victims of Crime program** provides compensation to victims who suffer personal injury, hardships or expenses as a result of crimes listed in the Victims' Rights Regulation of *The Victims Bill of Rights Act*. The program is also available to specific relatives and dependants of victims of homicide in Manitoba. Compensation may cover reasonable expenses (not already covered by another source) resulting from a crime, such as payment of medical expenses and counselling services, compensation for lost wages for victims who have been disabled or for dependants of victims who were fatally injured, support payments for dependents, payment for rehabilitation or retraining, compensation for permanent disability and payment of funeral expenses.

For further information on Manitoba's Compensation for Crime Victims program please visit: www.gov.mb.ca/justice/victims/services/compensation.html.

Victim services particularly helpful for some victims of human trafficking include explaining the criminal court process and procedures, court preparation (including a visit to the courtroom to help familiarize them with their surroundings and make them feel more comfortable); identifying special needs and the potential for aids to help with testimony; attending court with witnesses, when possible; scheduling meetings with Crown attorneys to discuss any special issues; arranging short-term counselling; providing emotional support; providing referrals to community resources, such as therapists or treatment programs and providing information and guidance on how to prepare victim impact statements.

6.6 Ontario

Ontario Victims Services supports a number of programs and services to assist victims of crime. Police and a wide range of community organizations also provide specialized services to meet the needs of victims of crime in Ontario. Some of the programs and services offered in Ontario which might be of assistance to victims of trafficking include:

- The **Victim Support Line** is a province-wide, multilingual, toll-free information line providing a range of services to victims of crime 24 hours a day, seven days a week.
- The **Victim Notification Service** provides access to information on changes in release status of provincially sentenced offenders.
- The **Victim Services Directory (VSD)** is an online database that provides information about services for victims of crime throughout Ontario.
- The **Victim Crisis Assistance & Referral Services Program** provides immediate, on-site short-term service to victims of crime 24 hours a day, seven days a week and makes referrals to community agencies for long-term assistance.
- The **Victim Quick Response Program** provides immediate assistance to victims of violent crime. Through this program, eligible victims who have no other financial means are able to access:

- 1) **Emergency expenses** to pay for crime scene clean-up, emergency accommodation and meals, securing premises and providing mobile devices to ensure safety, and transportation and dependent-care costs to receive medical treatment or travel to safe accommodation, or for a family member who must identify a homicide victim or support a seriously injured victim of violent crime
 - 2) **Funeral expenses** to assist families of homicide victims and
 - 3) **Counselling** to provide short-term, early intervention counselling to help victims of serious crime.
- The **Support Link Program** provides victims at risk of domestic violence, sexual assault and stalking with help developing a personal safety plan, information and referral to community services, follow-up contact, and, where appropriate, a cell phone pre-programmed to dial 911.
 - Community-based **Sexual Assault/Rape Crisis Centres** provide a variety of counselling, information and referral services to female victims and survivors of sexual assault who are 16 years of age or older.
 - The **Victim/Witness Assistance Program** provides information, assistance and support to victims and witnesses of crime to increase their understanding of, and participation in, the criminal justice process. Services include crisis intervention and emotional support; familiarization with the criminal court process; provision of case-specific information; assistance to secure testimonial aids, complete victim impact statements and apply for financial benefits; and referrals to community agencies. Services begin once police lay charges and continue until the court case is over.
 - The community-based **Child Victim/Witness Program** offers specialized support and services to child victims and witnesses during the criminal court process.

Further information services for victims in Ontario and contact information may be found at: www.attorneygeneral.jus.gov.on.ca/english/ovss/.

Compensation

Anyone injured as a result of a violent crime in Ontario may apply to Ontario's Criminal Injuries Compensation Board for compensation within two years of the offence. Some examples of compensable expenses include treatment expenses, loss of income and awards for pain and suffering. Please see the following link for further information on Ontario's program: www.cicb.gov.on.ca/en/index.htm.

6.7 Québec

Québec's Department of Justice is responsible for the Crime Victims Assistance Office or BAVAC (Bureau d'aide aux victimes d'actes criminels) which promotes the establishment of crime victim assistance centres or CAVACs, (Centres d'aide aux victimes d'actes criminels). BAVAC provides technical, professional and financial

assistance to establish, maintain and develop sixteen CAVACs throughout Québec. CAVACs are non-profit community organizations that participate in the implementation of Quebec's victim-assistance program.

Services provided by CAVACs include providing information on the criminal justice process, the progress of the case and court dates; providing information about Quebec's crime victim-compensation program and assisting victims in completing applications for compensation; providing support throughout the criminal justice process and providing referrals to specialized services.

For further information on Victims Services in Quebec please see:

www.cavac.qc.ca/english/index.html.

Compensation

Anyone who has been injured as a result of a crime listed in the schedule to Québec's *Crime Victims Compensation Act* may apply for compensation to Québec's Direction de l'indemnisation des victimes d'actes criminels (IVAC). In cases where a victim has been killed, other persons connected to the victim may make the application. The application must be submitted during the year in which the victim's injury or death occurs. Available compensation and services include reimbursement of medical expenses, benefits for permanent disability, rehabilitation services and death benefits.

For further information on Quebec's Crime Victim Compensation Program please see:

www.ivac.qc.ca/EN_brochure.asp.

6.8 New Brunswick

The Department of Public Safety's Victim Services Program provides direct services to victims of crime through a system-based model in 15 offices across New Brunswick. The objective is to provide a continuum of services to the victim throughout the criminal justice process. Such support to victims helps to minimize their re-victimization by the criminal justice system. Available services include:

- **Trauma Counselling:** A service provided by a professional psychologist to treat victims shortly after the incident to deal with the trauma and to assist them in testifying.
- **Court support and Court Preparation:** Provided to all victims of crime who are required to testify in court.
- **Victim Impact Statement Program:** Enables any victim of crime to submit a statement at the time of sentencing on the impact the crime has had on them.
- **Compensation for Victims of Crime Program:** is available to victims of violent crimes who have suffered personal injury or losses because of the crime. Some benefits include assistance with funeral costs, crime scene clean-up, relocation and medical expenses not covered by Medicare or personal health insurance. The program exists under the *New Brunswick Victim Services Act*.

