



# 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?

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Trafficking in persons (TIP), also referred to as human trafficking, is a serious crime. TIP involves an act committed for the purpose of exploiting someone’s labour or services. Victims<sup>1</sup> provide their labour or services under circumstances that would cause a reasonable person in the victim’s shoes to believe that their physical or psychological safety— or that of someone known to them — would be threatened if they refuse to provide that labour or service. TIP violates the autonomy of its victims, often through the abuse of a position of trust, power or authority, and may include acts of physical and/or sexual violence or threats of violence, manipulation and/or psychological control. These acts or threats of violence will frequently, in and of themselves, constitute separate criminal offences.

## 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. This Handbook is designed to assist front-line personnel and improve the ability of the criminal justice system to bring traffickers to justice while fully respecting the rights and needs of victims. It is also intended to 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.

The first edition of the Handbook was released in 2015 in support of a commitment by Federal, Provincial and Territorial (FPT) Ministers responsible for Justice and Public Safety to work together more closely to address human trafficking. Five years later, in 2020, FPT Ministers asked FPT officials with expertise in criminal justice matters to examine ways to strengthen the criminal justice system’s response to human trafficking, including by updating the Handbook. This work was 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 the updated version of the Handbook at their 2023 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, an overview of

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<sup>1</sup> In this Handbook, the term “victim” is used to refer to the person subjected to human trafficking, consistent with the *Criminal Code*, which uses the terms “victim” and “complainant”. Many victims of crime, however, prefer other terms such as “survivor”. Criminal justice professionals should ask victims about their preferred term and endeavour to use that term in all communications with that person.

federal and provincial strategies to combat trafficking, as well as information on the international community's response to this crime in recent years.

**Chapter 2** provides an overview of Canada's human trafficking offences and other related offences used to address this crime. It also breaks down TIP-specific offences into their constituent elements.

**Chapter 3** is directed at law enforcement. It includes information designed to assist in interviewing 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 exercise of control, direction or influence over 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 could reasonably be expected to cause a person in the victim's circumstances to believe that their physical or psychological safety — or that of someone known to them — would be threatened if they refuse to provide that service or labour. Victims suffer physical, sexual and/or psychological 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)*<sup>2</sup> 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 that contains an

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<sup>2</sup> GA Res 55/25, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, (2000) Doc A/55/383.



agreed upon definition of TIP. 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* defines TIP as follows:

- (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 TIP 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**.

The *Criminal Code*'s<sup>3</sup> main trafficking offences (section 279.01 and 279.011) are consistent with the definition of “trafficking in persons” in article 3, but easier to prove because they do not require proof that the act element (e.g., recruiting, transporting or harbouring etc.) was effected through specific means (e.g., force, fraud or coercion etc.). To establish guilt, prosecutors must prove that the accused committed the act element (e.g., recruiting, transporting or harbouring), with the intent of exploiting the victim or facilitating the victim's exploitation by someone else. See Chapter 2 for more information on these offences and their elements.

## **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.

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<sup>3</sup> RSC 1985, c C-46.

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

- a) Human smuggling is, by definition, a transnational crime; whereas, TIP can occur transnationally or entirely within a country's borders;
- 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 illicit 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 coerced into providing 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.

Migrant smuggling is a transnational crime that is typically prosecuted under section 117 of the *Immigration and Refugee Protection Act*.<sup>4</sup> Despite the differences between smuggling and trafficking, it is crucial to properly identify these crimes in practice because human smugglers may well intermingle victims and migrants, and smuggled migrants are at risk of becoming trafficking victims.

## 1.5 What We Know about Human Trafficking Globally

TIP is a profitable and pervasive violation of human rights, affecting people of all genders. TIP 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. While figures vary, an estimate from 2021 indicated that the number of trafficking victims globally at any given time is around 50 million people.<sup>5</sup> In 2014, profits from TIP were estimated at \$150 billion per year.<sup>6</sup>

Prior to COVID-19, countries were detecting more victims and convicting more traffickers. While the number of globally detected victims decreased in 2020 by 11%

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<sup>4</sup> SC 2001, c 27.

<sup>5</sup> International Labour Organization, “Global Estimates of Modern Slavery: Forced Labour and Forced Marriage” (2022) at 1, online (pdf): *International Labour Organization* <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_854733.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_854733.pdf)>.

<sup>6</sup> International Labour Organization, “Profits and Poverty: The Economics of Forced Labour” (2014) at 13. online (pdf): *International Labour Organization* <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_243391.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf)>.

from 2019,<sup>7</sup> the COVID-19 pandemic may have increased the incidence of TIP.<sup>8</sup> Globally, victims may be trafficked for the purpose of sexual exploitation, forced labour or for other purposes, such as organ removal, forced criminality, exploitative begging or child soldiering. Prior to the COVID-19 pandemic, trafficking for sexual exploitation was the most detected form of TIP with 50% of detected trafficking victims being trafficked for the purpose of sexual exploitation, followed by 38% of detected victims trafficked for forced labour.<sup>9</sup> In 2018, women made up the largest percentage of detected victims at 46% followed by girls at 19%, men at 20% and boys at 15%.<sup>10</sup> Globally, roughly 77% of victims trafficked for the purpose of sexual exploitation are women, while roughly 67% of victims trafficked for forced labour are men.<sup>11</sup> Data from the first year of the COVID-19 pandemic recorded a 24% decrease in detection of trafficking for the purpose of sexual exploitation and a 21% decrease in detection of cross-border trafficking. Trafficking for sexual exploitation and trafficking for forced labour were detected at almost equal rates, with 38.8% of detected victims trafficked for forced labour and 38.7% of detected trafficking victims trafficked for the purpose of sexual exploitation.<sup>12</sup> In 2020, women made up the largest percentage of detected victims at 42% followed by men at 23%, girls at 18% and boys at 17%.<sup>13</sup>

International research shows that 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 TIP 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

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<sup>7</sup> UNODC, *Global Report on Trafficking in Persons 2022*, 7th ed (New York: UN, 2022) at 17, online (pdf): <[https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP\\_2022\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf)>.

<sup>8</sup> UNODC, *Global Report on Trafficking in Persons 2020*, 6th ed (New York: UN, 2020) at 9, online (pdf): <[https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP\\_2020\\_15jan\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf)>.

<sup>9</sup> UNODC, *Global Report on Trafficking in Persons 2020*, *supra* note 8 at 11.

<sup>10</sup> UNODC, *Global Report on Trafficking in Persons 2020*, *supra* note 8 at page 31.

<sup>11</sup> UNODC, *Global Report on Trafficking in Persons 2020*, *supra* note 8 at page 33.

<sup>12</sup> UNODC, *Global Report on Trafficking in Persons 2022*, *supra* note 7 at 23.

<sup>13</sup> UNODC, *Global Report on Trafficking in Persons 2022*, *supra* note 7 at 25.

may be overwhelming. The results of the experience can be everlasting, even with treatment.<sup>14</sup>

International research also shows that 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.<sup>15</sup>

This pandemic caused an unprecedented decrease in economic activity and working time, which may significantly increase the number of those who live in extreme poverty. Poverty creates a "higher risk of exploitation leading to human trafficking."<sup>16</sup>

For a more detailed analysis of global trafficking trends, victim profiles and trafficker profiles, please see the United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons, 2022* or their most recent *Global Report on Trafficking in Persons*.

## 1.6 What We Know about Human Trafficking in Canada

The most recent information available on human trafficking in Canada is contained in Statistics Canada's 2022 *Trafficking in Persons* report, which examines police-reported and court data from 2010 to 2022. This report found that: between 2012 and 2021, there were year-over-year increases in the number of police-reported incidents of human trafficking, except for a slight decrease in 2018; and, the majority of detected human trafficking cases in Canada occur entirely within Canada and involve sexual

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<sup>14</sup> UNODC, *Toolkit to Combat Trafficking in Persons*, 2<sup>nd</sup> ed (New York: UN, 2008) at 155 to 156, online (pdf): <[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)> .

<sup>15</sup> For more detailed information on the health effects on persons that have been trafficked, please see: International Organization for Migration, *Caring for Trafficked Persons, Guidance for Health Providers*, (Geneva: IOM, 2010), online (pdf): <[https://publications.iom.int/system/files/pdf/ct\\_handbook.pdf](https://publications.iom.int/system/files/pdf/ct_handbook.pdf)>; World Health Organization, *Human trafficking*, WHO/RHR/12.42 (2012), online (pdf): <[https://apps.who.int/iris/bitstream/handle/10665/77394/WHO\\_RHR\\_12.42\\_eng.pdf;sequence=1](https://apps.who.int/iris/bitstream/handle/10665/77394/WHO_RHR_12.42_eng.pdf;sequence=1)>; Cathy Zimmerman et al, *The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study* (London: London School of Hygiene & Tropical Medicine, 2003), online (pdf): <<https://www.icmec.org/wp-content/uploads/2015/10/Health-Risks-and-Consequences-of-Traffic-in-Europe-Zimmerman-2003.pdf>>; Public Safety Canada, *The Way Forward to End Human Trafficking, National Consultation on Discussion Paper*, Catalogue No PS4-243/2018E-PDF (Ottawa: Public Safety Canada, 2018), online (pdf): <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/wy-frwr-nd-hmn-trffckng-ppr/wy-frwr-nd-hmn-trffckng-ppr-en.pdf>>; UNODC, *Global Report on Trafficking in Persons 2020*, *supra* note 8; UNODC, *Global Report on Trafficking in Persons 2022*, *supra* note 7.

<sup>16</sup> International Labour Organization and United Nations Children's Fund, *COVID-19 and Child Labour: A time of crisis, a time to act*, (New York, 2020) at 5, 9, online (pdf): <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_747421.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_747421.pdf)>.

exploitation.<sup>17</sup> Recent data also indicate that: over the last decade, Ontario and Nova Scotia have been overrepresented in the number of police-reported incidents of human trafficking in Canada; victims may not originate from the location in which incidents are detected; some victims may have been moved from one jurisdiction and exploited in another; and, human trafficking incidents are most often reported by police in urban centres.<sup>18</sup>

Similar to global trends, trafficking for sexual exploitation is the most detected form of trafficking in Canada, followed by trafficking for forced labour. Trafficking for organ removal, where the trafficked person's organs are removed for transplantation, does not appear to be prevalent in Canada.

Generally, traffickers commit a range of other criminal offences while extracting labour or services from their victims. These include assault, sexual assault, uttering threats, extortion, kidnapping, forcible confinement, materially benefitting from others' sexual services, procuring others to offer sexual services and/or advertising others' sexual services.<sup>19</sup>

As in the rest of the world, the COVID-19 pandemic may have a considerable impact on human trafficking in Canada. The socio-economic effects of the virus, such as greater economic need, unstable living conditions, and increased prevalence of substance use/abuse, make vulnerable populations more susceptible to trafficking, while social isolation measures have reduced their access to needed supports.

### 1.6.1 Victims

Anyone can become a victim of human trafficking: Canadians, permanent residents and foreign nationals, including individuals from all socio-economic backgrounds. However, Indigenous and marginalized populations are at greatest risk of becoming trafficked, in particular where the factors that create vulnerability intersect. The following groups are disproportionately represented among those who have been trafficked in Canada: women and girls, particularly Indigenous women and girls; at-risk youth, including runaway and homeless youth; persons with disabilities; refugees and migrants; and 2SLGBTQI+ persons. Children, adolescent girls, and women tend to be most at risk of being trafficked for sexual exploitation.<sup>20</sup>

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<sup>17</sup> Statistics Canada, *Trafficking in persons in Canada, 2022*, by Loanna Heidinger, Catalogue No 85-005-X (Ottawa: Statistics Canada, December 4, 2023), online: < <https://www150.statcan.gc.ca/n1/pub/85-005-x/2023001/article/00002-eng.htm>>.

<sup>18</sup> Statistics Canada, *Trafficking in persons in Canada, 2022*, *supra* note 17.

<sup>19</sup> Statistics Canada, *Trafficking in persons in Canada, 2022*, *supra* note 17; Statistics Canada, *Trafficking in persons in Canada, 2021*, by Shana Conroy, Catalogue No 85-005-X (Ottawa: Statistics Canada, December 6, 2022), online: <<https://www150.statcan.gc.ca/n1/pub/85-005-x/2022001/article/00001-eng.htm>>.

<sup>20</sup> Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, Catalogue No PS4-254/2019E-PDF (Ottawa: Public Safety Canada, 2019) at 16 online (pdf): <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2019-ntnl-strtggy-hmnn-trffc/2019-ntnl-strtggy-hmnn-trffc-en.pdf>>.

Recent data indicate that nearly all (94%) victims of police-reported human trafficking were women and girls. Just over four in ten (43%) of victims were aged 18 to 24, nearly one in four (24%) were under the age of 18 and nearly one in five (22%) were aged 25 to 34. Seven in ten (69%) of the victims were women and girls aged 24 and younger. The vast majority (91%) of victims of human trafficking knew the person accused of trafficking them. Most commonly, victims were trafficked by a current or former intimate partner (34%) or casual acquaintance (22%).<sup>21</sup> However, these statistics likely underreport trafficking cases involving male and gender diverse victims, and do not reflect their experiences, including because most human trafficking cases that have proceeded through Canada's criminal justice involve sexual exploitation. Relevant international data indicate that, while sex trafficking cases involve predominantly female victims, trafficking cases for other types of exploitation involve a higher proportion of male victims.<sup>22</sup>

Victims may be reluctant to come forward due to fear for their safety or for the safety of someone known to them, shame or because they lack confidence in authorities.<sup>23</sup> Victims can suffer substantial trauma as they are often subjected to sexual, physical, financial, emotional and psychological abuse. The conditions they are required to live and work in are often horrific. It can take a lifetime to recover from the impacts of being trafficked.<sup>24</sup>

## 1.6.2 Indigenous Women and Girls

Canada's history and ongoing treatment of Indigenous Peoples generally, and in particular of Indigenous women, through harmful and systemically racist laws, policies and practices, increases Indigenous peoples' risk of becoming a victim of human trafficking. Recent evidence indicates that Indigenous females are disproportionately represented among victims of trafficking.<sup>25</sup> Released in 2019, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* ("the Report") highlighted the many factors that make Indigenous women and girls more vulnerable to sexual exploitation and trafficking.<sup>26</sup> Intersecting factors that contribute to the disproportionate representation of Indigenous women and girls among those who have been trafficked for the purpose of sexual exploitation

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<sup>21</sup> Statistics Canada, *Trafficking in persons in Canada, 2022*, *supra* note 17.

<sup>22</sup> UNDCO, *Global Report on Trafficking in Persons 2022*, *supra* note 7

[https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP\\_2022\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf)

<sup>23</sup> Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, *supra* note 20 at 16.

<sup>24</sup> Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, *supra* note 20 at 14.

<sup>25</sup> Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, *supra* note 20 at 7.

Recent data from Nova Scotia also indicate a significant overrepresentation of Indigenous women and girls (38%), as well as Black/African Nova Scotian women and girls (14%), among trafficking victims in Nova Scotia. See Lila Pavey, Jenna Hopson, & Charlene Gagnon, *Hearing Them: Exploring the vulnerability and risk factors for commercial sexual exploitation of children and youth in Nova Scotia*, (2022) at 4, online (pdf):

<<https://static1.squarespace.com/static/615b42b67a44671f61b7f0c8/t/6346e16f9ce1ec7093794c09/1665589615819/Hearing+them+-+Risks+Prevention.pdf>>.

<sup>26</sup> For more information about the Final Report and its Calls for Justice, please see: <https://www.mmiwg-ffada.ca/>.

include: systemic racism, violence against Indigenous women and girls, inter-generational trauma from colonization (e.g., Indian Residential Schools), lack of access to social and economic resources and colonial assimilation policies and marginalization of Indigenous women through the *Indian Act*.<sup>27</sup> The Report's Calls for Justice reinforce the need to address the disproportionately high rates of violence against Indigenous women and girls, including trafficking for sexual exploitation and other forms of sexual exploitation. The Report also specifically notes the need to prevent the recruitment of children in care (child welfare agencies, group or care homes or foster situations) into the sex industry.<sup>28</sup>

### 1.6.3 Offenders

In Canada, men and boys have represented the majority of individuals accused in human trafficking incidents between 2011 and 2022 (82%), with men aged 18 to 34 accounting for almost two-thirds (64%) of all persons accused of human trafficking.<sup>29</sup> Between 2011 and 2022, among the youth aged 12 to 17 accused of human trafficking, a larger proportion were girls (55%) than boys (44%).<sup>30</sup>

Traffickers use a variety of methods to lure and groom their victims, including false promises, the pretence of a romantic relationship or positioning themselves as a person of trust in the victim's life to gain control.<sup>31</sup> Once a trafficker has established control, they use a variety of tactics to maintain control, including sexual and physical assault, manipulation, psychological abuse, confinement, and threats of violence.<sup>32</sup>

### 1.6.4 Addressing Offending Committed by Trafficking Victims

The Inter-Agency Coordination Group against Trafficking in Persons articulates the "principle of non-punishment" as follows:

Trafficked persons should not be subject to arrest, charge, detention, prosecution, or penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked.<sup>33</sup>

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<sup>27</sup> 1985, c I-5.

<sup>28</sup> See *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1b (Vancouver: Privy Counsel Office, 2019) at 196 online (pdf): <[https://publications.gc.ca/collections/collection\\_2019/bcp-pco/CP32-163-2-2-2019-eng.pdf](https://publications.gc.ca/collections/collection_2019/bcp-pco/CP32-163-2-2-2019-eng.pdf)>. According to Census 2016, while only 7% of all children under 14 are Indigenous, 48% of children in foster care under 14 are Indigenous (Statistics Canada, *Insights on Canadian Society: Living arrangements of Aboriginal children aged 14 and under*, by Annie Turner, Catalogue No: 75-006-X (Ottawa: Statistics Canada, April 13, 2016), online: <<https://www150.statcan.gc.ca/n1/pub/75-006-x/2016001/article/14547-eng.htm>>).

<sup>29</sup> Statistics Canada, *Trafficking in persons in Canada, 2022*, *supra* note 17.

<sup>30</sup> Statistics Canada, *Trafficking in persons in Canada, 2022*, *supra* note 17.

<sup>31</sup> Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, *supra* note 20 at 14.

<sup>32</sup> Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, *supra* note 20 at 14.

<sup>33</sup> Inter-Agency Coordination Group against Trafficking in Persons, *Issue Brief: Non-Punishment of Victims of Trafficking*, Issue 08/2020 (2020) at 1, online (pdf): <[https://www.unodc.org/documents/human-trafficking/ICAT/19-10800\\_ICAT\\_Issue\\_Brief\\_8\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/ICAT/19-10800_ICAT_Issue_Brief_8_Ebook.pdf)>.

This principle is an important consideration when responding to offences committed by persons who were themselves victims of trafficking. Responding to this type of offending can be complex as the circumstances and type of offending can vary significantly from case to case. Trafficking victims may commit a range of offences in the context of being trafficked, including immigration offences, drug possession, and other trafficking-related conduct, including trafficking others. A number of factors are relevant to whether a charge should be laid or a prosecution should be pursued, including:

- The importance of fostering a relationship of trust between the victim who has offended and authorities;
- The importance of identifying and holding to account that person's trafficker;
- The importance of ensuring that the victim who has offended has opportunities to heal;
- Whether the victim who has offended was compelled to commit the offence, including through manipulation, psychological pressure or influence;
- The severity of the offending at issue, e.g., immigration or drug possession offences vs. offences that cause others serious harm;
- Whether public safety, in particular the safety of other vulnerable persons, would be jeopardized in the absence of a criminal justice response.

These issues are addressed in more detail in Chapters 3 and 4.

## **1.7 Federal/Provincial Strategies to Combat Human Trafficking**

In 2019, the Government of Canada launched a five-year National Strategy to Combat Human Trafficking to strengthen Canada's efforts to prevent human trafficking, protect victims, prosecute offenders, build partnerships to assist in ensuring a comprehensive response and empower victims and survivors by enhancing supports and services.<sup>34</sup>

Some provinces have also implemented their own action plans and strategies to combat human trafficking.

British Columbia:

- British Columbia's Action Plan to Combat Human Trafficking concluded at the end of 2016. The Action Plan laid a strong foundation for ongoing actions to combat human trafficking in British Columbia, including those that raise awareness, provide training and education, foster community-led responses, and improve service coordination to trafficked persons:  
<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/victims-of-crime/human-trafficking/about-us/action-plan.pdf>.

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<sup>34</sup> For more information, please see: Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, *supra* note 20.



- The Province provides over \$40 million in annual funding to support over 400 victim service and violence against women programs across British Columbia. This includes programs that provide assistance to trafficked persons.
- The Province also funds VictimLinkBC, which is a toll-free, multilingual, confidential service available across British Columbia and Yukon 24-hours a day, seven days a week and can be accessed by phone, text or email. It provides information and referral services to all victims of crime and immediate crisis support to victims of family and sexual violence, including victims of human trafficking exploited for labour or sexual services:  
<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/victimlinkbc>.
- Through one-time grants, the Province supports non-profit organizations across British Columbia in the development and delivery of community safety and crime prevention projects, including training, prevention, and awareness initiatives as well as response services for victims, including victims of human trafficking. Grant funding is provided through programs such as the Civil Forfeiture Crime Prevention and Remediation Grant Program:  
<https://www2.gov.bc.ca/gov/content/safety/crime-prevention/community-crime-prevention/grants>.

#### Alberta:

- Alberta's Action Plan to Combat Human Trafficking was established in 2019. The nine-point Action Plan aims to protect at-risk individuals from being trafficked in Alberta, empower survivors of trafficking, and provide new remedies to deal with traffickers: <https://www.alberta.ca/human-trafficking-action-plan.aspx>.
- The *Protecting Survivors of Human Trafficking Act* was proclaimed in May 2020: <https://www.alberta.ca/protecting-survivors-of-human-trafficking.aspx>. This legislation proclaimed an awareness day in solidarity with other provinces, enforces standard definitions, allows victims to sue their traffickers via civil tort, offers additional remedies including a specialized human trafficking protection order, and allows law enforcement warrant permitting entry without notice to the respondent.
- Alberta adopted February 22<sup>nd</sup> as the National Human Trafficking Awareness Day within provincial legislation to continue to bring awareness on the issue.
- Alberta's Human Trafficking Task Force provided recommendations on how to best implement Alberta's action plan to combat human trafficking: <https://www.alberta.ca/human-trafficking-task-force.aspx>.
- In 2022, Alberta Treasury Board approved \$22.8 million over 4 years to address and implement the Alberta Human Trafficking Task Force's recommendations, including:
  - Establishing and implementing an Office to Combat Trafficking in Persons in partnership with community;
  - Creating a Centre of Excellence for research and data collection;
  - Supporting new grant programs for coordinated survivor supports and Indigenous-led services; and

- Providing sustainable funding for civilian positions on the Alberta Law Enforcement Response Teams to support victims and survivors through the investigation process.

#### Ontario:

- Ontario's anti-human trafficking strategy 2020-2025 will raise awareness of the issue through training and public awareness campaigns, empowering frontline service providers to prevent human trafficking before it occurs and take action early, supporting survivors through specialized services, and give law enforcement and prosecutors the tools and resources they need to hold offenders accountable: <https://www.ontario.ca/page/ontarios-anti-human-trafficking-strategy-2020-2025>.
- As part of this strategy, Ontario has formed a Human Trafficking Prosecution Team, consisting of a Provincial Coordinator and 14 specialized Crown prosecutors who are dedicated to human trafficking prosecutions – both sexual exploitation and labour trafficking – as well as pre-charge consultation with police across the province, education and training.
- The Ontario Police College provides a human trafficking session in the Basic Constable Training. The Ontario Police College also provides a specialized Human Trafficking Investigation course developed with police stakeholders, experts and individuals with lived experience. Criminal Intelligence Service of Ontario offers an Advanced Human Trafficking Investigators Course.