For further information on New Brunswick's Compensation for Victims of Crime Program please visit:

http://www2.gnb.ca/content/gnb/en/services/services_renderer.201175.html

- **Short Term Counselling:** A service provided by a registered therapist to assist victims after the court process to deal with the after effects of victimization, it is part of the case-management process.
- **Victim Notification of Release of Provincial Incarcerated Offenders:** Eligible victims registered with the province's Department of Public Safety (DPS) can obtain information on an offender's release and transfer from a provincial institution.
- **Victim Notification of Provincial Notification of Not Criminally Responsible Accused Information:** Eligible victims registered with DPS can access information about accused found not criminally responsible because of mental disorder (NCR), and, subject to Review Board approval, read initial and updated victim impact statements during Review Board hearings.
- **Victim Notification of Release of Federal Incarcerated Offenders:** Victim services co-ordinators provide victims with information about the parole process and provide necessary forms for applying for notification from the Parole Board Canada.

For further information on New Brunswick's Victims Services Program please visit:

http://www2.gnb.ca/content/gnb/en/departments/public_safety/safety_protection/content/victim_services.html.

6.9 Nova Scotia

The Department of Justice Victim Services in Nova Scotia uses a system-based model, operates four interdependent province-wide programs and provides services through community-based and police-based programs that meet specific needs.

- Through its four regional offices and three sub-offices, the **Provincial Victim Services Program** provides victims with information, support and assistance as a case moves through the criminal justice system, including general and case specific information, case tracking and updates, court orientation, help with applying for restitution and criminal injuries counselling, safety planning and making referrals to other agencies.
- **The Child Victim Witness Program** assists child witnesses by providing information and answering questions about the criminal justice system; explaining the court process and everyone's role in it; providing tours of the courtroom and preparing child witnesses for court; arranging meetings with Crown attorneys; accompanying child witnesses to court; helping to prepare victim impact statements; helping with applications for criminal injuries counselling; and helping child witnesses contact other agencies.

- **The Victim Impact Statement Program** provides information on victim impact statements, assists victims who wish to complete and submit statements directly to the court (or through a victim service officer).
- The **Criminal Injuries Counselling Program** pays for professional counselling services to help victims of violent crime deal with trauma resulting from the crime. Members of the immediate family of a murdered person, along with children witnessing domestic violence may also apply to the Program. Applications must generally be received within one year of the crime, and the crime must be reported to the police.

For further information on Nova Scotia's Victim Services Programs, please visit: www.novascotia.ca/just/victim_Services/programs.asp.

6.10 Newfoundland and Labrador

The Department of Justice's Victim Services Program provides services through a system-based program; 11 regional offices operate throughout the province.

- **The Victim Services Program:** Provides services to victims of crime with the goal of ensuring they are able to participate meaningfully in the criminal justice process and access services that promote healing and recovery. Services are available at any point during the criminal justice process, and if victims choose not to participate in the criminal justice system. The services are free of charge and confidential (with identified limits).
- **Adult Program:** Provides services to victims aged 16 years or older. Priority is given to victims of violent crimes, however the nature of the offense and victims' responses are determining factors. Requests for service are met as resources permit. Services are available to those who feel they have been victimized, regardless of whether a complaint has been made to the police or a charge has been laid, and are available at any point throughout the process. Individuals can be referred to victim services or make contact themselves.
- **Child Program:** Services are available to child/youth victims and witnesses, under the age of 16, who may be required to testify in criminal justice proceedings. Parental consent is required. Children's caregivers are also eligible for services. Available services include: general information about the criminal justice system; specific information regarding the case prior to, during and after criminal court proceedings; pre-court preparation and court orientation; court support; assistance in the preparation of victim impact statements; identification and co-ordination of community and other resources; assessments and referrals to individuals or agencies offering specialized services; provision of short-term counselling and support for adult victims and children and their families; and safety planning.

For further information on Newfoundland and Labrador's Victim Services Program, please visit: www.victimserviceshelp.ca/index.html.

6.11 Prince Edward Island

The Victim Services section of Prince Edward Island's Department of Environment, Labour and Justice operates a province-wide program to assist victims of crime throughout their involvement with the criminal justice system. Services include information about the status of a victim's case, the criminal justice system, criminal injuries compensation and corrections; short-term counselling and emotional support; court preparation and accompaniment; assistance in preparing victim impact statements; and referrals.

Compensation

Criminal injuries compensation is available in PEI to victims of crimes specified under the *Victims of Crime Act* including the following crimes: assault, sexual assault, murder, robbery, (please contact Victim Services for a complete list of eligible crimes). Compensation may be made for wages or salary lost because of injury or death, funeral expenses, pain and suffering, maintenance of a child born as a result of sexual assault, medical or dental expenses, and other reasonable expenses, except for property loss or damage. Applications for compensation should be received within one year of the commission of the crime.

For further information on victims' services in Prince Edward Island and contact information please visit: www.gov.pe.ca/jps/index.php3?number=1000822&lang=E.

6.12 The Territories

The federal government has a unique role to play with respect to victim services in the three territories because the Attorney General of Canada, through the Public Prosecution Service of Canada, is responsible for prosecuting *Criminal Code* offences in the territories. As a result, the federal government provides court-based services to victims of crime in the three territories through Crown Witness Coordinators (CWCs). CWCs provide a wide range of services including liaison and information-sharing with Crowns; preparing victims and witnesses for court; explaining the criminal justice system and the victim's role; providing information on, and assistance with, the preparation of victim impact statements; arranging testimonial aids as necessary; supporting and accompanying victims and witnesses during their court process; and referring victims and witnesses to supportive community services.

Victim services in the Territories face unique challenges due to factors specific to the North. The crime rates in Yukon, Northwest Territories and Nunavut are significantly higher than elsewhere in Canada. There are eight Aboriginal languages in the Yukon, spoken by 75 percent of the population. There are 11 official languages in the NWT, where an Aboriginal language is spoken by 13 percent of the population. In Nunavut 70 percent of the population speaks Inuktitut or Inuinnaqtun as their mother tongue. The CWC program accommodates these language issues through the use of

interpreters and by hiring staff who speak one or more indigenous languages. CWCs also travel with the circuit court all over the territories.

In addition to the assistance provided by CWCs, victims of crime receive assistance from community organizations, the territorial government, some First Nations and police services via first response, pre-court, police-based support. Funding provided by the territorial governments to non-governmental organizations enables services to be developed that respond to the particular needs of victims of crime in the three territories.

6.12.1 Yukon

The Victim Services Unit in the Yukon's Department of Justice offers a system-based model of victim services. Yukon Victim Services works closely with the Crown attorney's office and the RCMP to offer support to victims from the time of the offence through to conclusion of sentence, treatment and release. The Victim Services Unit provides direct services for victims of crime including court support, crisis support, group counselling and referrals. The Yukon Government also provides public education, prevention activities and support to community agencies, through the Department of Justice, the Women's Directorate and other departments. In addition to the services provided by the territorial government, women's organizations, non-governmental agencies, First Nations and community groups provide direct and indirect services for victims of crime.

For further information on services for victims of crime in the Yukon please visit: www.justice.gov.yk.ca/prog/cor/vs/.

6.12.2 Northwest Territories

The Department of Justice of the Northwest Territories (NWT) provides annual contribution funding to ongoing, community-based Victim Service Programs located in seven communities in the NWT. Outreach victim services are available in both T'licho and Beaufort Delta regions. Victims living in communities where there is no Victim Services Program can receive information and support from a Victim Services worker by telephone. NWT community-based victim services include information, assistance, support, court orientation and accompaniment, referrals, safety planning and assistance with victim impact statements.

The emergency costs associated with criminal victimization are great, particularly in the NWT where, in most cases, victims residing in smaller communities are required to travel to either a regional centre, the capital or outside of the NWT to access services. Furthermore, services available in the community, such as home repairs, are very expensive. The NWT **Victims of Crime Emergency Fund** provides limited financial assistance to help victims of serious violent crime meet emergency needs where no other sources of financial assistance are available.

The Victim Notification Program allows victims to apply to receive information about the offender who was convicted of a crime against them, such as the length, start and expiry date of sentences; eligibility dates for temporary absences; any variation to the sentence or eligibility dates; the location of the institution of incarceration; release dates and destination for temporary absences; special conditions imposed on temporary absences; the release date and community to which the offender will be released, if known; escapes from custody or other “unlawfully at large” statuses and when the offender is returned to custody. The Victim Notification Program is administered by the Corrections Service. All NWT correctional facilities have victim-notification representatives.

For further information and contact numbers for Victims Services in the NWT please visit: www.justice.gov.nt.ca/VictimServices/index.shtml.

6.12.3 Nunavut

The Community Justice Division within the Nunavut Department of Justice provides support and contribution funding to community-based programs located throughout Nunavut to assist victims of crime. The Victims Assistance Fund is a special-purpose fund maintained with revenue from victims’ fine surcharges.

The Victims Assistance Fund does not provide direct financial compensation to individuals but it supports community-based projects and activities that provide services and assistance to victims of crime through:

- Training geared toward sensitizing and informing community resource workers about the needs and circumstances of victims of crime;
- Direct services that assist victims through crisis response, personal support, follow-up assistance, victim information and systems referral;
- Public awareness and information on the rights and responsibilities of victims, available services, the criminal justice system and its procedures and any issues relating to victims of crime; and
- Gathering and distribution of information about services to victims and the needs and concerns of victims.

The **Nunavut Victim Travel Support Program** provides support to Nunavummiut survivors/victims of serious, violent crimes that occur and are being prosecuted in Nunavut before the Nunavut Court of Justice. The program provides limited, travel-related financial assistance to the victim’s family members and/or support person so that they may offer the victim the benefit of emotional, moral and familial support and, in some cases, personal translation when the victim is required to attend criminal proceedings.

Court-based assistance is also provided to victims and witnesses in Nunavut through the Office of the Director of Public Prosecutions (via federal Crown Witness Coordinators). Victim services will continue to expand in Nunavut.

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6. *Bedford v. Canada (Attorney General)* (2012), 109 O.R. (3d) 1, 2012 ONCA 186
7. *R. v. Bell*, [2010] O.J. No. 6044, 2010 ONCJ 736
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18. *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005, [1990] S.C.J. No. 45
19. *R. c. Gauthier*, [1989] J.Q. No. 2232, No. 500-10-000376-879 (C.A.)
20. *R. v. Goodwin* (1997), 89 B.C.A.C. 269, [1997] B.C.J. No. 954
21. *R. v. Gowing*, [1994] O.J. No. 1696 (Prov. Div.)
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49. *R. v. St. Vil*, [2008] O.J. No. 6023 (Ont. Sup. Ct. Jus.)
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51. *R. v. Sturge*, [2001] O.J. No. 3923, (2001), 17 M.V.R (4th) 272 (C.A.)
52. *R. v. Tang* (1997), 51 Alta. L.R. (3d) 23, [1997] A.J. No. 460 (C.A.)
53. *R. v. Tynes*, [2010] Q.J. No. 13355, 2010 QCCQ 11298, Nos.: 500-01-035485-108, 500-01-034231-099 (C.P.)
54. *R. v. Vaughn*, [2009] B.C.J. No. 912, 2009 BCPC 142 (Prov. Ct.)
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ANNEX 2: SENTENCING CHART — HUMAN TRAFFICKING AND RELATED OFFENCES

This Annex is intended to provide police and prosecutors with guidance on the appropriate range of sentences for human-trafficking and related offences. Given the paucity of reported human trafficking sentencing judgments, this chart includes several cases without human trafficking charges but that are factually comparable to human trafficking in some way (e.g., procuring/pimping cases whose sentences could be considered a base line for a human trafficking case). This chart was compiled in July 2013.