#### Quebec:

- Quebec's Government Strategy to Prevent and Counteract Sexual Violence (2016-2021) is comprised of three interdependent, complementary themes: 1) Prevent; 2) Intervene with respect to the psychosocial, medical, legal, police and correctional dimensions, and 3) Develop knowledge and share expertise to act more effectively: <http://www.scf.gouv.qc.ca/fileadmin/Documents/Violences/Brochure-ViolencesSexuelles-EN.pdf>.
- Government Action Plan 2021-2026 in response to the recommendations of the Select Committee on the Sexual Exploitation of Children.
- Integrated Government Strategy 2022-2027 (against sexual violence, intimate partner violence and to rebuild trust).

#### Nova Scotia:

- New integrated policing unit that conducts investigations and provides education to police officers and the public.
- Nova Scotia has also created a dedicated Human Trafficking Crown prosecutor position and is providing additional supports to child welfare through training for foster parents and specialized placements for trafficked youth in care.

- Nova Scotia has created four new victim support navigators who will work to support Nova Scotian and Indigenous communities directly.
- Funding is being directed to non-profit groups to provide prevention programs and services for victims: <https://novascotia.ca/news/release/?id=20200220001>.

## 1.8 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) gender-based violence, (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 partnerships. 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.<sup>35</sup>

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<sup>35</sup> See, for example: UN, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, (E/2002/68/Add. 1), online (pdf): <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>; UNODC: *Toolkit to Combat Trafficking in Persons*, *supra* note 14; UNODC, *First Aid Kit for use by Law Enforcement Responders in addressing Human Trafficking*, (2011), online (pdf): <http://www.unodc.org/unodc/en/human-trafficking/2011/first-aid-kit.html>; UNODC, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, (New York: UN 2010), online (pdf): [http://www.unodc.org/documents/human-trafficking/Needs\\_Assessment\\_Toolkit\\_ebook\\_09-87518\\_June\\_2010.pdf](http://www.unodc.org/documents/human-trafficking/Needs_Assessment_Toolkit_ebook_09-87518_June_2010.pdf); UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (2009), online (pdf): [http://www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf); International Organization for Migration, *Handbook on Direct Assistance for Victims of Trafficking* (2007), online: <https://publications.iom.int/books/iom-handbook-direct-assistance-victims-trafficking-0>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Compendium of relevant reference materials and resources on ethical sourcing and prevention of trafficking in human beings for labour exploitation in supply chains: Second updated edition*, (Vienna, March 2020), online: <https://www.osce.org/secretariat/450769>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Following the Money: Compendium of Resources and Synthesized Step-by-Step Guide to Financial Investigations related to Trafficking in Human Beings* (Vienna, 2019), online: <https://www.osce.org/secretariat/438323>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Occasional Paper No. 9: Child Trafficking and Child Protection: Ensuring that Child Protection Mechanisms Protect the Rights and Meet the Needs of Child Victims of Human Trafficking* (2018), online: <https://www.osce.org/secretariat/405095>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *The Critical Role of Civil Society in Combating Trafficking in Human Beings* (Vienna, 2018), online: <https://www.osce.org/secretariat/405197>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE Region* (Vienna, 2019), online: <https://www.osce.org/mission-to-bosnia-and-herzegovina/413123>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Practical Handbook on How to Conduct Simulation-based Training Exercises to Combat Human Trafficking*, (Vienna, 2019),

## Chapter 2: The Law

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TIP continues to garner significant attention, both domestically and internationally. Despite the recent attention, TIP, often referred to as a modern form of slavery, is not a new phenomenon. Slavery, servitude, forced labour and similar practices have existed

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online: <<https://www.osce.org/secretariat/413510>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking as Modern-Day Slavery: A Matter of Rights, Freedoms and Security*, (Vienna, 2010), online: <<https://www.osce.org/secretariat/74730>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation, *Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment*, Occasional Paper Series no 5 (June 2013), online: <<https://www.osce.org/secretariat/103085>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings*, Occasional Paper Series no 6 (July 2013), online: <<https://www.osce.org/secretariat/103393>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of States and the Private Sector*, Occasional Paper Series no 7 (Vienna, November 2014), online: <<https://www.osce.org/secretariat/126305>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Human Trafficking for Labour Exploitation/Forced and Bonded Labour: Identification - Prevention - Prosecution; and Prosecution of Offenders, Justice for Victims*, (2008), online: <<https://www.osce.org/cthb/31923>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, (Vienna, 2010), online <<https://www.osce.org/secretariat/75804>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings*, (2014), online: <<https://www.osce.org/secretariat/121125>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime*, (2010), online: <<https://www.osce.org/secretariat/69028>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *A Summary of Challenges on Addressing Human Trafficking for Labour Exploitation in the Agricultural Sector in the OSCE Region*, (2009), online: <<https://www.osce.org/cthb/37937>>; OSCE, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Compensation for Trafficked and Exploited Persons in the OSCE Region*, (2008), online: <<https://www.osce.org/odhr/32023>>; The Bali Process, *Guide on Assisting and Interviewing Child Victims of Trafficking*, online: <<https://s3.ap-southeast-2.amazonaws.com/assets.baliprocess.net/app/uploads/2022/01/19134513/Quick-Ref-Guide-Assisting-and-Interviewing-Child-Victims-of-Trafficking-ENGLISH2.pdf>>; The Bali Process, *Quick Reference Guide on Interviewing Victims of Trafficking in Persons*, online: <<https://s3.ap-southeast-2.amazonaws.com/assets.baliprocess.net/app/uploads/2022/01/19134847/Quick-Ref-Guide-Interviewing-Victims-of-TIP-ENGLISH.pdf>>; The Bali Process, *Enhancing a Victim Centered Approach*, (2017), online (pdf): [https://news.baliprocess.net/UserFiles/baliprocess/File/RSO-CIFAL-curriculum%20Enhancing%20a%20Victim-Centered%20Approach\\_A4\\_Final\\_2017-02-14\\_for-web.pdf](https://news.baliprocess.net/UserFiles/baliprocess/File/RSO-CIFAL-curriculum%20Enhancing%20a%20Victim-Centered%20Approach_A4_Final_2017-02-14_for-web.pdf)>; The Bali Process, *Policy Guides on Protecting of Victims of Trafficking*, online (pdf): <[https://news.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20Policy%20Guide%20on%20Protecting%20Victims%20of%20Trafficking%20\(1\).pdf](https://news.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20Policy%20Guide%20on%20Protecting%20Victims%20of%20Trafficking%20(1).pdf)>; The Bali Process, *Policy Guide on Criminalizing Trafficking in Persons*, online (pdf): <<https://news.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20-%20Policy%20Guide%20on%20Criminalizing%20Trafficking%20in%20Persons-2.pdf>>; The Bali Process, *Policy Guide on Following the Money in Trafficking in Persons Cases*, online (pdf): <<https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Process%20Guide%20WEB%20v01.pdf>>.

in one form or another for thousands of years. The scope, incidence and impact of TIP has galvanized international interest in the last three decades and has made combating it a priority for the international community.

Prior to the enactment of trafficking-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)), sexual assault (sections 271 to 273), extortion (section 346) and the organized crime (sections 467.11-467.13) and sex trade offences (in particular, now repealed section 212, replaced by sections 286.2 and 286.3 in 2014).<sup>36</sup> These offences continue to be used in TIP cases, depending on the facts of the case.

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 TIP under the *Trafficking Protocol* (see Chapter 1 for more information). Section 118 of the IRPA prohibits TIP 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. Former Bill C-49, *An Act to amend the Criminal Code (trafficking in persons)* (S.C. 2005, c. 43) came 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). Furthermore, in 2010, the new offence of trafficking in children (section 279.011) was enacted, which is substantively the same as the main TIP offence (section 279.01), but imposes higher mandatory minimum penalties.<sup>37</sup> In 2012, the TIP provisions of the *Criminal Code* were further amended to:

- (1) enable the Canadian prosecution of Canadian citizens or permanent residents who commit, outside Canada, any *Criminal Code* TIP offence (subsection 7(4.11)); and,
- (2) clarify the meaning of "exploitation" as defined in section 279.04, by creating an interpretive provision to assist in applying the definition of exploitation. This change

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<sup>36</sup> On December 6, 2014, former Bill C-36, the *Protection of Communities and Exploited Persons Act*, SC 2014, c 25, came into force. This Bill reformed Canada's criminal law responses to the sex trade. For more information, please see: Department of Justice, *Technical Paper: Bill C-36, Protection of Communities and Exploited Persons Act*, Catalogue No J2-399/2014E-PDF (Ottawa: Department of Justice Canada, 2014), online (pdf): <<https://www.justice.gc.ca/eng/rp-pr/other-autre/protect/protect.pdf>>.

<sup>37</sup> Bill C-268, *An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years)*, SC 2010, c 3 (in force on June 29, 2010).

is discussed in more detail in section 2.5, which explains the elements of TIP offences.<sup>38</sup>

Further amendments were enacted 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 where the victim is a child (subsections 279.02(2) and 279.03(2)).<sup>39</sup>

Most recently, in 2019, subsections 279.02(1) and 279.03(1) were hybridized, an evidentiary presumption was enacted to assist prosecutors in proving human trafficking, and the reverse onus for forfeiture of proceeds of crime was extended to apply to the human trafficking offences.<sup>40</sup>

## 2.1 Trafficking in Persons *Criminal Code* Offences

As a general matter, 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 exploit the victim or facilitate the exploitation of the victim 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 treat as the principal offender anyone who does what is prohibited, without recourse to the concept of party liability. Party liability provisions (see section 21 of the *Criminal Code* and section 131 of the IRPA) 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 (provided that there is evidence to suggest that the assistance was rendered with the requisite level of intent to exploit the victim or facilitate their exploitation by someone else). For example, a person may assist another person in recruiting victims, knowing that the intended purpose is that the victim be exploited, without actually engaging in the recruiting activities themselves.

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<sup>38</sup> Bill C-310, *An Act to Amend the Criminal Code (trafficking in persons)*, SC 2012, c 15 (assented to June 28, 2012).

<sup>39</sup> Bill C-36, the *Protection of Communities and Exploited Persons Act*, SC 2014, c 25 (came in force on December 6, 2014).

<sup>40</sup> Originally enacted by former Bill C-452, *An Act to amend the Criminal Code (exploitation and trafficking in persons)*, SC 2015, c 16, on June 18, 2015 and brought into force by former Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, SC 2019, c 25, on June 21, 2019.

## 2.2 Section 279.01: Trafficking in Persons

**270.01** 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

Section 279.01 contains the following key elements:

1. Commission of one of the prohibited acts;
2. The mental elements of either: (a) intending to exploit the victim; or, (b) intending to facilitate the victim's exploitation by someone else.

### 2.2.1 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, transfers, 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, Transfers, Receives, Holds, Conceals or Harbours

These acts reflect the various stages of TIP 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. Appellate courts have found that the act elements are disjunctive; an accused need only engage in one of these acts for the prohibited purpose.<sup>41</sup> Notably, the terms recruits, holds, conceals and harbours are also used disjunctively in the procuring offence (section 286.3), enacted in 2014. In that context, the Ontario Court of Appeal has interpreted the term “harbours” to include the provision of shelter, whether secretly or not.<sup>42</sup>

#### 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. The Ontario and Quebec Courts of Appeal have interpreted this phrase as follows:

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<sup>41</sup> *R v Gallone*, 2019 ONCA 663 at paras 33—41 [*Gallone*]; See also *R c Urizar*, 2013 QCCA 46 at para 72 [*Urizar*]; *R v AA*, 2015 ONCA 558 at para 80 [*AA*].

<sup>42</sup> *R v Joseph*, 2020 ONCA 733 at para 86 [*Joseph*].

Control does not necessarily mean complete physical control over or the absence of any choice by the complainant and can also refer to psychological coercion... [W]hile the terms, “control”, “direct” and “influence” involve different degrees of coercion, those terms all “evoke a scenario in which a person, by virtue of her or his relationship with the complainant, has some power – whether physical, psychological, moral or otherwise – over the complainant and his or her movements.” It is not necessary that control be complete, constant and absolute.<sup>43</sup>

This phrase appears in both the now-repealed procuring offence of the *Criminal Code* (paragraph 212(1)(h)), as well as in the new procuring offence (section 286.3).<sup>44</sup> It has been judicially interpreted in the context of paragraph 212(1)(h) 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.<sup>45</sup>

Interpreting the same phrase in the context of section 279.01, the Quebec Court of Appeal followed this approach in its 2013 *Urizar* decision,<sup>46</sup> as did the Ontario Court of Appeal in its 2019 *Gallone* decision:

Consistent with [*Perrault c. R.*, [1997] [R.J.Q. 4 (Q.C.C.A.)] I would define “exercises influence” over the movements of a person for the purposes of s. 279.01(1) as something less coercive than “exercises direction”. Exercising influence over a person’s movements means doing anything to affect the person’s movements. Influence can be exerted while still allowing scope for the person’s free will to operate. This would include anything done to induce, alter, sway, or affect the will of the complainant. Thus, if exercising control is like giving an order that the person has little choice but to obey, and exercising direction is like imposing a rule that the person should follow, then exercising influence is like proposing an idea and persuading the person to adopt it. I also agree with the Court of Appeal of Quebec’s comment in *Urizar*, at para. 74, that “exercises control, direction or influence over the movements of a person” generally

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<sup>43</sup> *R v Wilson*, 2022, ONCA 857 at para 28 [*Wilson*]; see also *Gallone*, *supra* 41 at para 50; *Chahinian c R*, 2022 QCCA 499 at para 74 [*Chahinian*]; *R v Mohsenipour*, 2023 BCCA 6 at para 225 [*Mohsenipour*].

<sup>44</sup> 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.

<sup>45</sup> See *R c Perreault*, 1996 CarswellQue 1069 (WL Can) (Cour d'appel du Québec); *R v Rodney*, 1999 ABPC 12; *R v Ng*, 2007 BCPC 204.

<sup>46</sup> *R c Urizar*, 2010 QCCQ 4475; *Urizar*, *supra* note 41.



suggests a situation that results from a series of acts rather than an isolated act.<sup>47</sup> [emphasis added]

There are a variety of ways in which physical and psychological control can be exercised over a person's movements depending on the facts of the individual case, some of which include providing the victim with drugs to keep them intoxicated during the period of exploitation, acting in a physically aggressive way towards the victim, retaining the victim's money, pressuring the victim to provide sexual services in exchange for money, becoming angry with the victim when they ask for money or refuse to provide sexual services, arranging the clients and locations, preventing the victim from leaving the place where they are seeing clients, driving the victim to see clients, and emotionally manipulating the victim through their romantic relationship to keep them with the trafficker and have them return to the trafficker on the occasions that they left.<sup>48</sup>

### **2.2.2 Mental Element: “For the Purpose of Exploiting or Facilitating Exploitation”**

Whichever aspect or element of the *actus reus* is alleged, it must be proved that the alleged act was done either for the specific purpose of exploiting another person or for the specific purpose of facilitating their exploitation by another person. It is the exploitative purpose that sets TIP apart from other crimes. As explained by the Ontario Court of Appeal, this part of the offence reflects the object the accused seeks to attain, the reason for which the act element is done or the accused's intended result. Specifically, actual exploitation is not an “essential element” of the offence and need not be proved; only the intention to exploit or to facilitate another person's exploitation must be proved.<sup>49</sup>

Accordingly, reference must be made to the defined meaning of “exploitation” for the purposes of the TIP-specific offences:

**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*

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<sup>47</sup> *Gallone*, *supra* note 41 at paras 47—49, and 50, which cites the 2015 version of this Handbook. See also *R v Ochrym*, 2021 ONCA 48 at para 30 (interprets the phrase in the context of section 286.3 and cites paragraph 50 of *Gallone*); *Wilson*, *supra* note 43 at para 48 (cited para 50 of *Gallone* at para 48).

<sup>48</sup> *Wilson*, *supra* note 43 at para 29.

<sup>49</sup> *AA*, *supra* note 41 at paras 82, 84—87; see also *Urizar*, *supra* note 41 at para 69; *Chahinian*, *supra* note 43 at para 82; *Mohsenipour*, *supra* note 43.

- (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.*

The first way that “exploitation” can be proved (i.e., under subsection (1)) accounts 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 TIP offences (sections 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 of” on various occasions. In *R v Hibbert*,<sup>50</sup> 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 by the Supreme Court of Canada in *R v Khawaja*,<sup>51</sup> as well as in relevant trafficking jurisprudence.<sup>52</sup>

### Exploiting or Facilitating Exploitation

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

- **For purpose of exploiting** applies where the accused is alleged to have committed the act element with the intention of exploiting the victim themselves;
- **For purpose of facilitating exploitation** applies where the accused is alleged to have committed the act element with the intention that someone else would exploit the victim.

“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; section 467.11, which prohibits participating in the activities of a criminal organization; and, section 286.3, which prohibits recruiting,

<sup>50</sup> [1995] 2 SCR 973, [1995] SCJ No 63.

<sup>51</sup> *Supra*, note 36; *R v Khawaja* 2012 SCC 69.

<sup>52</sup> See *AA*, *supra* note 41; *R v Beckford and Stone*, 2013 ONSC 653 [*Beckford and Stone*].

holding, concealing or harbouring another person for the purpose of facilitating an offence under section 286.1 (purchasing sexual services). 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*;<sup>53</sup> *R v Lindsay*;<sup>54</sup> *R v Khawaja*.<sup>55</sup> Furthermore, the Ontario Court of Appeal has interpreted “for the purpose of facilitating” in the context of section 286.3 as follows:

A “purpose” requirement imposes a “high” “specific intent” *mens rea*: *R. v. Khawaja*, 2012 SCC 69, [2012] 3 S.C.R. 555, at paras. 45-47; *R. v. Legare*, 2009 SCC 56, [2009] 3 S.C.R. 551, at para. 32. More than knowing facilitation is required: “the accused must *specifically intend* his actions to have this general effect” (emphasis in original): *Khawaja*, at para. 46; see also *R. v. Briscoe*, 2010 SCC 13, [2010] 1 S.C.R. 411, at paras. 16-18.<sup>56</sup>

### 2.2.3 Exploitation

**Section 279.04(1):** *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.*

The human trafficking offence requires proof that the accused intended to cause the victim to provide their labour or services through conduct that would cause a reasonable person in the victim’s circumstances to believe that their physical or psychological safety - or that of someone known to them - would be threatened if they did not provide that labour or service. In this context, “cause” means “to produce an effect, bring about or encourage something”, not “force” or “compel”, and subjective fear on the part of the victim is not required.<sup>57</sup> Furthermore, the definition has both objective and subjective elements:

- the expectation of belief engendered by the accused’s conduct must be reasonable (objective element);<sup>58</sup> and,
- the reasonableness of that expectation must be determined based on the victim’s circumstances but evidence that the victim was actually afraid is not required (subjective element).<sup>59</sup>

Ultimately, the focus is on the effect of the conduct in a given case on the hypothetical “reasonable” victim. Accordingly, both the nature of the conduct and the context in

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<sup>53</sup> 2009 SCC 56.

<sup>54</sup> [2005] OJ No 2870, [2005] OTC 583 (Sup Ct Jus).

<sup>55</sup> [2006] OJ No 4245, [2006] 42 CR (6th) 348 (Ont Sup Ct Jus).

<sup>56</sup> *Joseph*, *supra* note 42 at para 88.

<sup>57</sup> *R v D’Souza*, 2016 ONSC 2749 at paras 130, 167 [*D’Souza*].

<sup>58</sup> *AA*, *supra* note 41 at para 70.

<sup>59</sup> *AA*, *supra* note 41 at para 70.

which the accused engages in that conduct are integral to the determination of that conduct's expected effect on the victim.

The Ontario and Quebec Courts of Appeal noted that the following circumstances may be relevant when assessing whether conduct amounts to exploitation as defined in section 279.04:

- the presence or absence of violence or threats;
- coercion, including physical, emotional or psychological;
- deception;
- abuse of trust, power, or authority;
- vulnerability due to age or personal circumstances, such as social or economic disadvantage and victimization from other sources;
- isolation of the complainant;
- the nature of the relationship between the accused and the complainant;
- directive behaviour;
- influence exercised over the nature and location services provided;
- control over advertising of services;
- limitations on the complainant's movement;
- control of finances;
- financial benefit to the accused; and
- use of social media to assert control or monitor communications with others.<sup>60</sup>

Other examples of evidence that may assist in proving that the accused's conduct would cause a reasonable apprehension of fear in a person in the victim's circumstances include: evidence of seemingly discreet conduct that appears innocuous in isolation,<sup>61</sup> such as a warning that a foreign national victim could be deported if they fail to comply with the demands of their trafficker, and evidence of any history of abuse between the accused and the victim.<sup>62</sup> Evidence of the use of threats, force or other forms of coercion is also indicative of exploitation, but is not necessary to demonstrate exploitation. Providing a victim who has an addiction with that drug after the victim provides sexual services for clients can be a form of coercion that establishes exploitation.<sup>63</sup>

To address concerns that the definition of exploitation may be difficult to understand, subsection 279.04(2) was enacted to provide 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. The Ontario Court of Appeal held that

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<sup>60</sup> *R v Sinclair*, 2020 ONCA 61 at para 15 [*Sinclair*]; see *R v Crosdale*, 2018 ONCJ 800 at paras 139, 144 and 148—169 (for an application of several of the factors); see also *Chahinian*, *supra* note 43.

<sup>61</sup> *R v Bell*, 2010 ONCJ 736.

<sup>62</sup> *R v Di Pucchio*, 2007 ONCJ 643.

<sup>63</sup> *R v Antoine*, 2019 ONSC 3843 at paras 190—193 [*Antoine* 2019].

this provision clarifies (but does not change), the definition of exploitation, including by indicating that the definition encompasses psychological pressure.<sup>64</sup>

Coercion is best conceptualized as an umbrella term encompassing the use of means for a specific purpose. Coercion need not be limited to physical force, and as relevant jurisprudence demonstrates, extends to acts that emotionally or psychologically restrain a victim.<sup>65</sup> This is consistent with the Supreme Court of Canada's interpretation of "coercion" in the context of freedom of religion:

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.<sup>66</sup>

Significantly, the Ontario Court of Appeal has held that the term "exploitation", as defined in section 279.04: was intended by Parliament to be interpreted broadly; is applicable equally to individual offenders and sophisticated criminal organizations; and, captures both physical and psychological forms of exploitation.<sup>67</sup>

### **Labour or Services**

The accused must be shown to have committed one of the prohibited acts with the intent of causing the victim to provide, or offer to provide, their labour or services, or to have committed one of the prohibited acts with the intent of facilitating another person causing the victim to provide their labour or services.

"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, regardless of its legality. When trafficking occurs in an illegal industry, trafficking victims may be more likely to commit criminal offences themselves, such as drug possession or trafficking, immigration offences and trafficking offences (e.g., recruiting others for the purposes of exploitation), depending upon the facts of the case. For more information on these types of cases, please see chapter 3 and 4 (sections 3.9.1 and 4.3).

### **Safety**

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<sup>64</sup> AA, *supra* note 41 at paras 59, 72.

<sup>65</sup> See e.g. *R v Beckford and Stone*, *supra* note 52.