Unless otherwise stated, the sentence indicated in the top right represents the total sentence for relevant offences — where the sentence can be severed from irrelevant offences — that would have been imposed without credit for pre-trial custody.

R v AR, [1998] AJ No 354 (Alta CA) **17 months**

17 months for one count of living on the avails of prostitution of someone under eighteen (s. 212(2)). This figure had already been adjusted account for pre-trial custody. The court opined that an adult offender would receive a sentence of 60 to 84 months in similar circumstances.

Summary: The sixteen-year-old offender instructed the fourteen-year-old victim to prostitute herself, told her how often, and delivered her to locations. The offender forcibly demanded and received money from her during a one-month period. When complainant wanted to go home to her parents, the offender threatened her with a knife.

Mitigating factors: The offender was a young offender.

Aggravating factors: The offender had a substantial criminal record (21 entries), exercised a degree of control, and use of a knife. There was evidence of arguments and physical altercations.

R v Tynes and Lafferty, 2010 QCCQ 11298 **34 / 34 months**

- Tynes received a total sentence of 16 months: global sentence of 34 months for two counts of living on the avails of prostitution of someone under eighteen (s. 212(2), conviction), three counts of procuring illicit sexual intercourse (s. 212(1)(a), conviction), two counts of procuring prostitution (s. 212(1)(d), conviction), one count of procuring a person to leave his place of abode to become a frequenter of a common bawdy house (s. 212(1)(e), conviction), and two counts of trafficking in controlled substances; minus 18 months credit for pre-trial custody.
Ancillary orders: 10-year firearms prohibition (s. 109) and a DNA order (s. 487.051).
- Lafferty received a total sentence of 17 months: global sentence of 34 months for three counts of living on the avails of prostitution of someone under eighteen

(conviction), two counts of procuring a person to have illicit sexual intercourse (conviction), one count of enticing a person to a common bawdy-house for the purpose of prostitution (s. 212(1)(b), conviction), two counts of procuring a person to become a prostitute (conviction), one count of procuring a person to leave his place of abode to become a frequenter of a common bawdy house (conviction), and two counts of trafficking in controlled substances; minus 17 months credit for pre-trial custody **Ancillary orders:** Lifetime firearms prohibition and a DNA order.

Both offenders were also convicted of several offences that were subject to the *Kienapple* principle (e.g., exercising control over a person in such a manner that he is aiding that person to engage in prostitution (s. 212(1)(h), conviction)). Both offenders were acquitted of several other offences (e.g., trafficking in persons (s. 279.01)).

Summary: The two victims were both under eighteen. The victims worked as escorts for both of the offenders, one for several weeks and the other for a few days. The offenders gave them drugs on a regular basis. There was no use of violence and the victims could leave if they wanted to, but there was a level of coercion and control over them. The victims had no control over the number of clients they had to accept during any given night and they could not refuse a client. The offenders furnished the victims with an apartment in exchange for their wages, but it became “more of a jail than a residence.”

Mitigating factors: The complainants were free to leave when they wanted.

Aggravating factors: Tynes exploited underage victims, provided the underage victims with drugs, and was in charge of an escort agency whose sole purpose was to offer the services of prostitutes to clients for his own monetary benefit. Lafferty participated in the daily activities of the escort agency and was involved in an intimate relationship with one of the underage victims.

R v AA, [2012] OJ No 6256 (Ont SCJ)

36 months less a day

Total sentence of 29 months imprisonment less a day: 36 months less a day for human trafficking (s. 279.01, conviction); 3 months consecutive for receiving a material benefit therefrom (s. 279.02, conviction); 2 months consecutive for failing to comply with a recognizance (s. 145(3), plea); 2 months concurrent for failing to comply with a probation order (s. 733.1(1), plea); minus 9 months credit for pre-trial custody. The offender was acquitted of two counts of procuring prostitution (s. 212).

Ancillary orders: Lifetime firearms prohibition (s. 110); DNA order (s. 487.051); and a forfeiture order on cell phones and cash (s. 490.1).

Summary: The victim was an exotic dancer. She was nineteen when she went to Toronto from Montreal to make extra money at Christmas. She was taken to offender’s apartment after working at a club and told she was “on charge” to him.

Mitigating factors: The operation was small and unsophisticated, the exploitative conduct was of a short duration, and there were no extraordinary negative impacts suffered by the victim.

Over several days, offender took the victim from the apartment to the club to dance. She was required to give offender all her money except for small amounts. The victim feared offender and testified that he used some violence when she did not make enough money and that she believed he had a gun. The victim managed to slip away from the club one night after several days and call police.

Aggravating factors: The victim was vulnerable, did not know the area, had no family support, English was not her first language, and she was quite young. The offender had a significant youth and criminal record (including drug and weapons offences, assaults and charges of fail to appear and fail to comply), had been charged with additional assault offences while out of custody awaiting trial and breaches, demonstrated violent coercion, and had not been deterred by the increasing severity and seriousness of court dispositions. There had been evidence of a weapon.