<sup>66</sup> *R v Big M Drug Mart*, [1985] 1 SCR 295, 1985 SCJ No 17 at para 95.

<sup>67</sup> AA, *supra* note 41 at paras 59, 73.

The Ontario and Quebec Courts of Appeal have held that the term “safety” is not limited to the state of being protected from physical harm, but extends also to psychological harm.<sup>68</sup>

### **Someone Known to the Victim**

Someone known to a victim can include their family members such as a mother, father, brother, sister, child or a friend: *R v Dupuis*<sup>69</sup> and *R v Dunnett*.<sup>70</sup>

### **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. There have been no known cases of TIP for the purpose of organ removal in Canada. Canada’s regulated health-care system may provide safeguards in this regard.

On December 15, 2022, new organ trafficking offences came into force.<sup>71</sup> Although these offences apply to trafficking in organs, as opposed to trafficking in human beings, they may be used in human trafficking cases that involve organ removal. They criminalize:

- obtaining an organ for one’s own or another person’s use, participating in or facilitating the extraction of the organ, or doing anything in connection with the extraction of the organ, knowing that the organ was extracted without informed consent, or being reckless as to that fact (subsection 240.1(1)); and,
- obtaining an organ to have it transplanted into one’s own body or another person’s body, participating in or facilitating the obtaining of an organ for transplantation purposes, knowing that the organ was obtained for consideration (i.e., purchased) or being reckless as to that fact (subsection 240.1(2)).

These offences have extra-territorial effect, meaning that a Canadian or permanent resident who engages in this conduct abroad can be prosecuted in Canada (subsection 7(4.2)).

### **2.2.4 Interpretive Provision**

*279.04(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*

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<sup>68</sup> AA, *supra* note 41 at paras 70, 71, 74, 76; *Chahinian*, *supra* note 43 at para 81.

<sup>69</sup> [1998] OJ No 5063, (1998), 40 WCB (2d) 330 (Gen Div).

<sup>70</sup> [1999] NBJ No 122, (1999), 41 WCB. (2d) 477(QB (TD)).

<sup>71</sup> Bill S-223, *An Act to amend the Criminal Code (trafficking in human organs)*, 2022, c 18 (came in force on December 15, 2022).

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

Subsection 279.04(2) provides a non-exhaustive list of factors for courts to consider when determining whether exploitation, as defined in subsection 279.04(1), has been made out. The Ontario Court of Appeal has found that this provision was intended to clarify the law, not change it.<sup>72</sup>

The Ontario Superior Court of Justice has also provided guidance on the meaning of this provision:

In subsection 279.04(2)(a), it means that the accused gave a sign or a warning of using force or coercion. "Force" and "coercion" have similar ordinary meanings, although the former is normally restricted to something physical while the latter is more broadly defined. "Coercion", very simply put, means persuasion by power. "Deception" means the act of misleading or making someone believe a falsity. "Position of trust, power or authority" is an expression well known in our criminal law and which appears elsewhere in the CCC.<sup>73</sup>

## **2.2.5 Evidentiary Presumption**

*279.01(3) For the purposes of subsections (1) and 279.011(1), evidence that a person who is not exploited lives with or is habitually in the company of a person who is exploited is, in the absence of evidence to the contrary, proof that the person exercises control, direction or influence over the movements of that person for the purpose of exploiting them or facilitating their exploitation.*

Subsection 279.01(3), which came into force in 2019, allows prosecutors to prove one of the elements of the human trafficking offence – that the accused exercised control, direction or influence over the movements of a victim – by establishing that the accused lived with or was habitually in the company of an exploited person.

The Supreme Court of Canada upheld a similar evidentiary presumption in the context of now-repealed procuring offences in its 1992 *Downey* decision (former subsection 212(3); now subsection 286.2(3)).

## **2.3 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.*

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<sup>72</sup> AA, *supra* note 41 at paras 59, 72.

<sup>73</sup> D'Souza, *supra* note 57 at para 149.

*(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**

Section 279.011 is exactly the same as section 279.01, except that higher mandatory minimum penalties apply where it is established that the victim was under the age of 18 years and the accused was aware of that fact. The Crown can prove the accused's knowledge of the victim's age by showing that the accused knew the victim was under 18 or was wilfully blind to that fact. Where it is shown that the accused honestly but mistakenly believed the victim was over the age of 18 years of age, the accused can nonetheless be convicted under the primary offence (section 279.01).

### **2.4 Section 279.02: Material Benefit**

*279.02 (1) Every person 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*

*(a) an indictable offence and liable to imprisonment for a term of not more than 10 years; or*

*(b) an offence punishable on summary conviction.*

*(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 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 (section 279.01 or section 279.011) 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).<sup>74</sup>

The Ontario Court of Appeal has described this offence as prohibiting “profiting from exploitative behaviour”.<sup>75</sup>

The concept of “financial or material benefit” is also used in the definition of “criminal organization” 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.<sup>76</sup>

## **2.5 Section 279.03: Withholding or destroying documents**

**279.03** (1) *Every person 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*

**(a)** *an indictable offence and liable to imprisonment for a term of not more than five years; or*

**(b)** *an offence punishable on summary conviction.*

(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 that the accused:

- (1) concealed, removed, withheld or destroyed any travel or identity document, whether legitimate or forged; and,
- (2) did any of the above-noted acts with the intention of committing an offence under either subsection 279.01(1) or 279.011(1) or facilitating the commission of such an offence by someone else.

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<sup>74</sup> *R v KGA*, 2019 ONSC 275; *Antoine* 2019, *supra* note 63.

<sup>75</sup> *AA*, *supra* note 41 at para 88.

<sup>76</sup> *R v Lindsay*, [2004] OJ No. 845, 70 OR (3d) 131 (ON SCJ).

It is not necessary to prove that an offence under either subsection 279.01(1) or 279.011(1) was actually committed; the Ontario Court of Appeal has described this offence as prohibiting “preliminary or preparatory conduct” that facilitates control over others.<sup>77</sup>

## **2.6 Criminal Code Trafficking Offences and the Charter**

The constitutionality of the TIP offences has been upheld at the trial level; the Ontario Superior Court of Justice has upheld as constitutional sections 279.01, 279.011 and 279.02 (*D’Souza*<sup>78</sup>) and section 279.011 (*Beckford and Stone*,<sup>79</sup> and *R v Ahmed*<sup>80</sup>).

## **2.7 Immigration and Refugee Protection Act**

In addition to the *Criminal Code* human trafficking offences, the IRPA also contains an offence that 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.*

*(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.*

Specifically, section 118 applies only to international human trafficking cases, i.e., where victims are brought from other countries into Canada. The offence does not, however, require proof of an exploitative purpose; only organizing the victim’s entry into Canada through any of the specified illicit means (abduction, fraud, deception or use or threat of force or coercion) need be proved. The offence may therefore be useful in cases where evidence of bringing victims into Canada through any of these illicit means exists, but it is difficult to prove ongoing exploitative conduct.

In cases involving persons who are brought to Canada where there is evidence of exploitative circumstances, consideration should be given to using the *Criminal Code* TIP offences, in addition to or instead of section 118. For example, in one case involving a 15 year old girl who was brought to Canada and subjected to domestic servitude, the court acquitted the accused of section 118, finding that the prohibited means could not be proven, although it was acknowledged that exploitative circumstances were present:

Her [the alleged victim’s] workdays were long. Her physical accommodations differed from and were inferior to those of the others in the home. The defense

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<sup>77</sup> *AA*, *supra* note 41 at para 88.

<sup>78</sup> *Supra* note 57.

<sup>79</sup> *Supra* note 52.

<sup>80</sup> 2019 ONSC 4822.

agrees with these facts and even concedes that she was exploited by Canadian standards.<sup>81</sup>

## **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 section 117 (organizing illegal entry into Canada), are also likely to apply to prosecutions under section 118. For example, under section 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*<sup>82</sup>).

### **Fraud and Deception**

In *R v Ng*,<sup>83</sup> the Court agreed with the Crown that the inclusion of fraud and deception is consistent, and complies, with the international instruments to which Canada is a party. However, the *Ng* decision 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*<sup>84</sup> to reach this conclusion:

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.<sup>85</sup>

Traffickers may attempt to defraud victims in both non-financial (e.g., with respect to living conditions upon arrival in Canada) and financial ways (e.g., with respect to the payment a victim is promised in return for labour services). The Supreme Court of Canada has interpreted the meaning of “fraud” in a non-financial context. Specifically, in the context of fraud vitiating consent to otherwise consensual sexual activity due to non-

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<sup>81</sup> *R v Ye Win*, [2018] OJ No 5006 (ONCJ).

<sup>82</sup> [1998] OJ No 5506, 1998 CarwellOnt 5069 (Prov Ct).

<sup>83</sup> 2006 BCPC 111 [*Ng*].

<sup>84</sup> (1903), 1 Ch 728, cited in *Ng*, *supra* note 83 at para 17.

<sup>85</sup> *London & Globe Finance Corp Ltd* (1903), 1 Ch 728, cited in *Ng*, *supra* note 83 at para 17.

disclosure of HIV, the court held that fraud requires dishonesty that results in deprivation:

The first requirement of fraud is proof of dishonesty... The second requirement of fraud is that the dishonesty result in deprivation, which may consist of actual harm or simply a risk of harm.<sup>86</sup>

Where fraud occurs in respect of financial matters, the deprivation that results from the dishonesty would likely be interpreted as risk of deprivation of something of economic value.<sup>87</sup>

### **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 is not limited to physical force, and can also extend to acts that emotionally or psychologically restrain a victim.

### **Mental Element**

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, i.e., organizing the coming into Canada through one of the specified illicit means.

## **2.8 Other Relevant *Immigration and Refugee Protection Act* Offences**

Other IRPA offences, in addition to section 118, may be used in cases involving the exploitation of foreign nationals:

- employing foreign nationals without authorization (without a work permit) (paragraph 124(1)(c));
- counselling a person to make false statements in their visa and/or work permit applications (section 126);
- aiding or abetting a person to violate any section of IRPA or its Regulations (section 131 and paragraph 124(1)(a));
- organizing, inducing, aiding or abetting the illegal entry of a person into Canada (section 117; the consent of the Attorney General of Canada is required to lay this charge subsection 117(4)).

## **2.9 *Immigration and Refugee Protection Act* Trafficking Offence and the Charter**

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<sup>86</sup> *R v Cuerrier*, [1998] SCR 371 at paras 126, 128.

<sup>87</sup> See *Criminal Code*, *supra* note 3, s 380.

In *Ng*<sup>88</sup> the Court confirmed that the means of fraud or deception as specified in subsection 118(2) are not constitutionally overbroad or vague.

## 2.10 Jurisdiction

A victim of human trafficking may be trafficked entirely in one province or throughout multiple provinces. Where all of the conduct alleged to make out the human trafficking offence occurs exclusively in one province, the charge must be laid in that province by virtue of section 478 of the *Criminal Code*. However, where different elements of the human trafficking offence are committed in different provinces, each of those provinces would have jurisdiction to try the offence pursuant to section 476(b) of the *Criminal Code*. This section establishes jurisdiction on a broad basis over interprovincial offences. If any element or part of the offence may have been committed in a particular province, that province has jurisdiction over the offence.<sup>89</sup> This means that a court has jurisdiction to try an offence commenced in one province and completed in another.<sup>90</sup>

Investigations into interprovincial human trafficking require coordination between law enforcement and prosecutors in the various jurisdictions where the trafficking took place to determine where the charge(s) should be laid and to allow for evidence collection in the various jurisdictions involved. There should only be one prosecution that encompasses all of the trafficking conduct committed in the various provinces. Police and prosecutors must ensure that the Information is drafted to include the start date and end date of all conduct that forms part of the human trafficking offence, regardless of the province in which it occurred. The Information must also allege that the offence was committed in the province where the charge is laid “and elsewhere in Canada” to ensure that the Crown is able to lead evidence at the preliminary hearing and trial of what happened to the victim in the other provinces where they were trafficked.

In cases where both the IRPA and *Criminal Code* human trafficking offences are implicated, federal and provincial Crown prosecutors must work together, given that federal prosecutors are responsible for enforcing IRPA offences and provincial Crown prosecutors are responsible for enforcing *Criminal Code* offences.

## 2.11 Relevant Jurisprudence

Please see Annex A for an overview of the jurisprudence considering both the *Criminal Code* and IRPA trafficking provisions by legal issue. Please see Annex B for an overview of sentencing jurisprudence.

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<sup>88</sup> *Supra* note 83.

<sup>89</sup> *R v Bigelow* (1982), 37 OR (2d) 304; [1982] OJ No 3314 (QL) (Ontario Court of Appeal).

<sup>90</sup> *R c Ibeagha*, 2019 QCCA 1534.

## Chapter 3: Guidelines for Police

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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 described to aid in the identification of human trafficking cases and the collection of evidence. Guidelines on the assessment of risk in particular cases are also examined and an overview of laying a charge and preparing the report to a prosecutor is provided. Finally, considerations related to international human trafficking cases are discussed. The chapter's overarching objective is to supplement a police officer's expertise by providing information that is particularly relevant to human trafficking cases.

### 3.1 Working with Traumatized Victims

Human trafficking is known to result in severe trauma for victims. Trauma has been described as follows:

Traumatic events overwhelm the ordinary systems of care that give people a sense of control, connection and meaning. Traumatic events are extraordinary, not because they occur rarely, but because they overwhelm the ordinary human adaptations to life . . . They confront human beings with the extremities of helplessness and terror and evoke the responses of catastrophe.

A traumatic event could be criminal in nature, a sexual assault, kidnapping or witnessing a murder. It could also be a natural disaster such as a hurricane or flooding or an accident. One does not have to live through or directly experience an event to be traumatized; one can experience trauma by witnessing an event – such as a terrorist attack or a hate crime – from a distance or even through different media such as television or news reports.<sup>91</sup>

Victims of human trafficking may have experienced severe trauma, possibly over long periods of time. The trauma will impact how they are able to function in general, but also how they are able to work with the criminal justice system and support services. It is critical that law enforcement understand the neurobiology of trauma in order to better support victims.

Traumatic events . . . are encoded (converted) [into memories] differently than more routine, everyday experiences in life. It is well known within the scientific and psychological communities that human memory and recall do not function like a tape recorder, faithfully recording events later to be recalled on command. Our memories are fallible and have gaps and

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<sup>91</sup> Judith Herman, *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror* (New York: Basic Books, 1992) at 65.

inconsistencies. As a result, we recall and narrate traumatic events differently than routine events.<sup>92</sup>

Key symptoms of trauma likely to have serious implications can include:

1. De-personalization of the abusive experience and coming to regard it as having happened to another person;
2. Fragmentation of memory, perception, feeling, consciousness and sense of time;<sup>93</sup>
3. Difficulty in providing clear and consistent statements to investigators;<sup>94</sup> and,
4. Tendency to fill in memory blanks by making up plausible elements of a traumatic situation.

Due to these symptoms 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 only after the victim feels that they are in a stable situation. In particular, experts have noted that two full sleep cycles may be necessary for the episodic memory circuitry to consolidate information that was encoded at the time of a trauma.<sup>95</sup>

Given the complexities and unique needs of victims of trafficking, they often require specialized support following their experience. Non-governmental organizations may have the expertise and experience to assist in meeting victims' practical needs for food and shelter. They can also arrange psychological support, translation services, immigration information, etc. Some communities also have government programs and services available to victims.

### 3.2 Victim Interview

When working with victims of human trafficking, investigators should adopt a **Trauma Informed Response**.<sup>96</sup> This is an approach to engaging people who are experiencing or have experienced trauma, that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives. Trauma-informed practices

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<sup>92</sup> Lori Haskell & Melanie Randall, *Impact of Trauma on Sexual Assault Victims*, Catalogue No J4-92/2019E-PDF (Ottawa: Department of Justice Canada, 2019) at 18, online (pdf): <[https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf)>.

<sup>93</sup> Haskell & Randall, *supra* note 92 at 20—21.

<sup>94</sup> A Ehlers & DM Clark, "A Cognitive Model of Posttraumatic Stress Disorder" (2000) 38 *Behaviour Research and Therapy* at 319—345 cited in Haskell & Randall, *supra* note 88 at 10.

<sup>95</sup> JL McGaugh, "Memory – A Century of Consolidation" (2000) 287 *Science* at 248-251 cited Haskell & Randall, *supra* note 88 at 19.

<sup>96</sup> See Public Health Agency of Canada, *Trauma and violence-informed approaches to policy and practice*, online: <<https://www.canada.ca/en/public-health/services/publications/health-risks-safety/trauma-violence-informed-approaches-policy-practice.html>>; Pamela Ponc, Colleen Varcoe & Tania Smutylo, *Trauma- (and Violence-) Informed Approaches to Supporting Victims of Violence: Policy and Practice Considerations*, (2016) 9 *Victims of Crime Research Digest* 3 online: <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd9-rr9/p2.html>>.

may assist in moderating the negative outcomes associated with the involvement of law enforcement and/or the legal system because they are less likely to be experienced by victims as punitive, hostile, or disempowering. Such an approach is more likely to avoid common pitfalls like re-traumatization and withdrawal of cooperation.

Trauma-informed practices include:

- Delaying the victim's formal interview until they have received any necessary medical attention;
- "Meeting victims where they are at" and mitigating risks of re-traumatization throughout the interview and investigation;
- Listening to victims with empathy and compassion;
- Addressing any safety or medical concerns at the initial interview, collecting just enough information to establish the elements of the crime and identify potential witnesses and suspect(s), and identifying and securing evidence (a more in-depth interview can occur at a later time when the victim is stabilized);
- Allowing for an uninterrupted narrative, articulated by the victim, so that they can express what happened in their own words. Be aware that trauma victims may act in ways that may not make sense to you (for example, laughing out loud while describing being beaten), which may be due to how they cope with describing a traumatic event or attempting to bring a memory forward;
- Allowing the victim to express what their experience was rather than just what they remember or do not remember;
- Opening with questions that are probing and open-ended. These can include:
  - What are you able to tell me about your experience?
  - Where would you like to begin?
  - What was the most difficult part of this experience for you? What can't you forget?
  - "Tell me more about ..." "How did that make you feel?"
  - "What are you able to remember?"
  - "Do you recall hearing anything? What do you recall hearing?"
  - "Do you recall smelling anything? What do you recall smelling?"
  - "What were your reactions to this experience?"
  - "What do you remember feeling physically?"
  - "What do you remember feeling emotionally?"
- Providing information about next steps and being transparent about how the process will unfold, to make it as predictable as possible.<sup>97</sup>

The goal of the interview should be to establish trust and instill in the victim a sense of security, while gathering the necessary facts related to potential criminal charges. It is important to always use proper interview techniques and, when possible, use an interviewer who has been trained in trauma-informed interviewing techniques. When needed, use an interpreter and, where appropriate, provide the victim with any other services and supports they may need. The location of the interview must be considered.

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<sup>97</sup> Adapted from Dr. Lori Haskell & Dr. Melanie Randall, *supra* note 92 at 18.



Ensure a safe and comfortable environment for the victim, preferably in a soft interview room if available. Courts have come to expect in depth civilian witness statements to be audio and video recorded, unless there is good reason to depart from this best practice. Audio recording a statement ensures that whatever the interviewer and interviewee say is captured, while a video recording allows the trier of fact to assess demeanor and nonverbal communication exhibited during the interview. In certain circumstances, videotaped statements can be admitted into evidence under subsection 540(7) of the *Criminal Code* or the principled exception to the hearsay rule. In addition, the video recorded evidence of children can be admissible pursuant to section 715.1 of the *Criminal Code*. Statements given under oath may also become admissible in the event the victim does not attend Court or recants their statement.

Trauma-informed methods are more likely to establish a relationship of trust with the victim, which can take time and patience. Because trauma is subjective,<sup>98</sup> being neutral and open to the victim's story is often key. In addition to utilizing trauma-informed practices, investigators should adopt a **Victim-Centred Approach**, meaning that a systematic focus should be placed on the needs and concerns of the victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. It seeks to minimize re-traumatization associated with the criminal justice process by engaging victim advocates and service providers to address the victim's needs and provide support. The ways in which trauma is processed in the brain may make it difficult for some victims to present consistent, chronological statements about what happened to them. Inconsistent statements should not automatically indicate a lack of credibility on the victim's part. The trauma they undergo can lead to, among other things, fractured memories and unconscious contradictions.<sup>99</sup> In some situations, an inability to provide consistent or coherent statements can be an indicator of the trauma that the victim has experienced.

Many victims of trafficking have trouble recalling and talking about particular events due to the impacts of the trauma they have experienced. As a result of the effects of trauma on the brain and on memory, victims may also exhibit inconsistencies and other gaps in how they recount their experience and answer questions. That is why a free narrative is so important. Its main purpose is to encourage the victim to recall and talk about relevant events in their own words. As trafficking offences often take place over time, inviting the victim to tell a chronological story can be useful, though it is important to remember that the effects of trauma on memory may make chronological accounting difficult. Avoid the temptation to jump in if the victim stops talking and a moment of silence occurs. 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 start talking again without any further questions. Confusion is common; if it appears, ask for clarification, being aware that the answers may remain imprecise.

At the end of the interview, the victim should be offered the opportunity to ask questions and address any misunderstandings during the interview:

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<sup>98</sup> Ponic, Varcoe & Smutylo, *supra* note 96.

<sup>99</sup> Haskell & Randall, *supra* note 92 at 18.

- 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;
- Explain what will happen next;
- Invite the victim to contact you if they have any additional comments or questions.

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 at Justice Canada: <https://canada.justice.gc.ca/eng/cj-jp/victims-victimes/index.html>.

For more resources on trauma-informed practices, please see:

- <https://bccewh.bc.ca/wp-content/uploads/2017/05/TIP-principles-Reflective-questions-2017.pdf>;
- [https://bccewh.bc.ca/wp-content/uploads/2012/05/2013\\_TIP-Guide.pdf](https://bccewh.bc.ca/wp-content/uploads/2012/05/2013_TIP-Guide.pdf);
- <https://www.justice.gc.ca/eng/rp-pr/jr/trauma/p5.html> (although this publication relates to sexual assault, the same principles apply in the human trafficking context).

### **3.2.1 Victim Mindset**

Being empathetic and attempting to understand and respond to the issues that affect the victim(s) will help establish a good rapport (e.g., by asking “Is there anything you need before we start?”, “Is there anything I can do to help you to feel safer?” and even “Are you hungry or thirsty?”). The officer should be looking for ways to help remove any obstacles that make the victim feel trapped in the trafficking situation. Collaboration with partners, such as victim services providers, can help a great deal with this.

In some cases, victims may purposefully not respond truthfully to questions. Some may provide prepared and rehearsed responses, and others may not talk at all. There are many reasons why a victim may not respond or tell the truth, including that they may:

- Believe that talking to authorities is a betrayal of the accused if they feel dependent (emotionally, physically, etc.) on them, or the accused is a family member;
- Feel responsible for placing themselves in their current situation;
- Fear or distrust the police;
- Believe that police cannot offer protection (for example, where there are transnational organized crime elements involved);
- Be addicted to substances and concerned about avoiding withdrawal symptoms;
- Be exhibiting responses that are shaped and impacted by the trauma they have experienced, including inconsistencies in how they recall and recount events;
- Believe their personal safety is threatened and/or that of person(s) known to them;

- Believe they may have committed a criminal offence and are afraid of being prosecuted;
- Be part of the human trafficking network and want to protect others for various reasons;
- Be unaware of their rights in Canada, including because they have been intentionally misinformed about their rights by their traffickers;
- Feel better in their current situation than where they came from;
- Feel ashamed and/or experience stigma;
- Fear being exposed and stigmatized; or
- Face cultural, gender or religious obstacles.

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

### **3.2.2 Victim-Trafficker Relationship**

To better understand the mindset of trafficking victims and why the trafficked person may make excuses for the trafficker, rationalize the trafficker's behaviour or feel responsible for the abuse they have endured, it is important to be aware of the nature of the relationship between the victim and the trafficker in each case. Traffickers identify and target a person's vulnerabilities to gain trust and form a bond. They often identify and fulfill a person's needs, and then use that dependence to manipulate, control and exploit them. Techniques used to target, recruit, lure and groom victims often rely on deception and psychological forms of coercion.

Traffickers often begin with getting to "know" the person, building trust and reliance by filling a void in the person's life, making the victim feel like they know them or believe that they are their friend, or romantic partner, etc., while the entire evolution of the relationship is fabricated with the intent to exploit the victim. It is also not uncommon for individuals to be lured and groomed with the promise of a relationship. According to recent statistics, the large majority (91%) of victims of human trafficking knew the person who was accused in the incident. For 22% of victims of human trafficking, the accused person was a casual acquaintance, and 34% of victims were trafficked by a current or former intimate partner.<sup>100</sup>

Some people who are trafficked are controlled and monitored constantly and do not have the opportunity to ask for help or they are afraid to do so. They may also be manipulated into believing that the trafficker is the only person who cares about them and that they are best off staying with their trafficker. Often, the bond between the victim and the trafficker develops into an intense attachment, referred to as trauma bonding. For some victims, this relationship could be the first time they have experienced love and/or affection. Once the relationship has been established, the cycle of abuse alternates between love and affection, anger and violence. The trafficker often controls

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<sup>100</sup> Statistics Canada, *Trafficking in persons in Canada, 2022*, *supra* note 17.

and manipulates the victim using emotional abuse, lies, threats, violence, isolation and by taking control of the victim's identification, documents and/or money.<sup>101</sup>

### 3.2.3 Victim's Basic Needs

It is important to ensure the well-being of the victim at the outset. This should be done with the assistance of service providers (see Chapter 6 for more information on victim services), who can work with the victim to ensure they have access to:

- Food;
- Medical attention;
- Housing;
- Clothing and other personal items;
- Means of communication (i.e. a cell phone);
- Canadian immigration services if the victim is a foreign national; and,
- Security and safety planning.

For needs like housing, clothing and personal items, investigators can contact local victim services or other non-governmental organizations. A listing of victim serving organizations can be found on the Justice Canada Victim Services Directory: <https://www.justice.gc.ca/eng/cj-jp/victims-victimes/vsd-rsv/sch-rch.aspx>. A list of available anti-human trafficking services and supports can be found through the Canadian Human Trafficking Hotline: [www.canadianhumantraffickinghotline.ca](http://www.canadianhumantraffickinghotline.ca) or 1-833-900-1010.

Victims of human trafficking who are foreign nationals without legal status in Canada may apply for a special Victims of Trafficking in Persons Temporary Resident Permit (VTIP TRP). This special permit provides temporary immigration status in Canada for 180 days and can be renewed. See section 3.5 Working with Foreign National Victims, for more information on VTIP TRPs.

### 3.2.4 Preparation for the Interview

It is important to be patient and wait until the victim is prepared for the interview, to 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. If multiple interviews are required, the same law enforcement officer should conduct all of the interviews, in order to increase trust with the victim and avoid re-traumatizing the victim by having them repeat their traumatic events multiple times.

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<sup>101</sup> Public Safety Canada, *National Strategy to Combat Human Trafficking 2019-2024*, *supra* note 20 at 14.

To the extent possible, carefully prepare for the interview by learning as much as you can about the victim beforehand. A work plan may help to prevent an investigator from missing details which may prove to be important and help to refresh the memory of the victim who might forget certain details. Some elements that could be helpful to include in a work plan include:

- Is the victim part of a criminal organization? What are the names (or alias) of the members? What are their roles in the organization?
- What material evidence exists (e.g., motel room receipts, surveillance videos where the victim appears with a third party involved in trafficking, etc.)?
- What are the barriers to obtaining an interview that must be overcome? For example, is an interpreter required?

Often a trafficked person has been involved with more than one offender or may be in the midst of dealing with multiple traumatic events. It is therefore important that the victim as well as the interviewer clearly establish the focus of the subject matter of the interview.

Once these preliminary considerations are discussed, ensure that the victim understands the following:

- They are being interviewed as a victim/witness;
- The interview is not a test;
- Their participation in the interview is completely voluntary;
- The interview may be recorded, and if charges are laid, the recording will be part of the disclosure given to the accused and will not stay confidential;
- They can say anything they believe to be true;
- Any risks the interview may pose to the victim and how they can be mitigated to protect their security and identity;
- Victims without legal status in Canada may apply for a special temporary resident for human trafficking victims (please see section 3.5);
- They are required to tell the truth and the importance of being truthful to your investigation;
- There are legal sanctions associated with deliberately lying during the interview, and explain what those sanctions are; and,
- If the statement is being taken under oath or solemn affirmation, explain the significance of this (i.e., that they are committing to tell the truth).

Should other topics for investigation arise during the interview, if possible, acknowledge the new topic and request to return to it. Then refocus on the original matter. Once all information about the original focus of the investigation has been collected, the new topic can be explored (this may require conducting a completely separate interview).

For more information about working with victims, see this guide from the Policy Centre for Victim Issues at Justice Canada: <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/res-rech/p1.html>

### **3.2.5 When a Victim Admits to Committing a Crime**

The relationship of trust that is established between the interviewer and the victim can result in the victim sharing confidences, or even admitting that they have committed an offence while being trafficked. Trafficking victims may commit a range of offences in the context of being trafficked, including immigration offences, drug possession, and other trafficking-related conduct, such as recruiting and trafficking others.

It is recommended that the victim be informed of their right to remain silent about crimes they may have committed, and that they are participating in the interview as a victim of crime, to avoid compromising the relationship of trust that has been built. Where serious criminal conduct is disclosed during a witness interview, investigators may need to warn the witness of the jeopardy they may face as a result of this disclosure. For considerations on responding to human trafficking victims who offend, please see section 3.9.1.

### **3.2.6 Suggested Tips for Investigators**

Human trafficking investigators should:

- Be aware: Human trafficking may be present in any type of police investigation (e.g., intimate partner violence incidents, traffic stops, drug investigations, etc.);
- Be proactive, compassionate and patient: Victims may not approach law enforcement on their own initiative and may not be forthcoming in providing information. It may take numerous attempts to make contact with a victim before trust can be established;
- Be honest about the processes and sensitive towards the victim's needs: This will assist with building the trust required to obtain relevant information;
- Utilize community mobilization strategies/situational tables to find meaningful solutions and/or appropriate allocation of resources;
- Be aware throughout the investigation: The safety of the victim or witness is of paramount concern. For additional information, please see the section in this chapter on Risk Assessment. A victim may feel they have no choice but to go back to the exploitative 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;
- Be aware that a victim can come forward at any time to disclose their story: The investigator should respond at this precise moment or the opportunity may not appear again; and
- Attempt to obtain as much corroborating evidence as possible.

### **3.2.7 Victim Support**

In Canada, the 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 victims of human trafficking. These range from

health care to emergency housing, social and legal assistance, and court support. 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.

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

Law enforcement may also contact the Canadian Human Trafficking Hotline at 1-833-900-1010. Local services can be found in the Policy Centre for Victim Issues' Victim Services Directory: <https://canada.justice.gc.ca/eng/cj-jp/victims-victimes/vsd-rsv/sch-rch.aspx>

Information on Human Trafficking Restraining Orders available to victims who do not want police involvement/trial process or for parents/guardians of youth involved can be found at: <https://www.canadianhumantraffickinghotline.ca/> or 1-833-900-1010.

### 3.3 Working with Indigenous Persons

Indigenous people are overrepresented in the Canadian criminal justice system as both victims/survivors<sup>102</sup> and accused/convicted individuals. The overrepresentation of Indigenous people is directly linked to historical and ongoing colonial values, laws policies and systems.<sup>103</sup> The Report of the Royal Commission on Aboriginal Peoples identified the colonial values underlying Canadian criminal laws, policies and practices that have had negative impacts on Indigenous peoples as the greatest contributor to overrepresentation.<sup>104</sup> “As a result of Canada’s colonial history, Indigenous peoples have been subjected to assimilation policies and practices that have created collective and individual intergenerational trauma resulting in negative impacts on social determinants of health for many.”<sup>105</sup> The ongoing impacts of colonization have led to mistrust of authorities and institutions, and have made Indigenous women and girls more at risk of becoming trafficked for sexual exploitation. The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls highlights this point. For example:

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<sup>102</sup> Department of Justice Canada, “Understanding the Overrepresentation of Indigenous people in the Criminal Justice System” (last modified 12 January 2023), online: *State of the Criminal Justice System Dashboard*: <<https://www.justice.gc.ca/socjs-esjp/en/ind-aut/u-o-cs>>.

<sup>103</sup> Department of Justice Canada, “Understanding the Overrepresentation of Indigenous people in the Criminal Justice System”, *supra* note 102.

<sup>104</sup> *Royal Commission on Aboriginal Peoples* (RCAP) 1996a.

<sup>105</sup> Department of Justice Canada, “Understanding the Overrepresentation of Indigenous people in the Criminal Justice System”, *supra* note 102.

Jennisha Wilson... described how prior negative experiences with police make Indigenous women reluctant to report violence or trafficking: “There is a significant reluctance for Indigenous women, specifically Inuit, to engage with police because of prior experiences of being seen as a criminal, being blamed, being seen as not a victim, causing it on themselves.”<sup>106</sup>

Developing an understanding of the systemic racism and inequality that Indigenous women and girls continue to face is a necessary step toward providing meaningful and culturally relevant support to Indigenous women and girls who come forward to report trafficking conduct. For more information, please consult:

- We Are Not Invisible-Indigenous Anti-Human Trafficking Education Toolkit - Wabano Centre for Aboriginal Health
- Speak Out: Stop Sex Trafficking

For information on culturally responsive, Indigenous-led victims services, please see:

- The Mushkowzee Ikw Empowerment Project: <https://www.kanikanichihk.ca/mushkowzee-ikew/>
- Clan Mothers Healing Village: <https://clanmothers.ca/>
- Tungasuvvingat Inuit: <https://tiontario.ca/>
- Ontario Native Women’s Association: <https://www.onwa.ca/learning-resources-ht>
- Minwaashin Lodge Indigenous Women's Support Centre: <https://www.minlodge.com/>
- Atlohosa Family Healing Services: <https://atlohosa.com/support/>
- Native Child and Family Services of Toronto: <https://nativechild.org/holistic-services/>
- Ganohkwasra Family Assault Support Services: <https://ganohkwasra.com/counselling/>
- Beendigen: <https://www.beendigen.com/>
- Ka Ni Kanichihk’s, Heart Medicine Lodge: <https://www.kanikanichihk.ca/heart-medicine-lodge/>.

### **3.4 Working with Children (persons under 18)**

Working with child victims of any crime is challenging. Children are particularly at risk due to their lack of experience and their dependence on and/or trust of adults. Traffickers use various methods of recruitment to lure children into exploitative situations such as enticing them with a “glamorous” lifestyle and opportunities to make money. Children are at risk of being manipulated because of their age and they may also be at risk for other reasons, such as a history of sexual abuse, poverty, low

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<sup>106</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (Vancouver: Privy Counsel Office, 2019) at 629 online (pdf): <[https://publications.gc.ca/collections/collection\\_2019/bcp-pco/CP32-163-2-1-2019-eng.pdf](https://publications.gc.ca/collections/collection_2019/bcp-pco/CP32-163-2-1-2019-eng.pdf)>.



self-esteem, isolation, lack of a sense of belonging, unstable home life, ethnicity, gender identity or sexual orientation, or other forms of marginalization.

Children who are frequently reported missing are particularly at risk of recruitment and exploitation by traffickers because:

- They may leave home/group homes because of intolerable situations with their families, schools, peers or others and need to make money to survive;
- They may not have a support network or anyone they can ask for help;
- Their need for food, clothing and shelter places them at risk of becoming involved in the sex trade as a means of survival; and,
- Children who are drug addicted can be controlled by their addiction.

Traffickers may recruit children through people they know and in places where they hang out:

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

Trafficking cases involving children are always complex. When working with any potential child victim, child protection agencies must be contacted. Investigators should always videotape interviews with children (recall section 715.1 of the *Criminal Code*).

Try to use an officer trained to interview children and consider:

- Obtaining information regarding any adult(s) who have brought the child into the country or otherwise accompanies the child;
- Referring the child to specialized medical and psychological counselling;
- Verifying if there are previous missing person occurrences/reports;
- Limiting the number of interviews where possible;
- That the child may fear 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.

Resources are available online for those who must interview a child without specialized training.<sup>107</sup>

A multi-disciplinary response to working with child victims is recommended. A Child Advocacy Centre (CAC)<sup>108</sup> is a model of service delivery that brings together a multi-disciplinary team comprised of law enforcement, child protection investigators, medical and mental health professionals, victim services advocates/workers, and Crown prosecutors, where appropriate, in a child-friendly facility to provide an individualized, coordinated response for children and youth who have experienced abuse. Services offered by CACs include prevention, intervention, treatment and other support/advocacy services. CACs seek to provide a culturally safe, trauma-informed, compassionate and effective response to children, youth and families that require their services, including child victims of trafficking. There are more than 40 CACs at some stage of development across Canada. For more information on CACs, please see: <https://cac-cae.ca/organizations/> or the Policy Centre for Victim Issues Victim Services Directory to find a CAC <https://justice.gc.ca/eng/cj-jp/victims-victimes/vsd-rsv/index.html>.

### 3.4.1 Specific Concerns Regarding Children Brought to Canada

Everyone, including children, seeking to enter Canada 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. Immigration, Refugees and Citizenship Canada has developed a procedures manual entitled, *Recovering Missing, Abducted and Exploited Children*.<sup>109</sup> Canada's Border Services Agency officers are instructed on the proper procedures to follow during primary inspection at a Port of Entry 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>.

## 3.5 Working with Foreign National Victims

Foreign nationals may be more at risk of exploitation because they may not have legal status in Canada, may have little or no knowledge of Canadian customs, laws and human rights, and these vulnerabilities may be used by the trafficker to manipulate them

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<sup>107</sup> See e.g. UNODC, *Anti-human trafficking manual for criminal justice practitioners, Module 9: Interviewing child victims of trafficking in persons*, (New York: UN, 2009), online (pdf): [https://www.unodc.org/documents/human-trafficking/TIP\\_module9\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/TIP_module9_Ebook.pdf).

<sup>108</sup> A number of Child Advocacy Centres are known as Child and Youth Advocacy Centres (CYACs) to more accurately reflect the client population (children and youth) that they serve.

<sup>109</sup> ENF 21 *Recovering Missing, Abducted and Exploited Children*, (Immigration, Refugees and Citizenship Canada, 2017), online (pdf): <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf21-eng.pdf>.

into providing labour or services. Victims may react to law enforcement interventions with fear, suspicion of authorities, scepticism, distrust, hesitation and/or hostility towards outsiders, especially law enforcement. They may worry about their immigration status in Canada and/or fear being issued a removal order and deported. They may also be concerned about the availability of services in Canada.

Foreign national human trafficking victims 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 such as health care or social assistance. Immigration, Refugees and Citizenship Canada has developed a Temporary Residence Permit (TRP) for foreign nationals who are believed to be victims of human trafficking: A Victims of Trafficking in Persons (VTIP) TRP. The VTIP TRP provides temporary legal status and 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 VTIP TRPs. To be eligible for a short-term VTIP TRP, a person must be a suspected trafficking victim; to be eligible for a long-term VTIP TRP, reasonable evidence of trafficking is required. Please see section 3.6.1 for indicators of trafficking. Victims are not required to collaborate with law enforcement agencies or testify against their traffickers to obtain VTIP TRPs. For more information on VTIP TRPs, please see: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/permits/considerations-specific-victims-human-trafficking.html>.

Foreign national victims should not be deported or repatriated if doing so places them at serious risk of harm. Where such risk has been identified, officers should contact the Canada Border Services Agency to discuss options. Police can offer to disclose information pertaining to the alleged trafficking situation. Documents such as occurrence reports could be helpful in obtaining legal status in Canada, such as through the VTIP TRP, if the victim expresses a desire to stay in Canada.

## **3.6 Identifying Victims and Evidentiary Issues**

### **3.6.1 Indicators: Sexual Exploitation or Forced Labour**

The following indicators may suggest that a victim has been trafficked. Individual indicators may or may not apply, based on the specific circumstances of a particular case. However, evidence of the presence of any of the following indicators may assist in proving that trafficking has occurred. Indicators of trafficking include that the victim:

- Was controlled, intimidated or subjected to actual or threatened physical, psychological or sexual violence/abuse, or feared for their physical or psychological safety or that of someone known to them;

- The opposite may also be true, where the victim does not exhibit fear due to desensitization and normalization of exploitative behaviour;<sup>110</sup>
- Observed the trafficker(s) be physically violent towards someone else;
- Observed a firearm or was told the trafficker(s) had access to a firearm;
- Was manipulated through exploitation of their vulnerabilities, such as financial need, youth, lack of immigration status; education; fluency in English or French; and/or, knowledge of Canada’s customs and laws;
- Is in an intimate relationship or has familial ties with someone who requires, or suggests to, them to provide certain types of services, such as sexual services;
- Has been threatened with something that their religious or cultural beliefs would not accept, for example that their involvement in the sex trade would be disclosed to family members;
- Has been threatened with deportation;
- Was branded or tattooed;
- Was provided with drugs or alcohol;
- Was required to lie to authorities or to commit a crime;
- Has no baggage or few bags, clothing or funds;
  - The opposite may also be true, as a victim of human trafficking may also present with expensive clothing, vehicles, jewellery and a well-kept appearance;
- Is unable to locate identity documents (e.g., passport, driver’s licence, health or social insurance card) or has had those documents taken from them;
- Is unaware of local surroundings, even if they have lived in the area for an extended period of time;
- Has been deceived about the nature of the job, wages, work permit/immigration documents, location or employer and expected living conditions;
- Has been deceived about the content or legality of their work contract;
- Has endured excessively long workdays and hours and/or very bad or hazardous working conditions;
- Has had no days off, low or no salary;
- Has endured poor or substandard living conditions;
- Has been isolated from friends and family, confined or surveilled;
- Turns to someone else to answer questions for them;
- Is always in the company of a “friend, or family member” (regardless of gender) who appears to monitor and/or control the victim’s movements;
- Seeks approval and/or answers from the “friend, or family member” before responding to questions, especially during the early stages of field interviews.<sup>111</sup>

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<sup>110</sup> Note that the human trafficking offences do not require proof that the victim was actually afraid; they require proof that a reasonable person in the victim’s circumstances would believe their physical or psychological safety would be threatened if they failed to provide the labour or service demanded of them.

<sup>111</sup> See *Sinclair*, *supra* note 60 at para 15 in which the Ontario Court of Appeal lists circumstances that may be relevant when assessing whether conduct amounts to exploitation as defined in section 279.04 (discussed in Chapter 2, section 2.5.3 Exploitation).

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

- Provide stories that sound rehearsed, including because of they use vocabulary that is not common among children;
- 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.

### 3.6.2 Corroborating Evidence

Corroborating evidence is a major asset in human trafficking cases. For the most part, it lightens the burden on the victim and bolsters credibility and reliability by corroborating the victim's testimony, establishing a chronology of events or highlighting forgotten details. The addition of all these elements can strengthen the credibility of a case and increase the chance of obtaining a guilty verdict. Video-recorded statements can also assist where victims recant.<sup>112</sup>

Other sources of corroborating evidence (provided it is obtained using legal means) can include anything that confirms the core allegations made by the victim, such as:

- Telephone records;
- Conversations by mobile device or other means, such as instant or text messages;<sup>113</sup>
- Digital device downloads of phones and computers used by the accused and/or the victim;
- Posts by the accused normalizing exploiting others;<sup>114</sup>
- Bank records;
- Hotel records;
- Statements made by hotel employees or employees of other businesses who could have observed the victim;
- Photos of injuries and the scene;
- 911 calls;
- Transportation records;
- Surveillance videos;
- Advertisements;
- Other victims (similar fact evidence);
- Witnesses (e.g., friends and family who observed assaultive/threatening behaviour and/or injuries; or, where a civilian came to the aid of the victim and

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<sup>112</sup> See *R v AN*, 2019 ONCA 741; *R v NA*, 2017 ONCJ 196; *Jeffers*, [2019] OJ No1711 (OCJ).

<sup>113</sup> See *R v PO*, 2020 ABQB 542; *R v NC*, 2019 ONCA 484.

<sup>114</sup> See *R v Bright*, 2017 ONSC 377 (accused's posts promoting the idea of women selling sexual services under the guidance/control of a pimp, with praise for those who bring in money and scorn for those who are poor but do not sell sexual services, admitted as relevant evidence); *R v Moradi*, 2016 ONCJ 843 (book on accused's laptop, "Pimpology – The 48 Laws of the Game", admitted as relevant evidence).

called police, that civilian should explain their observations and the victim's demeanour).

### **3.6.3 Tracking Financial Transactions**

In 2016, Canada launched Project Protect, the first flagship public-private partnership involving Canada's financial intelligence unit, Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), financial institutions and other entities obligated to report to FINTRAC, law enforcement, and various non-profits. Its aim is to target human trafficking for the purposes of sexual exploitation by focusing on the money laundering aspect of the crime. In 2016, FINTRAC published its first Operational Alert in support of Project Protect with 39 money laundering and contextual indicators to assist the private sector in detecting the laundering of illicit proceeds from human trafficking for the purposes of sexual exploitation.

FINTRAC updated the Operational Alert in 2021 with an additional 58 money laundering and contextual indicators drawn from analysis of approximately 100,000 sampled financial transactions linked to human trafficking. It also highlights money laundering methods used and findings specific to three types of human trafficking business models: trafficking out of short-stay locations (e.g., hotels), trafficking out of private residences (e.g., apartments), and trafficking out of illicit storefront businesses offering sexual services (e.g., massage parlours). Findings and indicators related to trafficking foreign nationals for sexual exploitation are also included.

The 2021 updated Operational Alert, which references the original within, can be found on FINTRAC's public website: <https://www.fintrac-canafe.gc.ca/intel/operation/oai-hts-2021-eng>.

## **3.7 Risk Assessment**

Throughout human trafficking investigations and court proceedings, the safety of the victim or witness should be the main priority for police. When investigating incidents of human trafficking and working with victims:

- Consider potential harm to family members, pets and persons known to them when evaluating risk;
- Conduct ongoing risk assessments as situations evolve;
- Take steps to ensure the safety of potential victims, their friends and family, where necessary;
- Seek the assistance of victim services and/or non-governmental organizations; and,
- If necessary, contact the witness protection program.

Trafficked victims usually come to the attention of law enforcement officers in one of the four following ways:

1. By victims escaping and seeking law enforcement assistance.
2. By law enforcement officers discovering or identifying victims during the course of a non-trafficking related enquiry or activity.
3. By law enforcement officers responding to or identifying victims during the course of a specific counter-trafficking investigation.
4. By victims being brought to police attention by third parties, such as family members or friends, victim support agency staff, or civilians who have witnessed a crime or from whom the victim has sought assistance etc.