R v McPherson, 2013 ONSC 1635

36 months

Total sentence of 36 months imprisonment: global sentence of 36 months for two counts of prostitution-related offences (ss. 212(1)(d) and (h), convictions) and 6 months concurrent for one count uttering threats (s. 264.1(1)(a), plea). No credit was granted for pre-trial custody because the offender was on bail. **Ancillary orders:** 10-year firearms prohibition (s. 109) and a DNA order (s. s. 487.051).

Summary: The victim met the offender at a nightclub when she was seventeen. Their relationship was initially platonic. When she turned nineteen, the offender set her up as a dancer at a club. They moved in together and a sexual relationship commenced. She considered the offender to be her boyfriend. At his request, she turned over all of her earnings to him. The offender instructed her to perform sexual services for club patrons, imposing a \$1,000 per night quota that she was required to earn and rules to follow. This arrangement continued for one and a half years. The offender was thirty-six at the time of sentencing.

Mitigating factors: The offender was employed at the time of sentencing, complied with his bail conditions over a four-year period, and had strong family support.

Aggravating factors: The offender exercised significant control over the victim (e.g., work locations, schedule, and sexual acts), took most of the money the victim earned from prostitution, and acted as the victim's pimp over a lengthy period of time.

R v St Vil, [2008] OJ No 6023 (Ont SCJ)

37 months

Total sentence of 1 day: global sentence of 37 months for trafficking in persons (s. 279.01, plea) and living on the avails of prostitution (s. 212(1)(j), plea) minus 37 months credit for pre-trial custody. 36 months probation. **Ancillary orders:**

18 month prohibition on entering adult entertainment venues and a DNA order (s. 487.051).

Summary: The offender began a relationship with victim. They moved together from Montreal to Mississauga where victim began dancing in strip clubs. They discussed the greater earning potential of offering extra services to clients and she began to prostitute herself. Relationship was violent, the offender maintained control over the victim's motor vehicle during the time she was prostituting herself, and he took around \$20,000 of her earnings.

Mitigating factors: The offender entered a guilty plea and demonstrated a strong potential for rehabilitation (i.e., he took significant steps in pre-trial custody with educational and religious programs).

Aggravating factors: There was domestic violence in the relationship. The offence was serious and must have had a serious impact on the victim (no victim impact statement was adduced).

R v Miller (1997), 40 OTC 17 (Ont CJ GD)

52 months

Total sentence of 22 months imprisonment: 15 months for one count of assault with a weapon (s. 267, plea); 6 months consecutive for one counts of keeping common bawdy-house (s.210(1), plea) and 6 months concurrent for each of two more counts; 6 months concurrent for each of two counts of living on avails of prostitution (s. 212(1)(j), plea); and 1 month consecutive for one count of common assault (s. 265, plea). These figures had already been adjusted down to account for 30 months credit for pre-trial custody.

Ancillary orders: 24-month probation order (); lifetime weapons prohibition (s. 110).

Summary: The offender was pimp who operated a common bawdy-house for one year. He had a number of adult prostitutes working for him. He provided three residential apartments and collected 40% of the fees. The offender pushed or shoved one victim. The assaulted an exotic dancer who lived with him with a weapon, wrapped electrical cord around her neck, and threatened her.

Mitigating factors: There was no evidence that offender corrupted or coerced women to become prostitutes. The offender pleaded guilty.

Aggravating factors: The offender was mature, had a lengthy prior criminal record (including assault and uttering threats), was motivated by greed, and was on probation for assault during the offences. The offences lasted a long period and involved a number of prostitutes.

R v Bright, 2005 CarswellOnt 7126 (Ont CJ)

46 months

Total sentence of 46 months: 40 months for one count of living on avails of prostitution (s. 212(1)(j), conviction) and 6 months consecutive for one count of assault causing bodily harm (s. 267, conviction).

Summary: The complainant had been a prostitute with drug habit and began relationship with the offender, whom she met at narcotics anonymous meeting. At the offender's behest, the complainant earned money as prostitute, gave all her earnings to offender, and received cocaine from him. The offender's conduct turned coercive over time and he used violence to make complainant earn money.

Mitigating factors: The offender had a troubled upbringing, had run various businesses, and did not use drugs until he was twenty-one years old.

Aggravating factors: The offender had a substantial criminal record (thirty-five entries).

R v Tang (1997), 34 WCB (2d) 473 (Alta CA)

60 months

60 months for living on the avails of prostitution (s. 212(1)(j) or 212(2) — unspecified).

Summary: The accused ran a sophisticated brothel business — he solicited and provided seven or eight customers per night, up to six nights weekly for two girls aged thirteen and fourteen, over a six-week period. The victims were in foster care and a group home at the time he introduced them to prostitution. The offender provided drugs and alcohol, although not to motivate them to prostitute themselves, and extracted personal sexual favours.

Mitigating factors: The offender had no prior record, was primarily employed outside of prostitution at the time the offences occurred, and the offence lacked gratuitous violence, intimidation, or coercion.

Aggravating factors: The offender exercised a high degree of planning, had a large number of customers, earned large sums of money, and displayed no remorse. The victims were vulnerable in their foster/group homes.

R v Nakpangi, [2008] OJ No 6022 (Ont CJ)

60 months

Total sentence of 47 months: 36 months for trafficking in persons (s. 279.01); 24 months consecutive for living on the avails of prostitution of someone under eighteen (s. 212(2), plea); 6 months concurrent for the possession of a counterfeit mark (s. 376(2)(b)); minus 13 months credit for pre-trial custody. **Ancillary orders:** None mentioned.

Summary: The twenty-five-year-old offender became a pimp for the first victim when she was fifteen years old. She worked as a prostitute almost daily and turned over a total of \$360,000 over three years until she contacted police. Over course of relationship, the offender threatened the victim and her family, assaulted her, and told her there was an exit fee of \$100,000 if she wanted to leave.

Mitigating factors: The offender pleaded guilty.

Aggravating factors: The offender lived an extremely lavish lifestyle on money taken from his victims, exercised control over the first victim for a long period of time and used assaults, threats, threats against her family, and the imposition of exit fees, and showed little remorse or

The second victim met the offender when she was a ward of CAS at age fourteen and became a prostitute. The offender acted as pimp for her and she gave approximately \$65,000 in earnings to him.

chance of rehabilitation. The victims were both young.

R v Wallace, 2009 ABCA 300

60 months

Total sentence of 22 months: 60 months for procuring prostitution (s. 212(1)(a), conviction); 48 months concurrent for controlling a prostitute (s. 212(1)(h), conviction); 12 months consecutive for assault (s. 265, conviction); 12 months concurrent for possession of a weapon (conviction); minus 50 months credit for pre-trial custody.

Ancillary orders: None mentioned on appeal.

Summary: The twenty-seven-year-old offender met the eighteen-year-old victim on an Internet dating website. The offender took the victim from Alberta to Toronto and introduced her to prostitution, keeping all the proceeds for himself. They then returned to Alberta where the offence continued.

Mitigating factors: None.

Aggravating factors: The offence was a planned and deliberate course of conduct that involved trickery and manipulation equivalent to coercion. The victim was unsophisticated and involved in an intimate relationship with the offender.

R v Husain, [2011] OJ No 6487 (Ont SCJ) aff'd [2012] OJ No 4848 (Ont CA)

62 months

Total sentence of 24 months less a day: global sentence of 62 months for two counts of sexual assault (s. 271, plea), one count of attempting to procure prostitution (s. 212(1)(d), plea), one count of procuring the services of a person under 18 (s. 212(4), plea), and one count of failing to comply with a recognizance (s. 145(3), plea); minus 38 months credit for pre-trial custody. **Ancillary orders:** Prohibition order (s. 161), DNA order (s. 487.051), and sex offender registration.

Summary: The victims were thirteen-and fifteen-year-old aspiring models when they were introduced to offender as a professional photographer. The offender had unprotected sex periodically with each victim over approximate eighteen-month period, during all or part of which victims were underage. He gave them alcohol and money and on occasion gave at least one of them Oxycontin. He also asked them to have sex with his friends for more money.

Mitigating factors: The offender pleaded guilty, was depressed after being separated from his wife and children, and claimed to have a sexual addiction.

Aggravating factors: The victims were young. The offender was much older (fifty-two at time of sentencing), provided the victims with alcohol and drugs were involved, and had an unrelated U.S. criminal record (71 months).

R v Murray, [1995] AJ No 688 (Alta CA)**72 months**

Total sentence of 60 months: global sentence of 72 months for an unspecified number of offences that included one count of living on the avails of prostitution (s. 212(1)(j)), two counts of uttering threats (s. 264.1), and one count of assault causing bodily harm (s. 267); minus 12 months credit for pre-trial custody.

Summary: Offender got his very vulnerable young girlfriend to working for him as a prostitute, even though she had never worked as a prostitute previously. The offender beat another woman with whom he was involved to prevent her from talking about his business. The offender threatened the victims to keep them from assisting the women who acted as his prostitutes.

Mitigating factors: None.

Aggravating factors: The offender committed a number of different offences involving four different victims and used violence to control those whom he regarded as interfering with prostitution business. One victim had not been a prostitute before she began working for the appellant.

R v Thomas, [2003] OJ No 6137 (Ont SCJ)**78 months**

Total sentence of 54 months: global sentence of 78 months for procuring prostitution (s. 212(1)(d)), living on the avails of prostitution in aggravating circumstances (s. 212(2.1)), and sexual assault (s. 271); minus 24 months credit for pre-trial custody.

Ancillary orders: Lifetime firearms prohibition (s. 110); DNA order (s. 487.051).

Summary: The twenty-six-year-old offender persuaded a fourteen-year-old runaway girl (who posed as a nineteen-year-old) to engage in prostitution to pay for room and board. The offender hit the victim when she refused to have sex with him, whipped her, and forced her to have anal sex with him to make her more valuable to him as a prostitute. The offences took place over nine to ten months.

Mitigating factors: The offender pleaded guilty and believed that the victim was nineteen years old.

Aggravating factors: The offender had an extensive criminal record dating back to 1991, including narcotics trafficking, kidnapping, possession of weapon, and sexual assault charges. The offender used threats, intimidation, and violence against the victim.

R v Bennett (2004), 184 OAC 386 (Ont CA)**78 months**

Total sentence of 54 months: global sentence of 36 months for one count each of procuring prostitution (s. 212(1)(d)), living on the avails of prostitution in aggravating circumstances (s. 212(2.1)), controlling movement for the purpose of prostitution (s. 212(1)(h)), and common assault (s. 265); 12 months consecutive for another count of controlling movement for the purpose of prostitution; 12 months concurrent for one count of living on avails of prostitution (s. 212(1)(j)); six months consecutive for one count of attempting to procure prostitution (s. 212(1)(d)). These figures had already

been adjusted down from a total sentence of 78 months to 54 months.

Summary: The offences involved three female complainants under the age of eighteen. The offender controlled a complainant to compel her to engage in prostitution and lived on avails of prostitution and procuring. The convictions were upheld but sentence reduced on appeal from a global sentence of 96 months (before credit for pre-trial custody credit) to a sentence of 78 months (before credit for pre-trial custody).

Mitigating factors: The conduct with the first victim was short-lived and violence left no physical injury. The second victim was a prostitute before she met offender and there was no indication of violence in their relationship. The offender's criminal record was dated and unrelated and he showed prospects for rehabilitation (an intelligent man with some community support).