It is important to consider the safety of any other individuals who may be identified by the facts of the case and who may face risk as a result, or who may be placed at risk by the course of action that the police intend to investigate or to pursue. The most serious risk of danger arises from violent reprisals being carried out by traffickers or their associates against victims and/or their family or loved ones, and this risk must always be the highest priority in the assessment and management process. The consequences of such an occurrence include the real possibility of serious injury and even fatalities, and should never be underestimated.

Investigators must be prepared to adapt to changing risks and levels of risk and to respond accordingly. Thus, risk assessment is a continuous process that should be under constant review.<sup>115</sup> Investigators should take steps to address any safety risks, including through safety planning or even the witness protection program (see below), if necessary.

### **3.7.1 Considerations for International Victims<sup>116</sup>**

For information on how to assist foreign national victims who wish to stay in Canada but do not have legal status, please see section 3.5 Working with Foreign National Victims.

For those who choose repatriation, 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 sexual exploitation to be disclosed to an official body in their home country. Sharing this information may also create a risk of reprisal or re-trafficking.

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<sup>115</sup> For more information on risk assessments, see: *Trafficking in Human Beings- Manual for Investigators* Module 5 (Interpol), online: <<https://polis.osce.org/manual-investigators-interpol-working-group-trafficking-women-sexual-exploitation>>.

<sup>116</sup> Considerations for International Victims sourced: *Trafficking in Human Beings- Best Practice Guidance Manual for Investigators* (Interpol), online: <<https://polis.osce.org/trafficking-human-beings-best-practice-guidance-manual-investigators>>.

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.

### **3.8 Protection of Witnesses**

Protective measures for witnesses can be provided by federal, provincial or territorial programs or through provisions in the *Criminal Code*.

#### **3.8.1 Federal Witness Protection Program Act**

The Federal *Witness Protection Program Act* (WPPA) is administered by the Royal Canadian Mounted Police (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.

#### **3.8.2 Criminal Code**

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 traffickers, nor is victim access to support services and assistance dependent upon their cooperation or support of an investigation/prosecution. Nonetheless, victim support for criminal proceedings 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);
- Support persons (section 486.1);



- 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,
- Court admissibility of video-recorded evidence for victims who were under the age of 18 at the time the offence was committed (section 715.1).

As part of the investigative process, it will be important to understand the basis upon which these testimonial aids can be accessed. Victim service organizations can provide information to victims on these provisions. For more information on these provisions, please see Chapter 4. For more information on available victim 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 to obstruct justice (sections 423.1 and 139).

### 3.9 Laying a charge

Decisions to charge and prosecute criminal offences in Canada are made by the police force of a jurisdiction and/or relevant prosecution services. The vast majority of criminal offences are investigated and prosecuted in Canada at the 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 Crown prosecutors; in other jurisdictions, charges can be laid directly by the police. Prosecutions under the IRPA are the responsibility of the Public Prosecution Service of Canada.

Despite the differences in charging practices, all decisions to prosecute in Canada are guided by a two-stage test:<sup>117</sup> (1) whether there is a reasonable prospect of a conviction;<sup>118</sup> and, (2) if so, whether the public interest requires a prosecution to be pursued. This charge assessment standard is to be applied throughout the entire process, from initially laying a charge through to the conclusion of the case. At any point where this standard is not met, prosecutors are under a duty to cease the prosecution.

Police officers are encouraged to liaise with prosecutors 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 should be consulted throughout the investigation and be part of the decision-making process regarding: evidentiary issues that arise; proposed investigative techniques and

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<sup>117</sup> 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.”

<sup>118</sup> In Quebec, prosecutors consider whether an objective analysis of the evidence and its sufficiency could reasonably lead a judge or jury well educated in law to find that the suspect is guilty of the offence disclosed by the evidence.

steps, such as obtaining search warrants and production orders; and, how best to address potential Charter issues. Prosecutors are best placed to provide advice on and assess what the viable charges are for prosecution, in which jurisdiction they should be laid and how the information should be worded. Ideally, a second prosecutor should be identified to review all relevant applications to obtain search and/or production warrants.

Charges are laid based on the evidence in each individual case. Other charges that might be considered in cases involving trafficking for sexual exploitation could include sex trade-related offences, such as materially benefitting from others' sexual services (section 286.2), procuring others to provide sexual services (section 286.3), advertising others' sexual services (section 286.4), sexual assault (sections 271 to 273), child pornography (section 163.1) and other child sexual offences (e.g., sections 172.1 and 151 to 153). IRPA offences should be considered in international labour trafficking cases and offences of general application, such as forcible confinement and kidnapping (section 279), assault (sections 266 to 268), uttering threats (section 264.1), criminal harassment (section 264), should be considered in all trafficking cases.

Once charges are laid, it is important for the law enforcement officer whom the victim trusts to continue to maintain contact with the victim through regular check-ins. These opportunities to build rapport also provide police with the ability to assess whether bail conditions are being followed, whether there are safety concerns that must be addressed and whether additional supports and services are needed, all of which may fluctuate over time.

### **3.9.1 Trafficking Victims Who Commit Offences**

Trafficking victims may commit a range of offences in the context of being trafficked. Some offending may be less serious and/or not involve harm to others, such as simple drug possession or immigration offences, while other types of offending may raise public safety issues, such as exploitative conduct toward other at-risk victims. For example, victims have been known to traffic others, including to diminish their own exploitation, i.e., where traffickers offer victims who engage in trafficking conduct on their behalf a reprieve from exploitative conduct. Involving victims in criminal activity can hide the trafficker's role in the trafficking enterprise, thereby shielding them from criminal liability.

An effective response that respects trafficking victims' rights requires timely identification of a person who has offended in the context of being trafficked. Importantly, victims who offend may not initially present as victims. The European Court of Human Rights has noted the necessity of early identification because an offender's status as a trafficking victim may affect the decision as to whether to prosecute that person:

[A]s soon as the authorities are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual suspected of having

committed a criminal offence may have been trafficked or exploited, he or she should be assessed promptly by individuals trained and qualified to deal with victims of trafficking....

Moreover, given that an individual's status as a victim of trafficking may affect whether there is sufficient evidence to prosecute and whether it is in the public interest to do so, any decision on whether or not to prosecute a potential victim of trafficking should – insofar as possible – only be taken once a trafficking assessment has been made by a qualified person....

Once a trafficking assessment has been made by a qualified person, any subsequent prosecutorial decision would have to take that assessment into account. While the prosecutor might not be bound by the findings made in the course of such a trafficking assessment, the prosecutor would need to have clear reasons which are consistent with the definition of trafficking contained in the Palermo Protocol and the Anti-Trafficking Convention for disagreeing with it.<sup>119</sup>

To assist in identifying victims as early as possible in the process, please see section 3.6.1 Indicators: Sexual Exploitation or Forced Labour. Trafficking victims who commit offences may also be working together with or for traffickers.

In cases where there is evidence that a person committed an offence in the context of being trafficked, consultation with a prosecutor prior to laying a charge is strongly recommended as laying a charge against a trafficking victim impedes law enforcement's ability to provide support to that person, negatively impacts law enforcement's ability to build a relationship of trust with that person, and makes it more difficult to hold their trafficker to account. In particular, pursuing charges for less serious offences in this context is unlikely to be in the public interest. Rather, building a relationship of trust with that person, instead of charging them, would assist them in their recovery and may lead to securing the evidence necessary to hold that person's trafficker accountable. Cases involving victims who commit serious offences that harm other at-risk persons are more difficult to address. In such cases, consultation with prosecutors is critical.

### **3.10 Report to Prosecutors**

A report to the prosecutor 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 charges in the case, including evidence that establishes the elements of the offence and the circumstances that led to the commission of the offence. In preparing the report, all evidence in support of the recommended charges should be included, as well as witness lists and statements, and exhibit lists. As is well known, the prosecution is required to disclose, in a timely manner, all relevant information in the possession of the police and the prosecution to the accused to permit them to make full answer and defence.

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<sup>119</sup> *VCL and AN v United Kingdom*, Nos 77587/12 74603/12 (16 February 2021) VI ECHR, online: <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-207927%22%7D%3E>>.

### 3.11 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.

Any evidence that the accused poses a danger to the victim or others is relevant to whether they should be released on bail. Bail may be denied on secondary (public safety) and/or tertiary grounds (maintain confidence in the administration of justice).<sup>120</sup> Moreover, prosecutors may be able to argue that the burden should be on the accused to show that they should not be detained (a reverse onus). The most frequent examples are when:

- The accused was already subject to bail conditions as part of an undertaking or order from the Court (paragraph 515(6)(c));
- The accused committed an indictable offence defined as both a serious act (section 467.1) and allegedly for the benefit, or at the direction, of a criminal organization (subparagraph 515(6)(a)(ii));
- The accused committed a violent crime against an intimate partner while being previously convicted of such crime in the past (paragraph 515(6)(b.1)).

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 by their conditions. 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 (subsection 742.6(1)). Victims must be advised of the bail conditions and to report any breaches of those conditions immediately. Police must investigate possible bail breaches expeditiously and if reasonable grounds to believe an offence has been committed exist, lay the appropriate charge(s). All breaches of bail must be taken seriously in human trafficking situations, as they may be associated with attempts to interfere with the witness and dissuade them from testifying or with other criminal activity.

Where an accused is denied bail, Crown prosecutors should seek an order pursuant to subsection 515(12) prohibiting the accused from communicating with the victim, a witness or any other person. When such an order is made, the victim, witness and/or other person in relation to whom the order is made must be notified of its existence and be encouraged to report to the police immediately if they receive any form of communication from the accused or anyone on their behalf. Attempts to interfere with victims and witnesses in human trafficking prosecutions – either through threats or the promise of payment of a large sum of money if the victim or witness does not testify at

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<sup>120</sup> See e.g. *R v SM*, 2020 ONCA 427; *R v Mohsenipour*, 2020 BCCA 112; *R v Brown*, 2020 ONSC 2626; *R v Davidson*, 2020 ONSC 2775.

trial - are common. To protect the viability of the prosecution, breaches of no-contact orders must be fully investigated quickly and appropriate steps taken to deal with the situation as soon as possible.

### **3.12 Peace Bonds**

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 a person will cause another person personal injury or damage property (section 810) or will commit certain offences, such as child sexual offences (section 810.1) or serious personal injury offences<sup>121</sup> (section 810.2). Breach of a peace bond is punishable by up to 4 years imprisonment (section 811).

Every peace bond includes an order to keep the peace. In addition, the judge may impose any other reasonable conditions necessary to secure the good conduct of the defendant. This 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.

### **3.13 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 to be used 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.

There may be situations where the foreign state declines to assist a Canadian investigator through informal agency-to-agency channels, but is, however, able to assist through the formal mutual legal assistance process. In these instances, the following considerations apply:

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<sup>121</sup> Defined in section 752 as an indictable offence (other than treason, high treason, murder) punishable by at least 10 years imprisonment involving the use or attempted use of violence against the person or conduct endangering or likely endangering the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person.

- (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 *United Nations Convention against Transnational Organized Crime* and its *Trafficking Protocol*. The *Mutual Legal Assistance in Criminal Matters Act*<sup>122</sup> provides for the implementation of both bilateral and multilateral treaties for mutual legal assistance.

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:

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<sup>122</sup> RSC, 1985, c 30 (4th Supp).

**International Assistance Group  
Criminal Law Operations Section  
National Litigation Sector  
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](mailto:cdncentralauthority@justice.gc.ca)**

In addition, investigators may wish to consult Chapter 3 of the International Assistance Group Deskbook Policy on the Mutual Legal Assistance in Criminal Matters:  
<https://www.justice.gc.ca/eng/cj-jp/emla-eej/db-gs.html#sec3>.

### **3.14 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 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 extradition partners, which include the 32 states or entities that are listed in the annex to the *Extradition Act*,<sup>123</sup> as well as bilateral and multilateral 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* (UNTOC) and its *Trafficking Protocol*.

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:

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<sup>123</sup> SC 1999, c 18.

**International Assistance Group  
Criminal Law Operations Section,  
National Litigation Sector 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](mailto:cdncentralauthority@justice.gc.ca)**

In addition, investigators and prosecutors may wish to consult Chapter 1 of the International Assistance Group Deskbook Policy on Extradition: Provisional Arrest: <https://www.justice.gc.ca/eng/cj-jp/emla-eej/db-gs.html#sec1>



## **Chapter 4: Guidelines for Prosecutors**

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

### **4.1 Victim Interview**

For some victims of trafficking, the first meeting with a representative of the prosecutor is their first encounter with the justice system. They may have fears or doubts that can be allayed by establishing a relationship of trust. These victims may be accompanied by the investigating officer assigned to their case with whom a relationship of trust may have already been established. The involvement of the prosecutor and victim services should build on that relationship.

Trafficking victims will have experienced severe trauma, possibly over long periods of time. That trauma may impact the way they perceive authorities and recount the events that happened to them. Understanding the impact of this trauma will assist in building trust and supporting them through the criminal justice process, which can be experienced as a form of re-victimization. For more information on the trauma experienced by trafficking victims and trauma-informed and victim-centered approaches, please see section 3.2.

Young women and girls are particularly at risk of trafficking, especially those from Indigenous and Black communities and youth in care. Indigenous women and girls are especially vulnerable to being targeted by traffickers and are over-represented among victims of human trafficking in Canada. The ongoing impacts of colonization, intergenerational trauma and systemic discrimination have led to mistrust of authorities and institutions and have made Indigenous women and girls more at risk of becoming trafficked for sexual exploitation. For more information on working with Indigenous victims, please see section 3.3.

#### **4.1.1 Make First Contact**

Arrange an informational meeting with the victim as soon as possible and involve the police officer whom the victim trusts and victim services in the case. To facilitate first contact, it is recommended that you verify the following:

- Will the victim require an interpreter, a communication aid or any disability-related accommodations?
- Does the victim wish to be accompanied by a support person?
- Are the meeting times and locations convenient for the victim?
- Does the victim require transportation?

- Are there any scheduling restrictions that the victim would like to have addressed (e.g., picking up children at the end of the day)?

Trafficking conduct impacts those subjected to it differently, but victims generally experience a significant degree of trauma. By keeping an open mind, free of stigma and bias, and by being empathetic, the victim may be more comfortable participating in the court process.

In some cases, meeting the victim early in the process may not be advisable, for example, when the victim is enrolled in a long-term recovery program and the professionals responsible for their care believe it would cause further trauma to have them meet with the Crown at that time, given that doing so would require the victim to think about the trafficking, the trafficker and court. At all times, “meet the victim where they are at” and if the victim is not ready for an initial meeting with the Crown at the outset of the case, delay it until enough time has passed that they are able to participate.

#### **4.1.2 The Initial Meeting**

As with any witness interview, ensure that another person is always present, such as the investigating officer assigned to the case or, depending on the circumstances, a victim services and/or a support person. In particular, the presence of a familiar investigating officer, particularly if a positive relationship has already been established, may help the victim feel more at ease and increase their willingness to participate.

Depending on the circumstances, the initial meeting with the victim may take place before charges have been laid. If possible and subject to the victim’s willingness, it may be beneficial to have at least two meetings with the initial meeting focusing on developing rapport, explaining the process, what to expect and what needs the victim has. It is also an opportunity for the victims to ask any questions. Depending on how the case proceeds, additional meetings may be beneficial.

When you are ready to interview the victim, take time to introduce yourself and explain the role of the Crown, the purpose of the interview and what will happen next. At this stage, consider focusing on whether the victim would like to add to or change their police statement, rather than asking about the offence itself.

Remain **sensitive** to the victim's personal situation and state of mind, including the psychological and emotional distress they are likely experiencing. Bear in mind that no two victims are alike and victims may react in different ways to Crown counsel and law enforcement, depending on the nature of their traumatic experience; some may be cooperative, though in many instances, they may not trust the justice system and may decline to participate meaningfully. Try to mirror the language they use to describe their situation and experiences (e.g., if they say “boyfriend”, use this term). Pay **close attention** to the victim’s body language and any comments about the accused in particular, as the victim may continue to fear for their safety, as well as that of others

known to them, even if the accused is in custody. Like other vulnerable victims, such as survivors of domestic violence or sexual assault, be prepared to arrange for frequent breaks, or even terminate the interview and suggest a later date to finish it if the victim is unable or unwilling to continue.

Victims who react negatively initially, may not remain adverse or hostile throughout the interview, as such a response may be a coping mechanism that they have adopted to survive their ordeal, and may not be directed specifically at the justice system. Showing empathy and sensitivity will help build trust and confidence that authorities are there to help. To maximize the effectiveness of the interview, it is thus important to avoid asking the victim about discrepancies or inconsistencies in their evidence too early in an interview. Inconsistent statements are consistent with having experienced trauma; probing victims' statements before a relationship of trust is established may lead the victim to feel they are not believed, which could greatly reduce their 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 more sensitive topics.

Avoid making promises that one may not be able to keep (e.g., assuring them that they will be able to testify via closed-circuit video or behind a screen, when this procedure requires an application on which the court has not yet ruled).

#### **4.1.3 Maintaining Trust**

In addition to the formal interview, involve the victim throughout the process. Specific provincial or territorial laws may apply.<sup>124</sup> Regularly consult the victim and provide timely information, particularly with respect to the release of the accused on bail and with respect to the results of the trial and sentencing. Engage victim services early in the process to assist in liaising with the victim. The role of victim services is addressed more thoroughly in Chapter 6.

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*.<sup>125</sup>
- The *Online Training Initiative to Address Human Trafficking*.<sup>126</sup>

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<sup>124</sup> See e.g. Quebec's *Loi sur l'aide aux victimes d'actes criminels*, Abrogée, 2021, c 13, a 195.

<sup>125</sup> UNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, (2009), online: <<https://www.unodc.org/unodc/en/human-trafficking/2009/anti-human-trafficking-manual.html>>.

<sup>126</sup> *Online Training Initiative to Address Human Trafficking*, online: <<https://training.helpingtraffickedpersons.org>>.

## 4.2 Approval of Charges/Review of Offences

In Canada, the responsibility to lay charges rests with the police in every province except for British Columbia and Quebec,<sup>127</sup> where the responsibility to lay charges rests with the Crown. In New Brunswick, the police lay charges after receiving approval from the Crown.

Despite the differences in charging practices, all decisions to prosecute in Canada are guided by a two-stage test:<sup>128</sup> (1) whether there is a reasonable prospect of conviction/whether an impartial and properly instructed judge or jury could reasonably conclude that the suspect is guilty of the offence disclosed by the evidence; and, (2) if so, whether a prosecution is in the public interest.

Human trafficking often occurs alongside other criminal offences. Human trafficking is an offence that takes place over a period of time, during which traffickers extract labour or services from their victims, including by engaging in incident-based offences, such as assault. Accordingly, consideration should also be given to the laying of additional charges, where the evidence supports it. For example, the following other offences may be relevant in human trafficking cases:

- 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));
- Sex trade offences (sections 286.1 to 286.4);
- Extortion (section 346);
- Intimidation (section 423);
- Criminal organization offences (sections 467.11–467.13);
- Narcotics trafficking offences (section 5 of the *Controlled Drugs and Substances Act*);
- Cannabis selling and distributing offences (sections 31 to 37 of the *Cannabis Act*);
- In cases involving victims who are foreign nationals, IRPA offences, such as illegally employing a foreign national (section 124).

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<sup>127</sup> In Quebec, the prosecutor authorizes a peace officer to appear before a justice of the peace to lay an information. The prosecutor determines the counts contained in the information.

<sup>128</sup> The exact wording of this test may vary slightly from one jurisdiction to another. For example, in British Columbia, moving forward with a prosecution requires evidence that there is a “substantial likelihood of conviction.” In Quebec, the criteria for evaluating a file at the authorization stage are: the sufficiency of the evidence and the appropriateness of prosecuting (Directive ACC-3 of the Director of Criminal and Penal Prosecutions)

### 4.3 Trafficking Victims Who Commit Offences

Trafficking victims may commit a range of offences in the context of being trafficked. Some offending may be less serious and/or not involve harm to others, such as simple drug possession or immigration offences, while other types of offending may raise public safety issues, such as exploitative conduct toward other vulnerable victims. For example, victims have been known to traffic others, including to diminish their own exploitation, i.e., where traffickers offer victims who engage in trafficking conduct on their behalf reprieve from exploitative conduct. Involving victims in criminal activity can hide the trafficker's role in the trafficking enterprise, thereby shielding them from criminal liability.

An effective response that respects trafficking victims' rights requires timely identification of a person who has offended in the context of being trafficked. Importantly, victims who offend may not initially present as victims. The European Court of Human Rights has noted the necessity of early identification because an offender's status as a trafficking victim may affect the decision as to whether to prosecute that person:

[A]s soon as the authorities are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual suspected of having committed a criminal offence may have been trafficked or exploited, he or she should be assessed promptly by individuals trained and qualified to deal with victims of trafficking....

Moreover, given that an individual's status as a victim of trafficking may affect whether there is sufficient evidence to prosecute and whether it is in the public interest to do so, any decision on whether or not to prosecute a potential victim of trafficking should – insofar as possible – only be taken once a trafficking assessment has been made by a qualified person....

Once a trafficking assessment has been made by a qualified person, any subsequent prosecutorial decision would have to take that assessment into account. While the prosecutor might not be bound by the findings made in the course of such a trafficking assessment, the prosecutor would need to have clear reasons which are consistent with the definition of trafficking contained in the Palermo Protocol and the Anti-Trafficking Convention for disagreeing with it.<sup>129</sup>

In cases involving victims who offend, the first consideration is whether a defence applies, such as the defence of self-defence or duress, such that there is no reasonable prospect of conviction. Even where there is reasonable prospect of conviction based on the facts, a prosecution of a trafficking victim may still not be in the public interest. For example, pursuing charges against a victim who has committed less serious offences, particularly where further offending is unlikely to occur once they are removed from the

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<sup>129</sup> *VCL and AN v United Kingdom*, *supra* note 119.

trafficking situation, is likely to negatively impact the victim's recovery, as well as authorities' ability to hold their trafficker accountable.

Cases involving victims who commit serious offences that harm other vulnerable persons and/or raise public safety concerns are more difficult to address. In such cases, a range of factors should be considered, including the risk of re-offending, the impact of pursuing a prosecution on the ability to hold the victim's trafficker accountable and the victim's support needs. Where the risk of re-offending is low and/or rehabilitation is likely, consideration should be given to providing support rather than punishment.

#### **4.4 Obtaining Foreign Evidence/Assistance**

Mutual legal assistance may be critically important to the successful investigation and prosecution of a human trafficking case that crosses international borders. Canada is party to 35 bilateral mutual legal assistance treaties and many multilateral conventions that contain provisions for mutual legal assistance, including the UNTOC and its *Trafficking Protocol*, which Canada ratified in May of 2002. Where a human trafficking case involves another country with which Canada does not have a bilateral mutual legal assistance treaty, the UNTOC provides a basis for mutual legal assistance (see article 18 of UNTOC and article 1 of the Trafficking Protocol). The *Mutual Legal Assistance in Criminal Matters Act* provides for the implementation of both bilateral and multilateral treaties for mutual legal assistance.

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 UNTOC and its Trafficking Protocol. Where a human trafficking case involves another country with which Canada does not have a bilateral extradition treaty, the UNTOC provides a basis for extradition (see article 16 of the UNTOC and article 1 of the Trafficking Protocol). The *Extradition Act* provides for the implementation of both bilateral and multilateral extradition treaties.

For more information on mutual legal assistance and extradition, please see sections 3.13 and 3.14.

#### **4.5 Pre-Trial Detention/Release**

Traffickers are known to continue to seek to control and intimidate victims and witnesses, even after they have been charged with criminal offences. To prevent the accused from communicating with the victim, or any other person connected with the case, an application for a no-contact order under subsection 516(2) is recommended. This request can be made to the court at the time of the first appearance. Once granted, it will remain in force under subsection 516(3).