Aggravating factors: The victims were young and vulnerable. The offences were serious.

***R v Patterson*, [2003] OJ No 1353 (Ont CA), add [2003] OJ No 1721 84 months**

Total sentence of 83 months: 84 months for ten charges including kidnapping (s. 279(1), conviction), unlawful confinement (s. 279(2), conviction), procuring to have illicit sexual intercourse (s. 212(1)(a), conviction), living on the avails of prostitution (s. 212(1)(j), conviction), uttering threats (s. 264.1, conviction), and attempt to obstruct justice (s. 139, conviction); minus 20 weeks credit for pre-trial custody.

Summary: The nineteen-year-old victim was kidnapped, held her against her will for over one week, and forced her into street prostitution. The offender subjected complainant to extreme threats and humiliation. The offender was a lawyer and member of the Ontario bar.

Mitigating factors: The offender had no criminal record.

Aggravating factors: The victim was young. The offender acted with two co-accused and subjected the victim to a week of systematic abuse and humiliation.

***R v Nelson*, [2004] OJ No 5532 (Ont SCJ) 96 months**

Total sentence of 24 months: global sentence of 48 months for one count each of exercising influence for the purpose of prostitution (s. 212(1)(h), conviction) and living on the avails of prostitution (s. 212(1)(j), conviction); 48 months consecutive for sexual assault (s. 271, conviction); global sentence of 12 months concurrent for two counts of assault (s. 265, conviction); global sentence of 9 months concurrent for three counts of breaching a recognizance (s. 811, conviction); minus 72 months credit for pre-trial custody. **Ancillary orders:** 10-year supervision order (s. 753.1(3)); lifetime firearms prohibition (s. 110); DNA order (s. 487.051).

Summary: During an eight-day period, the offender procured the victim to become his prostitute. The victim was a drug addict who purchased drugs from him. The offender physically and sexually assaulted her and took her earnings.

Mitigating factors: None.

Aggravating factors: The offender had a criminal record involving sexual assault and twenty-five years of drug abuse.

R v MS, [2006] OJ No 1347 (Ont SCJ)

96 months

Total sentence of 57 months: 48 months for one count of unlawful confinement (s. 279(2)); 48 months consecutive for two counts of living on the avails of prostitution of someone under eighteen (s. 212(2)); minus 39 months credit for pre-trial custody in solitary confinement.

Summary: While on probation, the twenty-two-year-old offender confined a teenaged girl and forced her to work as a prostitute. The offender also had two other teenaged girls work as prostitutes for him for about three to four weeks each, apparently from the detention centre.

Mitigating factors: None.

Aggravating factors: The offender had been arrested on similar charges in three years earlier, had a recent and relevant criminal record, had been deported and had returned to Canada illegally, was on probation when the offences were committed, and was manipulating and taking advantage of young girls while in the detention centre.

R v Mfizi (2008), 78 WCB (2d) 109 (Ont SCJ), aff'd 2010 ONCA 253

96 months

Total sentence of 72 months imprisonment: 96 months for one count of living on the avails of prostitution of someone under eighteen (s. 212(2), conviction); 60 months concurrent for procuring prostitution (s. 212(1)(a), conviction); 48 months concurrent for exercising control for the purposes of prostitution (s. 212(1)(h), conviction); 60 months concurrent for five counts of assault (s. 265); minus 24 months credit for pre-trial custody. **Ancillary orders:** Lifetime firearms prohibition (s. 110) and a DNA order (s. s. 487.051).

Summary: The victim met the offender at a nightclub when she was seventeen. Their relationship was initially platonic. When she turned nineteen, the offender set her up as a dancer at a club. They moved in together and a sexual relationship commenced. She considered the offender to be her boyfriend. At his request, she turned over all of her

Mitigating factors: The offender had a difficult childhood with a single mother who worked three jobs, had a ten year old son, and did not exercise control over victim for an extended period of time.

Aggravating factors: The victim was young (seventeen years old) and the offence had a severe impact on her and

earnings to him. The offender instructed her to perform sexual services for club patrons, imposing a \$1,000 per night quota that she was required to earn and rules to follow. This arrangement continued for one and a half years. The offender was thirty-six at the time of sentencing.

her family. The offender exercised control through violence and humiliation, used drugs as an inducement, lacked remorse or responsibility, and had a criminal record (including robbery, attempted robbery, assault, and failure to comply with a recognizance).

R v Grouse (1994), 71 OAC 79 (Ont CA)

108 months

Total sentence of 108 months: 60 months for one count of assault causing bodily harm (s. 267, conviction) and global sentence of 48 months consecutive for one count each of procuring prostitution (s. 212(1)(a), conviction), exercising control for the purpose of prostitution (s. 212(1)(h), conviction), and living on the avails of prostitution (s. 212(1)(j), conviction).

Summary: The offender kept the victim in a “state of near slavery and brutalized her mercilessly for three years.” The assaults on the victim were prolonged and brutal, including attempted drowning, cigarette and curling iron burns, and severe beatings, even when she was pregnant. The victim and another woman who worked as a prostitute for the offender were known on the streets as “the burn sisters.”

Mitigating factors: None mentioned on appeal.

Aggravating factors: The offender had a prior conviction for living on the avails of prostitution, exercised total control over the victim for approximately three years, and left her destitute and dependent on him.

R v Domotar, Domotar, and Kolompar, [2012] OJ No 3630 (Ont SCJ)

108 / 60 months

- Domotar Sr. received a total sentence of 54 months: 108 months for human trafficking (s. 279.01, plea); an unspecified concurrent sentence for participating in a criminal organization (s. 467.11, plea); 6 months concurrent for counselling misrepresentations that induced error in the administration of the IRPA (plea); minus 24 months credit for pleading guilty and 30 months credit for pre-trial custody. **Ancillary orders:** 10-year firearms prohibitions (s. 109); DNA orders (s. 487.051); and a delayed parole recommendation (s. 743.6).
- Domotar Jr. received a total sentence of 16 months: 60 months for human trafficking (plea); an unspecified concurrent sentence for participating in a criminal organization (plea); 3 months concurrent for misrepresentation (plea); minus 24 months credit for pleading guilty and 20 months credit for pre-trial custody. **Ancillary orders:** 10-year firearms prohibitions and DNA orders.

- Kolompar received a sentence of time served for misrepresentation (plea).

Summary: The accused (father, mother, and son) were major players in large family organization that carried out a number of criminal endeavours both in Hungary and then in Canada, including human trafficking, welfare frauds, thefts from mail, and fraudulent dealings with cheques stolen by that method. The organization began trafficking victims from Hungary into Canada after visa requirements were lifted for Hungarian visitors. In total, nineteen victims were brought into Canada by the organization. Once in Canada, the victims were required to live in the offenders' basements and work for little or no pay in their businesses. The victims spoke no English, were taken to make false refugee claims, were taken to claim social services benefits that the offenders collected, and were taken to open bank accounts that only the offenders could access. The victims' families in Hungary were threatened and intimidated by the original recruiters to withdraw complaints when charges began to be laid in Canada.

Mitigating factors: All three accused pleaded guilty. The father waived preliminary hearing. Domotar Jr. was in his late teens when offences were committed, played lesser role and was groomed by father, and has no criminal record.

Aggravating factors: Domotar Sr. and Kolompar each have minor criminal records in Canada. The offences were a premeditated, deliberate, and calculated criminal scheme years in the making and which lasted over a long period of time. The offences continued to be perpetrated even after Domotar Sr. was arrested. The welfare fraud offences were a breach of society's trust. Other members of the criminal organization threatened victims and their families in Hungary. The scheme involved more greed and nastiness than was required to accomplish its purpose.

R v SM, 2010 BCCA 546, aff'ing 2010 BCSC 178

144 months

Total sentence of 95 months: 144 months for one count of kidnapping (s. 279, conviction); 84 months concurrent for one count of unlawful confinement (s. 279(2), conviction); 60 months concurrent for extortion (s. 346, conviction); 48 months concurrent for assault with a weapon (s. 266, conviction); 48 months concurrent for sexual assault (s. 271, conviction); 36 months concurrent for assault causing bodily harm (s. 266, conviction); 24 months concurrent for threatening (s. 264.1, conviction); minus 48 months credit for pre-trial custody.

Summary: The victim was a 56-year-old drug addict and part-time drug trafficker. In revenge for the victim's use of some of the drugs and money entrusted to him, the offender and others kidnapped him and held him for five days during which time he was denied food and tortured in numerous

Mitigating factors: The offender had an unfortunate upbringing, showed a willingness to take programs for substance dependency and tendency towards violence, had family support, and had been gainfully employed for most of adult life.

horrific ways, including being lifted up by his testicles.

Aggravating factors: The offender had a fairly significant criminal record, used gratuitous violence, had an exceptionally criminal motive, and showed a high moderate risk for antisocial behaviour.

R v Downey and Thompson, 2010 ONSC 1531

168/168 months

- Downey received a total sentence of 104 months: 168 months for one count of aggravated sexual assault (s. 273, conviction); 120 months concurrent for one count of kidnapping (s. 279, conviction); minus 64 months credit for pre-trial custody. **Ancillary orders:** Lifetime firearms prohibition (s. 110) and a DNA order (s. 487.051).
- Thompson received a total sentence of 103 months: 168 months for one count of aggravated sexual assault (conviction); 120 months concurrent for one count of kidnapping (conviction); 240 months concurrent for two counts of sexual assault (s. 271, conviction); minus 65 months credit for pre-trial custody. **Ancillary orders:** Lifetime firearms prohibition and a DNA order.

Both offenders were also convicted of several offences that were subject to the *Kienapple* principle: unlawful confinement (s. 279), common assault (s. 265), and additional counts of sexual assault. Both offenders were acquitted of trafficking in person (s. 279.01), theft of identity documents to facilitate an offence (s. 402.2), and additional accounts of sexual assault.

Summary: The two twenty-one- and twenty-two-year-old offenders kidnapped and confined nineteen year old victim for twenty-four hours. The victim was repeatedly and violently sexually assaulted, bound, gagged, burned on various body parts, and left tied-up in a closet overnight.

Mitigating factors: The offenders were relatively young and expressed some remorse.

Aggravating factors: The offenders had criminal records. The offence took deliberation and planning and lasted over a twenty-four-hour period.

R v Davis and Walker (1999), 117 OAC (Ont CA)

192 months

Each offender received a total sentence of 192 months: 180 months for kidnapping (s. 279(1)), 156 months concurrent for sexual assault with a weapon (s. 272), 144 months concurrent for robbery (s. 344), and 12 months consecutive for using a firearm in the commission of an indictable offence (s. 85(1)). The Court of Appeal indicated that these sentences were imposed after considering pre-trial custody; the sentences would otherwise have been in the range of 216 to 228 months.

Ancillary orders: The Court of Appeal reversed the trial judge's delayed parole order (s. 743.6).

Summary: The two nineteen-year-old co-accused and a third offender approached the male and female victims in their car. The offenders forced them to drive to a secluded location at gunpoint where the female was sexually assaulted multiple times. The victims were subjected to “extreme violence and dehumanizing acts of unspeakable proportions,” “urban terrorism,” and “stark horror.”

Mitigating factors: One co-accused pleaded guilty and co-operated with police.

Aggravating factors: Walker had substantial youth court record, including for sexual assault with a weapon. Davis was on bail for serious firearms offence. Both offenders showed poor prospects for rehabilitation. Both victims were psychologically scarred.