### **4.5.1 Grounds for Detention**

The three grounds of detention in subsection 515(10) can be raised when seeking the detention of an accused charged with human trafficking offences. While the factors relevant to the three grounds of detention are well known, the following considerations are particularly germane to trafficking cases.

With respect to the first ground at paragraph 515(10)(a) (ensuring attendance at court), 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 easily leave the jurisdiction. Ensure that passports are confiscated and that border services are notified that the person is not allowed to leave the country. Prohibiting the person from applying for a passport is also a condition of release that should be considered in these circumstances.

With respect to the second ground at paragraph 515(10)(b) (ensuring the protection or safety of the public), given the coercion and threats inherent in the offence of human trafficking, victim/witness protection and safety is a prime consideration. Human trafficking is a lucrative business, and traffickers have significant incentive to continue committing the offence after they are released. Conditions aimed at restricting their access to certain places and people associated with crime should be considered. Moreover, the victim's perception of their physical and psychological safety is critical to their recovery and maintaining their cooperation in the prosecution.

With respect to the last ground at paragraph 515(10)(c) (maintaining confidence in the administration of justice), the gravity of the offence and the potential for the accused to receive a lengthy term of imprisonment are equally important factors to consider (subparagraphs 515(10)(c)(ii) and (iv)). Because of the human trafficking offences' minimum and maximum sentences, the objective gravity of these offences is high. The maximum sentence for aggravated human trafficking is life imprisonment and 14 years in other cases (sections 279.01 and 279.011).

For bail decisions in human trafficking cases, please see Annex A.

### **4.5.2 Onus**

While human trafficking offences do not trigger an automatic reverse onus during a bail hearing, even where a firearm is involved, there may be cases where a reverse onus applies. In particular, if the accused is charged with a criminal organization offence under section 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) 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 their detention is not justified (subparagraph 515(6)(a)(ii)). Given that human trafficking 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 subparagraph 515(6)(a)(ii).

Since 2019, a reverse onus applies where the accused is charged with a violent offence against an intimate partner, if they have a prior conviction for violence against any intimate partner. As of January 4, 2024, this reverse onus was broadened to apply to individuals who were previously discharged of an intimate partner violence offence. This reverse onus also applies in trafficking cases where the victim has been led to believe that their trafficker is their intimate partner. Although the accused may dispute the nature of their relationship with the victim, the court must consider the victim’s view of that relationship when determining whether this reverse onus applies.

#### **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 surety, becomes apparent.

Below are some relevant considerations in preparing for the bail hearing:

- **Consider having the investigating officer attend and testify at the bail hearing.** This can be helpful in more complicated cases. The investigating officer will likely have additional relevant information, including about the victim that is not in the investigation report. In certain circumstances, it may also be appropriate to ask the investigator to remain present in the courthouse during the bail hearing.
- **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 may use some of their victims to help recruit and control new victims. If the accused is also a victim, they may be more likely to be released on the basis that they are a “lesser” player. They may still be under the control of the main trafficker and may be at risk of continuing to commit offences at the direction of their trafficker, even if their trafficker is charged and detained. The proposed surety can be asked in cross-examination how they will prevent the accused from associating with their trafficker. Please also see section 4.3 Trafficking Victims who Commit Offences.
- **Collect as much background information on the accused as possible.** Look for any occurrences that may demonstrate that the accused is entrenched in a criminal lifestyle, especially reports of previous involvement in, or associations with people involved in, the sex trade even if no charges were laid. Police occurrence reports pertaining to the accused and the proposed surety may demonstrate longstanding problems between them and/or that the surety has



been unable to control the accused's behaviour in the past or has been subjected to assaults/threats/aggressive behaviour by the accused. All relevant evidence is admissible at a bail hearing, as long as it is credible or trustworthy, and even if it shows the accused to be of bad character. The Supreme Court of Canada clarified has this point:

There are practically no prohibitions as regards the evidence the prosecution can lead to show cause why the detention of the accused in custody is justified. According [page744] to s. 518(1)(e) *Cr. C.*, the prosecutor may lead any evidence that is "credible or trustworthy", which might include evidence of a confession that has not been tested for voluntariness or consistency with the *Charter*, bad character, information obtained by wiretap, hearsay statements, ambiguous post-offence conduct, untested similar facts, prior convictions, untried charges, or personal information on living and social habits. The justice has a broad discretion to "make such inquiries, on oath or otherwise, of and concerning the accused as he considers desirable" (s. 518(1)(a)). The process is informal; the bail hearing can even take place over the phone (s. 515(2.2)).<sup>130</sup>

- **Have the proposed surety investigated.** In general, sureties must have complied with the requirements of section 515.1 and an investigation may commence as soon as they are received. 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 inquiries into the suitability of a proposed surety, the prosecutor should be aware that the proposed surety may be involved in the accused's criminality and should ask the police to investigate this possibility, which 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 on the proceeds of that activity such that they have a conflict of interest. The prosecutor should explore the proposed surety's income and employment situation in cross-examination in order to uncover any conflict that would make the surety unlikely to prevent the accused from participating in criminal activity or to notify authorities, in the event of a bail violation. The

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<sup>130</sup> *Toronto Star Newspapers Ltd v Canada*, 2010 SCC 21 at para 28; see also *R v Hansa*, 2016 ONSC 4541 at paras 21—27.

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 is facing 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 for cross-examination at future bail hearings. But the prosecutor may not know that the surety has previously been a surety, particularly if the other proceeding took place in another jurisdiction. The prosecutor can ask the surety this question at in the 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, the transcript could be obtained for that proceeding under sections 520 and 521.
- **Has the proposed surety ever acted as a surety before for this accused or anyone else?** If so, did the accused breach any conditions or commit a new offence while on bail?
- **Is the surety able to effectively supervise the accused?** Probe the dynamics of their relationship, how well the proposed surety knows the accused (such as what the accused does to earn income, the nature of their criminal record, where the accused lives etc.), how much time they have spent together recently, whether the surety will really be able to make the accused follow the bail conditions and whether the surety will have the time to provide the level of supervision required given the surety's other obligations (work, family, school, volunteer, etc.).
- **Consider filing new charges if the accused breaches release conditions issued in a previous proceeding.** If the accused has breached an appearance notice or summons, undertaking or release order under subsections 145(2) - (5), a reverse onus under paragraph 515(6)(c) applies such that the accused must show cause as to why detention is not justified.
- **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, a reverse onus applies, such that the accused must show cause as to 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 a foreign national, the police should try to determine if the accused has a criminal record or outstanding charges in their 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 a foreign national.** The fact that an accused is a foreign national is relevant to the primary ground for detention under paragraph 515(10)(a). Also, the accused’s statements and declarations to the CBSA may be used during cross-examination at the bail hearing.
- **Consider preparing documentation to file with the court.** Where the accused does not have a criminal record and the decision on detention may depend on the tertiary ground under paragraph 515(10)(c), submitting documentation to the court helps establish “the apparent strength of the prosecution’s case,” which is one of the circumstances to consider under paragraph 515(10)(c). The documentation could include:
  - The victim’s statements or summaries thereof;
  - The accused’s statements or summaries thereof;
  - The background of the accused;
  - The background of the victim;
  - Corroborative material such as debt lists and ledgers, immigration documents, cell phone records to show the accused’s movements, surveillance videos or photos, messages, photos and videos from a phone or computer used by the victim or accused, which the police lawfully accessed, and which prove the charges, before and after photos of the victim, and past occurrence reports.
- Where there are supervision programs for persons released on bail, look for reporting and residency provisions. Bail supervisors can play an instrumental role in monitoring an accused and informing the Crown of any breaches.

#### **4.5.4 Non-Communication Order upon Detention**

Where the accused is ordered detained, the prosecutor should seek an order, pursuant to subsection 515(12), that the accused abstain from communicating, directly or indirectly, with any victim, witness or other identified person, associated with the case. Traffickers are known to seek to control their victims, including when they are detained.

#### **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 human trafficking charge 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 subsection 515(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 argue for such a condition in respect of the victim, the victim’s family members, witnesses, and associates of the accused. In certain circumstances, it may be advisable to include the initials of victims and witnesses in the order instead of their full names.

**Remain away (or “no go”) 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, that address should be the subject of such a condition. If there are special circumstances that affect the victim’s safety, it may be necessary to omit the victim’s address as these orders are public. To avoid the need to bring an application to vary the order under section 519.1, it is advisable to include a clause stating that the accused must remain away from any place known to the accused where the victim may reside. If the accused is not aware of the relevant address, care must be taken not to reveal information that could enable the accused to locate the person. In a sexual exploitation trafficking case, the following additional types of remain away conditions may be appropriate:

- Not to attend an establishment where adult services or entertainment is provided, such as strip clubs, erotic massage parlours/spas; and/or
- Not to attend any hotel or motel unless in the presence of a surety.

### **Optional Conditions**

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.<sup>131</sup> In most cases, the prosecutor should consider asking for additional conditions, as follows:

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<sup>131</sup> *R v Zora*, 2020 SCC 14.

- That the accused report;
- That the accused 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 the accused remain away from that region except for necessary court attendances and meetings with counsel;<sup>132</sup>
- That the accused reside with the surety or a previously identified person at a named address;
- If there is no “reside with” condition, consideration should be given at least to a “reside at” condition, which would require the accused to seek the permission of the court, should they 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;
- That the accused be under house arrest and/or keep a curfew; if any exceptions are built into this condition, consideration should be given to making them dependent on the accused’s obtaining written permission from a designated person before exercising the exception;
- That the accused not possess any telecommunications devices and not access the Internet, since traffickers may contact and threaten victims and witnesses through these means;
- If a victim is a minor, that the accused not associate with minors, including for employment or voluntary work that would place the accused in a position of trust of authority with minors, or in specific locations (e.g., group home);
- If relevant to the facts of the case, that the accused abstain from the consumption of alcohol and not possess any intoxicating substances or drugs except in accordance with a medical prescription;
- That the accused not to have any involvement in the sex trade; and
- Electronic monitoring.

#### **4.5.6 Publication Bans During Bail Proceedings**

Publication bans on bail hearings may be sought under section 517. Section 517 of the *Criminal Code* is predominantly used by the defence to limit the stigma attached to the accused’s interaction with the justice system and to ensure the partiality of the trier of fact should there be a trial. The order is mandatory when sought by the defence but remains discretionary when requested by the prosecution. As part of the application, the prosecutor will have to show how the publication ban protects the fairness of the trial, that there are no other reasonable alternatives and that the benefits of the ban outweigh the negative effects, particularly with respect to the freedom of expression of the media covering the case. Prosecutors should discuss with the victim whether they wish a publication ban in advance of making an application. Please see section 4.10 for general information on publication bans.

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<sup>132</sup> More specific “remain away” conditions should also be considered where appropriate.

## 4.6 Post-Bail Hearing Considerations

### 4.6.1 If Accused is Released

**Post-bail hearing meeting and investigation of evidence:** Soon after the bail hearing, it can be useful for the prosecutor and the police to meet to discuss the evidence at the bail hearing, provided evidence has been submitted. Any evidence that raises suspicions can be the subject of investigation, as can matters raised in defence cross-examination of the investigating officer, if they testified at the bail hearing. Transcripts of that testimony can be requested to facilitate follow-up and for potential use at trial.

**Possible bail review:** Where an accused has been released despite the opposition of the prosecutor, the prosecutor may want to consider bringing a bail review application pursuant to section 521 of the *Criminal Code*. A post-bail hearing investigation that rebuts evidence given at the bail hearing may strengthen the bail review application.

**Proactive 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 human trafficking 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 foreign nationals,<sup>133</sup> even if a non-communication order is in place. Similarly, the accused may continue to run the trafficking business, even if they are detained. Prosecutors should work with police to determine whether such conduct has occurred. If the accused was released after the bail hearing, any such conduct would warrant having the accused arrested pursuant to section 512.3 and charged with additional offences, and/or bringing an application pursuant to subsection 524(3) to have all previous releases cancelled.

### 4.6.2 If Accused is Detained

An accused may request review of a bail decision at any time (section 520) and the jailer may do so at the end of the 30-day period for a summary offence and 90 days in other cases (section 525). In all cases, the prosecutor must be notified in advance. In a section 520 review, the onus is on the applicant to show that there was an error in law and that the decision was manifestly improper. While a section 525 hearing takes place as of right, the reviewing judge has the independent responsibility to consider whether continued detention is justified under subsection 515(10), with the parties having an opportunity to submit their respective arguments.

## 4.7 The Jury Selection Process – Challenge for Cause

The challenge for cause process is used frequently and is considered an important aspect of the jury selection process that aims to ensure that only eligible and impartial

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<sup>133</sup> This is more likely to occur if the accused and victim are from the same location.

jurors are selected to try a case. Subsection 638(1) of the *Criminal Code* sets out the basis upon which prospective jurors may be challenged by either the prosecutor or the accused. Jurors who are successfully challenged based on one or more of the grounds listed are dismissed from jury duty pursuant to section 640 of the *Criminal Code*.

A “*Parks* challenge” or “*Parks* question” refers to the 1993 decision<sup>134</sup> of the Ontario Court of Appeal that established the right to “challenge for cause” based on racial partiality. Specifically, the challenge for cause ground under paragraph 638(1)(b) (“a juror is not impartial”) was interpreted to permit either the accused or the Crown to challenge prospective jurors on the basis of questioning whether their ability to judge the evidence in the case without bias, prejudice or partiality would be affected by the accused’s race.

Since the decision in *R v Parks*, the Supreme Court of Canada has endorsed this practice and the use of challenges for cause in *R v Williams*<sup>135</sup> and *R v Spence*,<sup>136</sup> noting that the “challenge for cause procedure is about the only tool available to the accused to root out and expose such racism where there is a ‘realistic potential’ of its existence”.<sup>137</sup> The Supreme Court of Canada has also noted that *R v Parks* does not describe the only questions available on a challenge for cause and that trial judges have discretion in deciding on the form of permissible questioning to ensure juror impartiality.<sup>138</sup>

As a matter of practice, in consultation with the defence counsel (or the accused), prosecutors should always consider whether to propose a “*Parks* question” to the trial judge. If a *Parks* question is requested by the accused and endorsed by the trial judge, consideration should also be given to offering to alternate posing the question with defence counsel (or the accused).

## 4.8 Jury Instruction Relating to Trauma

In human trafficking jury trials, prosecutors should consider seeking a final instruction, which explains to the jury that they must not apply pre-conceived notions of how trauma victims ought to behave or react. This type of jury instruction has become accepted practice in sexual violence prosecutions and is being used more frequently in human trafficking trials. In September 2022, the jury was charged as follows in the *R v McIntosh* trial:

[27] It has long been recognized that there is no rule on how people who are the victims of trauma like human trafficking behave. A complainant may or may not exhibit immediate symptoms of trauma, be weepy, be depressed or withdrawn, or avoid the accused. The presence or absence of these behaviours does not mean

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<sup>134</sup> *R v Parks*, [1993] OJ No 2157, 15 OR (3d) 324.

<sup>135</sup> *R v Williams*, [1998] 1 SCR 1128.

<sup>136</sup> *R v Spence*, 2005 SCC 71.

<sup>137</sup> *R v Spence*, *supra* note 136 at para 25.

<sup>138</sup> *R v Chouhan*, 2021 SCC 26.

that a complainant was or was not the victim of these sorts of offences. It just means that there is no “normal” or “typical” way for a victim of these offences to behave.

[28] No inference should be drawn regarding the complainant's credibility that is based on assumptions about how a victim of these offences is supposed to react and respond to them. It cannot be assumed that victims react in any objectively identifiable way. A failure to demonstrate avoidant behaviour or a change in behaviour must not be the subject of any presumptive adverse inference based upon now rejected stereotypical assumptions of how people react to these offences.

[29] I caution you, as I did when we started the trial, that experience has shown us that there is no typical victim or typical offender or typical situation or typical reaction. I am not telling you this to support a particular conclusion or so you don't use your common sense. I am telling you this so that when you reflect thoughtfully on the evidence, you are careful not to be influenced by misconceptions about the offences before you or the people involved. You must resist and help each other to resist conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies or stereotypes. Think about why you are making your decisions and examine your reasons for stereotypes and assumptions that you may be applying.<sup>139</sup>

## 4.9 Testimonial Aids and Other Measures

Testifying in criminal proceedings can be a difficult and frightening experience for any witness but may be particularly difficult for a victim of trafficking. Because trafficking involves coercive practices, such as violence, which may be physical, sexual or psychological, and threats of violence to the victim or to someone known to the victim, trafficking victims are likely to require the use of testimonial aids in order to provide their testimony, as may other witnesses in trafficking cases.

In particular, victims may recant or struggle during testimony for many reasons, including fear and/or trauma. For these reasons, consideration should always be given to requesting testimonial aids for trafficking victims. In cases involving Indigenous victims, the following excerpts from *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* may assist in submissions requesting testimonial aids for Indigenous victims (over 18), as well as for closing submissions at trial:

- Due to the stigma of trafficking, victims may not want to report for many different reasons, including being in physically, economically, and otherwise vulnerable positions, or being threatened by traffickers... Final Report, V1a-1, p. 658.

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<sup>139</sup> A copy of the complete jury charge can be obtained by sending an email request to: [HTProsecutionteam@ontario.ca](mailto:HTProsecutionteam@ontario.ca)



- While police are eager to have women report violence, there still needs to be significant trust and education built. Many of the barriers experienced by Indigenous Peoples are rooted in the police's and justice system's response to Indigenous Peoples from a place of limited to no understanding of the complex historical relationships, as well as the realities of intergenerational trauma among Indigenous Peoples. Police officers who attended the National Inquiry also shared that, for instance, police receive limited training on these very issues that are so fundamental to ensuring that a victim's experience with the police is safe and takes place in a relationship that demonstrates this knowledge. Final Report, V1a-1, p. 631.
- When a First Nations, Métis, or Inuit woman appears in court, they go before the same justice system that established the reserve system, the residential school system, and continues the removal of children from their families, and they ask that court for justice. Final Report, V1a-1, p. 627.

The *Criminal Code* contains provisions that allow judges to order the use of testimonial aids and other measures to help witnesses testify. 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 committed against them. One of the objectives of these provisions is to help reduce the trauma that 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.

Testimonial aids and other measures that assist victims and witnesses testify include the following:

- 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 (section 486.2);<sup>140</sup>
- Allowing a **support person or animal** to be present during the witness's testimony, to make the victim or witness more comfortable by having that person at their side (section 486.1); and
- **Appointing a lawyer to conduct the cross-examination of a victim** when the accused is self-represented (section 486.3).

These measures **must** be 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.

These measures **may** be available to other vulnerable adult witnesses, upon application, if the judge feels it is necessary for the witness to give a full and candid account of the acts at issue. The judge will consider factors such as the witness's age,

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<sup>140</sup>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 *Urizar*, *supra* note 41.

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 issue an **exclusion order** requiring some or all members of the public to leave the courtroom during some or all of the criminal proceedings (section 486). A judge may make such an order if they are of the opinion that it is:

- In the interest of public morals; or
- In the interest of the maintenance of order; or
- In the interest of the proper administration of justice, which includes “safeguarding the interests of witnesses under the age of 18” (paragraph 486(2)(a)) and “protecting justice system participants” (paragraph 486(2)(b)); or
- Necessary to protect international relations, national defence or national security.<sup>141</sup>

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 identified that could accomplish the same results (*Canadian Broadcasting Corporation v New Brunswick [Attorney General]*<sup>142</sup>).

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

For additional information please see: Testimonial Aids:

<https://www.justice.gc.ca/eng/cj-jp/victims-victimes/factsheets-fiches/aids-aides.html>

If the victim resides in a different jurisdiction than where the charges are laid, canvas with the victim and their support persons whether it will re-traumatize the victim to require them to attend court in person. For many victims, returning to the city where they were trafficked will trigger trauma associated with the trafficking. Some victims who reside outside of the jurisdiction may refuse or be reluctant to attend court, but when it is explained to them that they may be able to testify by videolink from the city in which they reside, they may be more willing to testify. Where having the victim testify in person will re-traumatize them, an application for videolink testimony may be made under section 714.1. This application, along with testimonial aid applications, should be made in advance of trial whenever possible, as some victims will experience significant anxiety about the possibility of having to testify in the physical presence of the accused

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<sup>141</sup> It should also be noted that the constitutionality of this provision has been upheld on several occasions. See, for example: *Canadian Broadcasting Corporation v New Brunswick (Attorney General)*, [1996] 3 SCR 480, [*Canadian Broadcasting Corporation*]; *French Estate v Ontario (Attorney General)* (1998), 38 OR (3d) 347, [1998] OJ No 752 (CA), leave to appeal to the SCC denied.

<sup>142</sup> *Canadian Broadcasting Corporation*, *supra* note 141.

without a support person or support animal, which can be avoided if the court's decision is known well in advance of trial.

## 4.10 Publication Bans

The *Criminal Code* provides for both mandatory and discretionary publication bans that prevent the publication, broadcast or transmission in any way of any information that could identify the victim or witness. Prosecutors must discuss publication bans with the victim at the earliest opportunity to determine whether a victim wants a publication ban. While many victims may want a publication ban to protect their identity, others may not. For example, a victim may want to speak publicly about their experience of being trafficked, including to raise awareness about the tactics that traffickers use to lure victims.

Under section 486.4 of the *Criminal Code*, a judge, upon application, **must** make an order directing that any information that could identify a witness under the age of 18 or the victim shall not be published in any document or broadcast in any way, in proceedings involving a number of enumerated offences, including the human trafficking-specific offences. The prosecutor may apply for a section 486.4 publication ban on behalf of a victim who requests one, as well as in cases where the prosecutor has not yet determined the victim's wishes, for example because they are having trouble locating the victim. In both cases, the prosecutor must, as soon as possible, inform the victim of the existence of the publication ban and of the victim's right to apply to vary or revoke the publication ban. If the prosecutor applies for a publication ban on the victim's behalf, they must inform the court as soon as possible that they have informed the victim who is the subject of the publication ban of its existence, that they determined the victim's wishes, and that they have informed the victim of their right to apply to revoke or vary it. If a victim who is the subject of a publication ban requests that the prosecutor have it varied or revoked, the prosecutor must apply to vary or revoke it as soon as possible.

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." Section 486.5 publication bans may be relevant in cases where a decision is made not to pursue human trafficking charges in favour of other charges that are not enumerated in section 486.4. The same duties to inform as described above apply to section 486.5 publication bans.

In deciding whether or not to order a section 486.5 publication ban, the judge is directed 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 (subsection 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 factor that the judge considers relevant (paragraph 486.5(7)(h)).

For more information on understanding trauma and human trafficking, please see Chapter 3 or visit the *Online Training Initiative to Address Human Trafficking*, 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 English and French and can be accessed at:

<https://helpingtraffickedpersons.org/training/curriculum>. See also <https://kmb.camh.ca> (EENet – An Introduction to Human Trafficking (Centre for Addiction and Mental Health)).

## 4.11 Preliminary Hearings

For offences committed on or after September 19, 2019, charges under paragraph 279.02(1)(a) and section 279.03 are no longer eligible for a preliminary hearing. If it is a crime that straddles the two time periods, a preliminary hearing is no longer possible, since procedural legislative changes are prospective, not retroactive.

Given the difficulties victims experience when testifying, particularly when they have to do so multiple times, consideration should be given to using subsection 540(7)<sup>143</sup> of the *Criminal Code* to avoid having the victim testify at the preliminary hearing. Under this provision and after giving notice (subsection 540(8)), the statement of the victim, generally an audio-video recorded statement, can be entered as evidence instead of the victim attending to provide the evidence. However, the judge may still require the victim to appear for examination or cross-examination in relation to a statement entered as evidence under subsection 540(7) (see subsection 540(9)). If a decision is taken to rely on subsection 540(7), victims should be made aware that they may still have to testify. Prosecutors should also consider opposing cross-examination under subsection 540(9), especially where the statement admitted under section 540(7) was taken under oath or solemn affirmation.

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<sup>143</sup> 540(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.

## Other methods of testimony

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

*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.*

## 4.12 Direct Indictments

Pursuant to section 577 of the *Criminal Code*, the Attorney General or the Deputy Attorney General is authorized to send a case directly to trial without a preliminary inquiry, when the preliminary inquiry has been commenced but not concluded, or after a preliminary inquiry has been held and the accused has been discharged. Importantly, the accused has no constitutional right to a preliminary hearing.<sup>144</sup>

In human trafficking cases, prosecutors should consider obtaining a direct indictment when there are benefits to removing the preliminary inquiry from the process, such as avoiding pre-trial delay, preserving evidence, protecting vulnerable witnesses, and other public interest factors. For prosecutors in Quebec, the ACC-2 directive should also be consulted for the use of this procedure.

## 4.13 Responding to Common Defence Strategies

The most common defence challenge in human trafficking cases is attacking the credibility and reliability of the prosecution's witnesses, and especially the victim. To raise reasonable doubt, the defence may submit prior inconsistent statements, and call into question the victim's credibility (e.g., by suggesting an ulterior motive, such as avoiding deportation or seeking revenge).

### 4.13.1 Prior Inconsistent Statements

There may be discrepancies between a victim's prior testimony or written statements and their testimony at trial. Such discrepancies may be inadvertent, as the material facts may have occurred a considerable time in the past. Victims may also deliberately withhold information or lie if they still fear for their safety or that of others, if they have feelings for their trafficker, for example in cases where the trafficker gained control over

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<sup>144</sup> *R v SJL*, 2009 SCC 14.

them by leading them to believe that they were in an intimate relationship with them, or if they have participated in criminal activity, for example in cases where the trafficker has involved their victims in the trafficking business or other related criminal activity. Discrepancies are also consistent with having experienced trauma, which is known to affect the ability to recall facts, particularly in a linear fashion. For more information on the impact of trauma on victims, see section 3.2.

Any 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 victim's evidence, the following practices may be of assistance:

- Corroborate victims' evidence through the use of additional evidence, including testimony of other witnesses, along with flight information, immigration documents, hotel or taxi records, cellphone evidence or surveillance footage etc., provided it is relevant to an issue at trial (please see Annex A, which references relevant jurisprudence on this point);
- 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. Inconsistencies or discrepancies in collateral facts should have little or no impact on the reliability of the testimony;
- Determine whether certain inconsistencies are actually material to the victim's overall account, or are just innocent variations that can be explained by the passage of time or stressful circumstances the victim was facing when they experienced the offence;
- When interviewing the victim, as well as during the examination-in-chief, ensure that they have an opportunity to address and correct inconsistencies. Correcting discrepancies and conceding weaknesses head-on is more persuasive than allowing the defence to control the narrative by raising the issues for the first time in cross-examination;
- For victims 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*,<sup>145</sup> or admitting eligible prior statements under the principled exception to the hearsay rule pursuant to the Supreme Court of Canada's decisions in *Bradshaw*,<sup>146</sup> *B(KG)*<sup>147</sup> and *R v Khelawon*<sup>148</sup>);
- Remind the court during closing submissions that proof beyond a reasonable doubt does not require proof without imperfection;<sup>149</sup> and
- Consider calling expert witnesses to testify about the psychological reactions and behaviours of victims of severe trauma to explain inconsistent statements or behaviour, where relevant.

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<sup>145</sup> RSC, 1985, c C-5.

<sup>146</sup> *R v Bradshaw*, 2017 SCC 35.

<sup>147</sup> *R v B(KG)*, [1993] 1 SCR 749.

<sup>148</sup> *R v Khelawon*, 2006 SCC 57.

<sup>149</sup> See e.g. *LSJPA – 181*, 2018 QCCA 117 at para 10.

#### 4.13.2 General Attacks on Credibility

Defence counsel may also attack the general credibility of the victim and/or point out motives to lie by raising matters such as their immigration status, criminality, 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 requesting that the accused's character evidence be declared admissible for narrative and/or similar fact evidence to demonstrate any pattern of abusive behaviour towards the victim or others. 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 a characterization of the victim's behaviour or reactions to certain events that fails to factor in the impact of the trauma experienced by the victim;
- Consider introducing expert evidence regarding methods traffickers use to control or manipulate their victims, which may include providing gifts or money to induce compliance, in order to show that such "benefits" are often a means of continuing the offence;
- If possible, attempt to illustrate the difference between the value of any "benefits" received by the victim to the actual market value of the labour or services provided, to demonstrate exploitation and refute suggestions that the complainant was appropriately compensated;
- If supported by the facts, present evidence to show that the complainant regularized their residency status independently of any cooperation with the investigation. If there was a link between the victim's cooperation and residency status, be transparent in showing the details of any such arrangement, and normalize it by presenting evidence to demonstrate that such acts are an international best practice<sup>150</sup> and should not reflect badly on the integrity of the victim's testimony; and
- If the victim has a criminal record, address the situation candidly in examination-in-chief, and pre-emptively rehabilitate their credibility by pointing to any relevant circumstances surrounding prior convictions or prior decisions (e.g., record is dated, is not related to crimes of deceit/falsehood, the victim was suffering from addictions or mental health issues at the time of any offence, etc.).

#### 4.13.3 Sexual History Evidence

Defence counsel may also seek to attack the victim's credibility by seeking to adduce evidence of the victim's prior sexual activity, for example where the defence seeks to admit evidence of the victim's prior or subsequent involvement in the sex trade to infer that they are less likely to have been exploited.

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<sup>150</sup> See, for example, article 7 of the *Trafficking Protocol*, *supra* note 2.

Human trafficking offences are not listed as a designated offence in the section 276 applications, which govern the admissibility of sexual history evidence. In its 2019 *Barton* decision,<sup>151</sup> the Supreme Court of Canada found that the regime governing the admissibility of sexual history evidence (the section 276 regime) applies "...to any proceeding in which an offence listed in subsection 276(1) has some connection to the offence charged, even if no listed offence was particularized in the charging document."<sup>152</sup> The Supreme Court of Canada also found that prior sexual activity evidence led by the Crown is subject to the common law principles articulated in its 1991 *Seaboyer* decision.<sup>153</sup> In the context of human trafficking charges, the jurisprudence is unsettled on the use of section 276 applications.<sup>154</sup> However, prosecutors should consider whether to demand that defence counsel make a section 276/*Seaboyer* application where they seek to adduce evidence of the victim's sexual history to infer that the victim's allegation that they have been exploited is less worthy of belief.

#### 4.14 Proceeds of Crime and Offence-Related Property

Globally, it is estimated that human trafficking is among the most lucrative of criminal activities, rivalled only by drug and firearms trafficking, and generates billions of dollars annually for sophisticated criminal organizations. Estimates by the International Labour Organization put the annual profits for human trafficking at approximately \$32 billion.<sup>155</sup>

Whenever possible, parallel proceeds-of-crime investigations should be conducted alongside human trafficking investigations and initiated at an early stage. Please see section 3.6.3.

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.

##### 4.14.1 What Are the Proceeds of Crime?

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

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<sup>151</sup> *R v Barton*, 2019 SCC 33.

<sup>152</sup> *R v Barton*, 2019 SCC 33 at para 76.

<sup>153</sup> *R v Seaboyer*, [1991] 2 SCR 577 at para 80.

<sup>154</sup> See Annex A.

<sup>155</sup> See, e.g. Financial Action Task Force, *Money Laundering Risk Arising from Trafficking In Human Beings and Smuggling of Migrants* (2011), online (pdf): <<http://www.fatf-gafi.org/media/fatf/documents/reports/Trafficking%20in%20Human%20Beings%20and%20Smuggling%20of%20Migrants.pdf>>.



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.

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.

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.

#### **4.14.2 Forfeiture under the *Immigration and Refugee Protection Act***

In addition to the penalty provided for in section 120 of the IRPA, an order for the forfeiture of offence-related property may also be made under subsection 137(1) of the IRPA.<sup>156</sup>

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<sup>156</sup> 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.

## Chapter 5: Sentencing for Human Trafficking Offences

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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 to sentencing in human trafficking cases.

### 5.1 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.<sup>157</sup>

### 5.2 Denunciation

The objective of denunciation mandates that a sentence should communicate society's condemnation of that particular offender's conduct.<sup>158</sup> A punishment that reflects the objective of denunciation should also be considered a symbolic, collective statement that the offender's conduct should be punished for encroaching on society's basic code of values enshrined within substantive criminal law. See, for example:

- *R v Eftekhar*,<sup>159</sup> involving the conviction of a man in his mid-50s for human trafficking, sex trade offences and assault in respect of an Inuit youth:

This is a case involving the exploitation of a vulnerable young person. It speaks to activity that furthers the public scourge of prostitution, an industry

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<sup>157</sup> *Criminal Code*, *supra* note 3, s 718.

<sup>158</sup> *R v M(CA)*, [1996] 1 SCR 500, [1996] SCJ No 28 at para 80.

<sup>159</sup> 2020 ONSC 1386 [*Eftekhar*].

that primarily affects marginalized women and girls. I take the view that the principal sentencing objectives are denunciation and deterrence.<sup>160</sup>

- *R v Lopez*,<sup>161</sup> where the Court states:

In terms of the range of sentences that are appropriate for pimping offences, Canadian courts have generally accepted that, in cases like the present one, where the accused has coerced a woman into becoming or remaining a prostitute and exercised a significant degree of control over her activities, sentences of four or five years are typically imposed. General deterrence, denunciation and specific deterrence are said to be the paramount sentencing consideration. Even longer sentences have been imposed and upheld in more aggravating circumstances.<sup>162</sup>

### 5.3 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, for example:

- *Lopez*, where the Court noted that general deterrence, denunciation and specific deterrence are paramount sentencing considerations for human trafficking offences.<sup>163</sup> This was adopted in *R v Clayton*.<sup>164</sup>
- *R v Downey and Thompson*,<sup>165</sup> 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 or economic

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<sup>160</sup> *Eftekhar*, *supra* note 159 at para 11.

<sup>161</sup> *R v Lopez*, 2018 ONSC 4749 [*Lopez*].

<sup>162</sup> *Lopez*, *supra* note 161 at para 53.

<sup>163</sup> *Lopez*, *supra* note 161 at paras 52—54.

<sup>164</sup> [2021] OJ No 6732 at para 21 [*Clayton*].

<sup>165</sup> *R v Downey and Thompson*, 2010 ONSC 1531 at para 29 [*Downey and Thompson*].

immigration programs, such as the Temporary Foreign Worker Program, to their advantage.<sup>166</sup>

## 5.4 Separation

Separation through detention 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.

Because human trafficking involves coercive practices, 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 time to properly treat the offender and for the National Parole Board to assess the risk of his reoffending.<sup>167</sup>

## 5.5 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 involve coercive practices, it is in the public interest for traffickers to participate in rehabilitative programming, including where 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.<sup>168</sup>

An offender's efforts toward rehabilitation may be taken into account on sentencing. See, for example:

- *R v Antoine*,<sup>169</sup> where the Court took note that the offender participated in a number of rehabilitation programs in jail as a mitigating factor for sentencing.<sup>170</sup>

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<sup>166</sup> See *R v Soysavanh*, [2000] OJ No 5979.

<sup>167</sup> *Downey and Thompson*, *supra* note 165 para 31.

<sup>168</sup> *Downey and Thompson*, *supra* note 165 para 32.

<sup>169</sup> 2020 ONSC 181 [*Antoine*].

<sup>170</sup> *Antoine*, *supra* note 169 at para 54.

- *R v Finestone*,<sup>171</sup> where the Court took note that the offender actively engaged in counselling, education and residential treatment to address, understand and appreciate the harm his criminal actions caused, to improve his self-awareness and self-control, and to address underlying mental health issues and addictions.<sup>172</sup>

## 5.6 Reparation and Responsibility

Section 738 of the *Criminal Code* provides a mechanism that can contribute to eliminating the financial profit that motivates the commission of the offence, thereby promoting specific and general deterrence and providing reparation to victims for the harm done to them. 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.<sup>173</sup>

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

## 5.7 Other Sentencing Considerations

Section 718.01 of the *Criminal Code* clarifies 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.

In its 2020 *Friesen* decision, the Supreme Court of Canada outlined factors to be considered in determining a fit sentence in cases involving sexual violence against children:

- Likelihood to reoffend;
- Abuse of a position of trust or authority;

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<sup>171</sup> 2017 ONCJ 22 [*Finestone*].

<sup>172</sup> *Finestone*, *supra* note 171 at paras 22—24.

<sup>173</sup> *R v Fitzgibbon*, [1990] 1 SCR 1005, [1990] SCJ No 45.

- Duration and frequency;
- Age of the victim; and
- Degree of physical interference.<sup>174</sup>

Although the *Friesen* case concerned the *Criminal Code*'s child sexual offences, the Court specifically noted that sentencing courts may also draw upon the sentencing principles outlined in its *Friesen* decision when imposing sentences for child abduction and human trafficking offences where the victim is a child and the factual foundation for the conviction involves sexual violence or exploitation.<sup>175</sup> For an example, please see:

- *R c SV*,<sup>176</sup> where the offender pled guilty to sexual interference of a person under the age of 16 (section 151), invitation to sexual touching of a person under the age of 16 (section 152), and possessing and accessing child pornography (subsections 163.1(4) and (4.1)). The offender was convicted at trial of trafficking a person under the age of 18 (section 279.011) and distributing child pornography (subsection 163.1(3)). The offender was sentenced to 18 years less pre-sentence custody. The Court noted that *Friesen* applied to the trafficking charge.<sup>177</sup>

Section 718.04 of the *Criminal Code* clarifies that, for any offence involving abuse of a person who is vulnerable because of personal circumstances, including because the person is Indigenous and female, a court must, in imposing a sentence, give primary consideration to the sentencing objectives of deterrence and denunciation. Through enacting this provision, Parliament has recognized the inherent seriousness of offences of this nature and has directed the courts 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.

This provision may be relevant to some human trafficking cases because the evidence shows that human trafficking victims are often targeted because of their vulnerabilities, for example due to age(children/youth), developmental delay and mental health issues, unstable/low quality housing, lack of status in Canada, and/or the impacts of colonization. Research shows that victims of trafficking for sexual exploitation are predominantly female and that Indigenous women and girls are disproportionately represented among this group. A number of intersecting factors contribute to the disproportionate representation of Indigenous women and girls among those who have been trafficked for the purpose of sexual exploitation, including systemic racism and discrimination, violence against Indigenous women and girls, inter-generational trauma from colonization (e.g., Indian Residential Schools), barriers to service access including lack of access to social and economic resources and regular access to healthcare, colonial assimilation policies, and marginalization of Indigenous women via the *Indian Act*. The ongoing impacts of colonization and assimilation have led to mistrust of

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<sup>174</sup> *R v Friesen*, 2020 SCC 9 at paras 121—147 [*Friesen*].

<sup>175</sup> *Friesen*, *supra* note 174 at para 44.

<sup>176</sup> 2021 QCCQ 2516.

<sup>177</sup> *R c SV*, 2021 QCCQ 7297 at para 104.

authorities and institutions. These intersecting factors contribute to the targeting of Indigenous women and girls by traffickers, including persons who identify as 2SLGBTQI+.

The following excerpts from the *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* may be of assistance to the court to add further meaning to section 718.04 and 718.201 of the *Criminal Code*, depending on the facts of the case:

- Despite these gaps in data collection, organizations working to advocate on behalf of sex worker rights, and those working to address sexual exploitation and trafficking, consistently report that Indigenous women, girls, and 2SLGBTQQIA people make up the majority of those involved in the street-level sex work. They are also more likely than other groups to be targeted for, or to experience, sexual exploitation or trafficking for the purposes of sexual exploitation. Page 661 of Volume 1(a) of the Report. *Final Report*, V1a-1, p. 656
- ... the Inquiry heard from many witnesses about how pimps stay outside group homes, youth detention centres, and bus depots to specifically recruit Indigenous girls and 2SLGBTQQIA youth. In this context, they are preyed upon because they are vulnerable to persuasion and grooming, and can be perceived as easy targets – especially when they are coming from the situation of child welfare. As was expressed, in many different ways, the perception of impunity on the part of pimps – the idea that no one will come looking for them – also creates conditions for violence. *Final Report*, V1a-1, p. 660
- Diane Redsky (former Executive Director of Ma Mawi Wi Chi Itata Centre in Winnipeg) also spoke about the relationship between early childhood violence resulting in trauma and sexual exploitation and trafficking. It [sexual exploitation and sex trafficking] often begins very young with some form of childhood trauma. Whatever trauma that is, whether it's sexual, whether it's physical, emotional, any kind of trauma, something happened to her when she was little that created a vulnerability that traffickers can sniff out, and they're really good at sniffing [out] and identifying a vulnerable girl." *Final Report*, V1a-1, p. 659

## 5.8 Statutory Aggravating 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 abused an intimate partner in committing an offence (subparagraph 718.2(a)(ii)).<sup>178</sup>

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<sup>178</sup> See *R c Murenzi*, 2018 QCCQ 7950 paras at 48, 76 and 94 [*Murenzi*].

- Evidence that the offender, in committing the offence, abused a person under the age of 18 years (subparagraph 718.2(a)(ii.1));<sup>179</sup>
- 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)); or
- 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)).

In addition to those aggravating factors which a court must take into consideration, other factors may also be relevant in a human trafficking cases.<sup>180</sup> Please see Annex B for an overview of human trafficking sentencing cases.

## 5.9 Other Aggravating Factors

While no individual is immune from falling victim to human trafficking, traffickers target individuals with specific characteristics and/or experiences. Indigenous women and girls, migrants and new immigrants, 2SLGBTQI+ persons, persons with disabilities, developmental delays and mental health issues such as anxiety and depression, youth residing in care (i.e., group homes), children in the child welfare system, and others who are socially or economically disadvantaged are at higher risk of being targeted by traffickers. It is a crime that is highly gendered, with root causes of exploitation, including a lack of education, social supports and employment opportunities, compounded by poverty, sexism, racism, colonialism and wage inequality. As noted above, there are number of intersecting factors that contribute to the disproportionate representation of Indigenous women and girls among those who have been trafficked for the purpose of sexual exploitation.

The courts have recognized **preying on vulnerable groups** as an aggravating factor. See, for example:

- *Eftekhar*, in which the court treated the fact that the offender recognized that the victim, an Inuit teenager, was “ripe for exploitation” and isolated her, as an aggravating factor.<sup>181</sup>
- *Antoine*,<sup>182</sup> *Strickland-Prescod*,<sup>183</sup> *NA*,<sup>184</sup> *R v Gray*,<sup>185</sup> *Clayton*,<sup>186</sup> *R c Chahinian*,<sup>187</sup> in which the court treated exploiting or taking advantage of vulnerabilities resulting from a victim’s struggles with addiction as an aggravating factor.

<sup>179</sup> *R c Losse*, 2021 QCCQ 13745 at para 52 [*Losse*].

<sup>180</sup> See e.g. UNODC, *Anti-Human trafficking manual for criminal justice practitioners*, *supra* note 125, module 14.

<sup>181</sup> *Eftekhar*, *supra* note 159 at paras 8—10.

<sup>182</sup> *Surpa* note 169

<sup>183</sup> 2019 ONCJ 755 [*Strickland-Prescod*].

<sup>184</sup> 2017 ONCJ 665 [*NA*].

<sup>185</sup> 2018 NSPC 10 [*Gray*].

<sup>186</sup> *Supra* note 164.

<sup>187</sup> 2018 QCCQ 20771 [*Chahinian* 2018].



- *Strickland-Prescod*,<sup>188</sup> in which the court treated the fact that the victim was alone without friends and family to be an aggravating factor.
- *R c Casanova*,<sup>189</sup> in which the court treated the particular vulnerabilities of the victim, namely, that she was homeless, addicted to cocaine and was cut off from her family, as an aggravating factor.
- *R c Wong*,<sup>190</sup> in which the court stated: “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.”
- *Losse*,<sup>191</sup> in which the court treated the victim’s precarious financial situation as an aggravating factor.

The courts have recognized **planning and deliberation** as an aggravating factor for sentencing. See for example:

- *R v Tang*,<sup>192</sup> in which the court treated the level of deliberation involved in running a brothel involving 14-year old girls as an aggravating factor.
- *R c Tynes*,<sup>193</sup> in which the court treated the fact that an operation involving procuring-related offences was well-organized as an aggravating factor.
- *R v Reginald Louis Jean*,<sup>194</sup> in which the court treated the fact that the offender engaged in planning to avoid authorities as an aggravating factor.
- *Strickland-Prescod*,<sup>195</sup> in which the court treated the fact that the accused’s actions appeared to be a longer-term plan as an aggravating factor.
- *Chahinian* 2018, in which the court treated the fact that the methods used by the offender were not improvised as an aggravating factor.<sup>196</sup>
- *DPCP c Valcourt*,<sup>197</sup> in which the court treated premeditation and a great deal of planning as an aggravating factor.<sup>198</sup>

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. See, for example:

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<sup>188</sup> *Supra* note 183.

<sup>189</sup> 2022 QCCQ 938 at para 53 [*Casanova*].

<sup>190</sup> [2005] QJ No 22795, No: 500-01-002702-048 (CQ) at para 25.

<sup>191</sup> *Supra* note 179 at para 56.

<sup>192</sup> 1997 ABCA 174 [*Tang*].

<sup>193</sup> 2010 QCCQ 11298.

<sup>194</sup> 2020 ONSC 624 [*Reginald Louis Jean*].

<sup>195</sup> *Supra* note 183.

<sup>196</sup> *Supra* note 187 at para 40.

<sup>197</sup> 2017 QCCQ 6798 [*Valcourt*].

<sup>198</sup> *Valcourt*, *supra* note 197 at para 47.

- *R v Sturge*,<sup>199</sup> discussing the offender’s lengthy criminal record and the fact that he was on parole while committing the offence.
- *R v Harme*,<sup>200</sup> discussing the effect of a lengthy criminal record on sentencing.
- *R v Leduc*,<sup>201</sup> in which the court noted the offender’s criminal record, which included previous crimes of violence.
- *Antoine*,<sup>202</sup> in which the court noted the offender’s significant criminal record, which included numerous offences of greed and dishonesty undertaken for personal gain.
- *Clayton*,<sup>203</sup> in which the court found the fact that the offender committed several human trafficking offences while on probation for a conviction of the same type of offence to be an aggravating factor.
- *R v Preymak*,<sup>204</sup> discussing the impact of a previous criminal record and the lengthy time between a previous conviction and the current offence.
- *Valcourt*, in which the court took note of the offender’s extensive criminal record.<sup>205</sup>

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, for example:

- *Antoine*,<sup>206</sup> *Reginald Louis Jean*,<sup>207</sup> *R v Gardner*,<sup>208</sup> *Eftekhar*,<sup>209</sup> *Valcourt*,<sup>210</sup> *Casanova*,<sup>211</sup> *Murenzi*,<sup>212</sup> *Losse*,<sup>213</sup> in which the court noted the duration of the offence as an aggravating factor.
- *Sentencing, 7<sup>th</sup> edition*, Clayton Ruby,<sup>214</sup> which 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.”
- *Downey and Thompson*,<sup>215</sup> in which the court noted: “These offences did not occur on the spur of the moment, for example, as a spontaneous reaction to an

<sup>199</sup> [2001] OJ No 3923, (2001), 17 MVR (4th) 272 (CA).

<sup>200</sup> 2007 BCPC 333.

<sup>201</sup> 2019 ONSC 6794.

<sup>202</sup> *Supra* note 169.

<sup>203</sup> *Supra* note 164.

<sup>204</sup> 2003 BCCA 260.

<sup>205</sup> *Valcourt*, *supra* note 197 at para 31.

<sup>206</sup> *Supra* note 169.

<sup>207</sup> *Supra* note 194.

<sup>208</sup> 2020 ONSC 5954.

<sup>209</sup> *Supra* note 159.

<sup>210</sup> *Supra* note 197 at paras 47, 51.

<sup>211</sup> *Supra* note 189 at para 53.

<sup>212</sup> *Supra* note 178 at para 92.

<sup>213</sup> *Supra* note 179 at paras 52—53.

<sup>214</sup> (LexisNexis Canada Inc: 2008) at pages 202-203.

<sup>215</sup> *Supra* note 165 at para 37.

assault or an insult. They took some deliberation and planning and they were carried out over a period of 24 hours. They were nothing short of the planned and executed torture of a small, vulnerable young woman involving elements of sadism.”

- *R v Nakpangi*,<sup>216</sup> in which the court noted that the lengthy period of time the offender exercised control over the victims was egregious.

Trafficking cases concern 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. See, for example:

- *R v Crosdale*<sup>217</sup> and *R v Kandola*,<sup>218</sup> in which the court treated the fact that the offender was motivated purely by greed as an aggravating factor.

Evidence of **violence, threats of violence** and other conduct engaged in by an offender to either physically or psychologically coerce the victim to provide their labour or services should aggravate the sentence. See, for example:

- *Gray*,<sup>219</sup> *R v McFarelane*,<sup>220</sup> *Eftekhar*,<sup>221</sup> and *Casanova*,<sup>222</sup> in which the court treated threats of violence and violence as an aggravating factor.
- *R v Best*,<sup>223</sup> discussing the role of gratuitous violence as an aggravating factor.

In cases of trafficking for sexual exploitation, traffickers often lure and groom victims with the promise of a relationship, some seduce victims and, once an intimate relationship has formed, begin to use the emotional bond and intense sense of attachment as a way to manipulate and control their victims. Courts have treated this type of **psychological manipulation** as an aggravating factor. See, for example:

- *R v Wallace*,<sup>224</sup> in which the court noted: “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...”
- *Lopez*,<sup>225</sup> *Murenzi*,<sup>226</sup> *Losse*,<sup>227</sup> and *Reginald Louis Jean*,<sup>228</sup> where offenders used a romantic relationship to exploit their victims.

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<sup>216</sup> [2008] OJ No 6022 (Ont Ct Jus).

<sup>217</sup> 2019 ONCJ 3.

<sup>218</sup> 2012 BCSC 1042.

<sup>219</sup> *Supra* note 185.

<sup>220</sup> 2012 CarswellOnt 17856, [2012] OJ No 6566 (ONCJ).

<sup>221</sup> *Supra* note 159.

<sup>222</sup> *Supra* note 189 at para 53.

<sup>223</sup> 2005 NSSC 208.

<sup>224</sup> 2009 ABCA 300.

<sup>225</sup> *Supra* note 161.

<sup>226</sup> *Supra* note 178.

<sup>227</sup> *Supra* note 179.

<sup>228</sup> *Supra* note 194.

Some traffickers provide **drugs or alcohol** to their victims to assist in maintaining control over them. The use of drugs or alcohol in this way has been treated as an aggravating factor. See, for example:

- *Antoine*,<sup>229</sup> *Strickland-Prescod*,<sup>230</sup> *NA*,<sup>231</sup> *Gray*,<sup>232</sup> and *Losse*,<sup>233</sup> in which the court recognized that exploiting or taking advantage of vulnerabilities resulting from the victim's struggles with addiction is an aggravating factor.

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 access to regular and adequate healthcare** can all result in a lifetime of adverse health conditions. Exposing victims to such risks has been treated as an aggravating factor. See, for example:

- *R v Alexis-McLymont* and *Elgin and Hird*,<sup>234</sup> where the court treated the fact that the victim was starved as an aggravating factor.
- *Losse*,<sup>235</sup> in which the court treated the fact that one of the victims was confined to unsanitary rooms, deprived of food and drugged to stay awake in order to be able to meet as many customers as possible as an aggravating factor.
- *Tang*,<sup>236</sup> in which the court considered the living conditions and lack of availability of health safeguards as aggravating factors.

## 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. Guilty pleas mean that the victim does not have to testify in a trial. The extent to which an early guilty plea is viewed as a mitigating factor will, of course, vary depending upon the facts of each case. See, for example:

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<sup>229</sup> *Supra* note 169.

<sup>230</sup> *Supra* note 183.

<sup>231</sup> *Supra* note 184.

<sup>232</sup> *Supra* note 185.

<sup>233</sup> *Supra* note 179 at para 56.

<sup>234</sup> 2018 ONSC 1389; 2018 ONSC 1152.

<sup>235</sup> *Supra* note 179 at para 53.

<sup>236</sup> *Supra* note 192.

- *Finestone*,<sup>237</sup> in which the court noted that the offender was youthful, remorseful, was taking responsibility for his conduct, did not have a criminal record, pled guilty, and was actively engaging in counselling and residential treatment in order to address his criminality.
- *R v St Vil*,<sup>238</sup> in which the court treated the fact that the accused pled guilty early to human trafficking offences as evidence of remorse and that the accused used his time in custody to turn his life around through educational and religious programs.

### 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 recruit others to facilitate their exploitation, they will, themselves, experience a lesser degree of exploitation than that which they had previously endured. See sections 3.9.1 and 4.3 for more information on victims who offend. While the reasons why a victim may subsequently engage in trafficking conduct can vary, these circumstances and any past history of victimization are relevant to sentencing.

In *Robitaille*,<sup>239</sup> the court imposed an 8 month sentence on a youthful female offender for having materially benefitted from the sexual services of two teenaged girls. A male offender (*Finestone*), who also “pimped” and abused Ms. Robitaille, was convicted of having trafficked those girls. The court made the following observations about Ms. Robitaille’s culpability:

There are many factors that substantially reduce Ms. Robitaille's own moral culpability. Much like the addict trafficker, Ms. Robitaille is best described as an offending victim. That is, Ms. Robitaille was a victim of sexual exploitation herself and was still being victimized when she committed the offences that are before the court.

It is my view, however, that Ms. Robitaille's situation is unique in that she was in the midst of her own victimization at the time she committed the offences before the court. There was no meaningful gap in time between her exploitation and the commission of her offences. Ms. Robitaille was a child sex worker. On the day she turned 18 she became an adult sex worker. She was still the same person, with the same vulnerabilities, only one day older. She never had space or time to step away from her victimization as a sex trade worker to evaluate and gain insight into her conduct. By turning 18, Ms. Robitaille did not all of a sudden

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<sup>237</sup> *Supra* note 171.

<sup>238</sup> [2008] OJ No 6023 (Ont Sup Ct Jus).

<sup>239</sup> 2017 ONCJ 768 [*Robitaille*]; see also *R c Nicolle*, 2022 QCCQ 1089 at paras 86, 125—137 in which the court discusses the *Robitaille* decision.

cease to be vulnerable. Her exploitation continued and was ongoing and still taking place at the time that she committed these offences.

There is no doubt, that Ms. Robitaille had power in relation to [the victims]. There is also no doubt that she made the decision to work for Mr. Finestone and to help Mr. Finestone pimp out these two young girls. That decision, however, was made while she was still being exploited herself. She moved from one exploitative relationship to another. In my view, this context reduces Ms. Robitaille's moral culpability. It does not, however, absolve Ms. Robitaille of all responsibility for her actions. Moreover, I note that it is clear by Ms. Robitaille's own admission in court that part of her motivation to comply with Mr. Finestone was because she was enjoying the financial benefits of working for Mr. Finestone.

Although the judge in *Robitaille* referred to the victim/offender as a “child sex worker”, this language should not be used because it suggests the child has agency and children cannot legally consent to providing sexual services in exchange for money or something of value. The term “prostitute” should also not be used to refer to a person who provides sexual services because that term carries with it negative connotations that risk dehumanizing or demeaning that person.<sup>240</sup> When referring to a person engaged in the sex trade, use their name rather than a label.

#### **5.10.4 Age**

The fact that an offender is a young person is generally treated as a mitigating factor.<sup>241</sup> It should be noted, however, that the courts have recognized that in cases involving serious violence, the fact that an offender is young may not be a relevant sentencing consideration. See, for example, *R v Porsch*.<sup>242</sup>

#### **5.10.5 Offender's Background**

Where there is evidence of some connection between racial and social factors and the crime, an offender's race or social circumstances may be relevant to their moral blameworthiness. See for example, *R v Augustin*.<sup>243</sup>

#### **5.10.6 Victim Participation is Not Mitigating**

The Supreme Court of Canada in *Friesen* specifically rejected treating victim participation as a mitigating factor or as relevant for determining a fit sentence.<sup>244</sup>

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<sup>240</sup> *Sinclair*, *supra* note 60 at para 31.

<sup>241</sup> See e.g. *Strickland-Prescod*, *supra* note 183; *Gray*, *supra* note 185; *R v Byron*, 2014 ONSC 990; *Chahinian* 2018, *supra* note 187 at para 52.

<sup>242</sup> 2008 BCCA 488.

<sup>243</sup> 2022 ONSC 5901 at paras 72—74.

<sup>244</sup> *Friesen*, *supra* note 174 at paras 148—154.

## 5.11 Specific Sentencing Considerations: Human Trafficking Cases under the *Immigration and Refugee Protection Act*

In addition to the sentencing principles of general application discussed above, a court sentencing an offender for the commission of an offence under 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;
- (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 statutory aggravating factors that must be taken into consideration by a court when sentencing an offender for certain offences, including human trafficking.

In determining the penalty to be imposed, including for a section 118 human trafficking IRPA offence, the court must 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 (section 120).

## 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 that lend themselves to establishing aggravating/mitigating factors and obtain evidence for the proof thereof, including:

- documents;
- photographs/video;
- witness statements;
- victim impact statements;
- community 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, which may include pre-sentence report, a *Gladue* report where the offender is Indigenous or an Impact of Race and Culture Assessment when the offender is racialized.
- **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 they have personal knowledge, are available and are compellable.
- **Facts:**
  - statement of facts, agreed to by prosecutor and defence, may be relied on by the court;
  - facts, express or implied, used by the jury to determine guilt may be accepted as proven;



- any other relevant fact disclosed by evidence at trial is accepted as proven; and,
- the court may hear further evidence with respect to disputed facts:
  - the party wishing to rely on that fact has the burden of proof;
  - either party may cross-examine any witness called by the other party;
  - the court must be satisfied on a balance of probabilities of the existence of disputed facts;
  - the 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 imposing sentence.
- **Relevant information:** the court shall consider any relevant information placed before it by the prosecutor and the defence.

## 5.13 The Role of the Victim at the Sentence Hearing

Human trafficking conduct inflicts trauma on victims. A trauma-informed approach throughout the criminal justice process, including at sentencing, is the best way to meet victims' needs and minimize the trauma. Please see Chapter 3 for additional information on adopting a Trauma Informed Response.

### 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 physical or emotional harm, property damage or economic loss suffered as the result of the commission of the offence and the impact of the offence on the victim. The statement must be prepared in writing, using Form 34.2 in Part XXVII of the *Criminal Code*. Each province and territory has victim services or non-governmental organizations that offer assistance to victims in preparing victim impact statements. This assistance ensures that victims are made aware of appropriate content for victim impact statements and that they receive support during the process. 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. Subsection 722(5) of the *Criminal Code* requires the court, upon the victim's request, to permit the victim to present their statement by:

- Reading it;
- Reading it in the presence and close proximity of any support person of the victim's choice;
- Reading it outside the court room or behind a screen or other device that would allow the victim not to see the offender; or
- Presenting it in any other manner that 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. Additionally, a photograph of the victim before the commission of the offence may accompany the presentation of the statement if, in the opinion of the court, it would not disrupt the proceedings (subsection 722(6)).

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.<sup>245</sup> 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 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.

Victims may suffer from post-traumatic stress disorder in varying degrees and often will require counselling and other psychological support.<sup>246</sup> 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.

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<sup>245</sup> See Chapter 6 on witness support for further information.

<sup>246</sup> For more information, see Chapter 6 on victim support.

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 help the victim heal and rebuild their lives, including their health and well-being, restoration of medical costs, and the additional reparations to address 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, using Form 34.2 in Part XXVIII in the *Criminal Code*, 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.

Additionally, the *Criminal Code* provides for community impact statements (subsection 772.2(1)), which must be prepared in writing on Form 34.3 in Part XXVIII of the *Criminal Code*. Community impact statements are made by an individual on a community's behalf describing the harm or loss suffered by the community as the result of the commission of the offence and the impact of the offence on the community.<sup>247</sup> Where the victim is under 18, the Canadian Centre for Child Protection can provide a community impact statement specific to the commercial sexual exploitation of children. Where the victim is Indigenous, an Indigenous elder or member of the victim's First Nation could provide a community impact statement to explain how the human trafficking offence has affected their community.

For additional information, please see:

- Justice Canada Victim Impact Statement Fact Sheet (<https://www.justice.gc.ca/eng/cj-jp/victims-victimes/factsheets-fiches/victim-victime.html>) (Justice Canada Victim Impact Statement Fact Sheet);
- Justice Canada Community Impact Statement Fact Sheet (<https://www.justice.gc.ca/eng/cj-jp/victims-victimes/factsheets-fiches/community-collectivite.html>).

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<sup>247</sup> See *Losse*, *supra* note 179 at para 31.

### 5.13.3 Victim Surcharge

A victim surcharge is an additional penalty that may be 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 order an offender to pay a victim surcharge, or to pay a reduced amount where the court is satisfied that a victim surcharge would cause undue hardship<sup>248</sup> to the offender or would not cause undue hardship to the offender but would be disproportionate to the gravity of the offence or degree of responsibility of the offender. The victim surcharge is used by the province or territory where the crime occurred to help fund programs, services and assistance for victims.

### 5.14 Restitution Orders

Restitution is a payment which an offender is required to make to a victim to cover a readily ascertainable 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 that they have suffered as a result of their victimization. Sentencing courts are required to consider imposing a restitution order in all cases and to provide reasons when restitution is not ordered. The court is required to ask the prosecutor if reasonable steps have been taken to determine if a victim is seeking restitution.

A court can order restitution for financial losses resulting from:

- Damaged or lost property due to the crime (section 738(1)(a));
- Physical injury or psychological harm due to the crime or due to the arrest or attempted arrest of the offender (section 738(1)(b));
- Costs for temporary housing, food, childcare and transportation due to moving out of the offender's household (this only applies if a victim moved out because they had been physically harmed or threatened with physical harm due to the offence, arrest, or attempted arrest of the offender) (section 738(1)(c));
- Costs incurred by a victim of identity theft to re-establish their identity, and to correct their credit history and their credit rating (section 738(1)(d)); or
- Costs incurred by a victim to remove their intimate image from the Internet or other digital network (section 738(1)(e)).

For additional information, please see Justice Canada Restitution Order Fact Sheet (<https://www.justice.gc.ca/eng/cj-jp/victims-victimes/factsheets-fiches/pdf/ro-eng.pdf>).

#### 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

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<sup>248</sup> "Undue hardship" is defined in subsection 737(2.2) of the *Criminal Code*, *supra* note 3.

a civil judgment. Saskatchewan, Nova Scotia and Alberta have a restitution enforcement programs, which assist 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. For this to occur, the Crown must seek forfeiture of the money found in the offender's possession upon conviction and a restitution order.

## 5.15 Probation Orders and Non-Communication Orders

Probation orders can be imposed instead of a period of imprisonment, provided there is no mandatory minimum penalty, or in addition to a sentence of less than 2 years. Probation orders have mandatory conditions and the Court can include optional conditions as well.

Additionally, non-communication orders can be ordered by a sentencing judge to prohibit an offender from directly or indirectly communicating with a victim, witness or any other identified individual during the custodial period of the sentence (section 743.21).

Please see Annex B for examples of sentencing cases that include prohibition and/or non-communication orders.

## 5.16 Other Ancillary Orders

There are a number of ancillary orders that can be ordered during sentencing, depending on the particular facts of the case. These ancillary orders include:

- A section 161 order (applicable where an offender is convicted for an enumerated offence with respect to someone under the age of 16);
- A mandatory weapons/firearm prohibition order (section 109);
- A discretionary weapons/firearm prohibition order (section 110);
- DNA order;
- Forfeiture order;
- Imposing a fine;<sup>249</sup>
- Dangerous offender and long-term offender orders; and/or
- Sex offender information and registration order.

Please see Annex B for examples of sentencing cases that include ancillary orders.

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<sup>249</sup> See *Chahinian* 2018, *supra* note 187 where the court imposed a fine of \$10,000 instead of a forfeiture pursuant to 462.37(3) of the *Criminal Code*.

## Chapter 6: Victim Services

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Victims of crime<sup>250</sup> in Canada, including victims of human trafficking offences, have rights under the *Canadian Victims Bill of Rights* (CVBR). The CVBR defines a victim as an individual who has suffered physical or emotional harm, economic loss or property damage, as a result of a crime committed in Canada. All victims may exercise their rights under the CVBR while they are in Canada. Canadian citizens or permanent residents may exercise these rights even if they are outside of Canada, as long as the crime took place in Canada.

The CVBR grants victims of crime the right to information, participation, protection and the right to seek restitution. The CVBR also gives victims the right to make a complaint if they feel that their rights have been infringed or denied.

### ***Right to Information***

Victims have the right, on request, to information about the criminal justice system, their role in it, and available victim services and programs. They also have the right, on request, to specific information about the progress of their case, including information relating to the investigation, prosecution, and sentencing of the person who harmed them.

### ***Right to Participation***

Victims have the right to convey their views about decisions being made by criminal justice professionals that affect their rights under the CVBR. As noted in Chapter 5, victims also have the right to present a victim impact statement at sentencing to describe the effect the crime had on them and to have that statement considered.

### ***Right to Protection***

Victims have the right to have their security and privacy considered at all stages of the criminal justice process, to have reasonable and necessary measures taken to protect them from intimidation and retaliation, to request that their identity be protected from public disclosure and to request testimonial aids when appearing as a witness. For additional information on some of these measures, see Chapter 4.

### ***Right to Seek Restitution***

Victims have the right to have the court consider making a restitution order against the offender for specific financial losses due to the crime. They also have the right to enter an unpaid restitution order as an enforceable civil debt. For additional information about restitution, see Chapter 5.

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<sup>250</sup> Previously in this Handbook, the term “victim” has been used to refer to the person subjected to human trafficking, consistent with the *Criminal Code*, which uses the terms “victim” and “complainant”. Many victims of crime, however, prefer other terms such as “survivor”. Criminal justice professionals should ask victims about their preferred term and endeavour to use that term in all communications with that person.

### ***Complaints under the CVBR***

The CVBR also allows victims to make a complaint if they believe their rights have been infringed or denied by a federal department or agency using the complaint systems in that department or agency (subsection 25(1)). If they remain unsatisfied with the response, they can take their complaint to any authority that has jurisdiction to review complaints in relation to that federal department or agency (subsection 25(2)). Victims who feel as though their rights have been infringed or denied by a provincial or territorial department, agency or body can file a complaint in accordance with the laws of that province or territory (section 26).

These rights apply at all stages of the criminal process, including when an offence is being investigated or prosecuted, when the offender is subject to the corrections or conditional release process, and when the accused is subject to a court or review board's jurisdiction if they are found unfit to stand trial or not criminally responsible due to a mental disorder. Victims' rights are to be applied in a reasonable manner so that they are not likely to interfere with investigations or prosecutions, endanger someone's life or safety, or injure national interests such as national security.

Since 1988, criminal justice professionals have been guided by the *Canadian Statement of Basic Principles of Justice for Victims of Crime* in their interactions with victims. The Statement was endorsed by federal, provincial and territorial Ministers of Justice in 1988 and 2003, and recognized the harmful impact of criminal victimization on individuals and on society. This document is closely aligned with the CVBR, and both continue to guide interactions with victims.

While not every victim will choose to access 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 that victims of trafficking typically endure, often for prolonged periods of time.

Many victims of crime benefit from services, but victims of serious and violent crimes, such as human trafficking, may have the greatest need. Access to specialized anti-human trafficking supports and services are critical to foster stability and help victims exit, heal and rebuild their lives. However, victims of trafficking may also be more reluctant to seek or accept services for a number of reasons, including: distrust of police; fear of reprisal from traffickers; fear of being persecuted or charged for associated criminal activity while involved in the trafficking situation (e.g., substance abuse, recruitment, luring/grooming peers), not self-identifying as having experienced human trafficking, including if they are not aware of what human trafficking is or, if they fear stigma as a result of their experiences. Indigenous and racialized victims of human trafficking may be less likely to seek support due to barriers when accessing services made available to the general public, such as experiencing systemic discrimination, stigma, and further isolation within and from mainstream support systems to which they are directed.

Various aspects of individuals' personal characteristics, background, and beliefs, including forms of oppression, may impact how an individual experiences human trafficking (including exploitation and recovery), and the intersection of socio-economic factors may increase an individual's risk of being targeted and/or trafficked. Indigenous communities and individuals and racialized groups have an increased risk of being targeted by traffickers as a result of a number of intersecting factors.

Intersecting factors contributing to the disproportionate representation of Indigenous women and girls among those who have been trafficked for the purpose of sexual exploitation include systemic racism, violence against Indigenous women and girls, inter-generational trauma from colonization (e.g., Indian Residential Schools), lack of access to social and economic resources, colonial assimilation policies and marginalization of Indigenous women via the *Indian Act*. The National Inquiry into Missing and Murdered Indigenous Women and Girls emphasized that Indigenous people, particularly women and girls, are especially vulnerable to trafficking for sexual exploitation due to the legacy and intersection of colonialism, intergenerational trauma and systemic discrimination, including intergenerational poverty and inequitable access to basic services. In addition, a recent study in Ontario has shown that youth involved in the child welfare system are vastly overrepresented as victims of human trafficking.<sup>251</sup> Indigenous children are significantly overrepresented in the child welfare system as a result of historical and ongoing colonial and assimilation policies. Indigenous children account for 52.2 percent of children in foster care while making up only 7.7 per cent of children in Canada according to the 2016 census by Statistics Canada.

The various interrelated factors that result in increased targeting by traffickers are 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 connect victims of human trafficking with appropriate supports. Given the disproportionate impact human trafficking has on Indigenous communities, criminal justice personnel should be aware of the unique histories of Indigenous Peoples, as well as culturally-responsive services and supports available for victims of human trafficking.

## 6.1 Victim Services

Responsibility for providing services to 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. Services for victims can be provided by police, provinces/territories, non-governmental organizations and the federal government, depending on where the case is in the process.

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<sup>251</sup> K Baird, KP McDonald & J Connolly, "Sex trafficking of women and girls in a southern Ontario region: Police file review exploring victim characteristics, trafficking experiences, and the intersection with child welfare" (2020) 52:1 Canadian Journal of Behavioural Science / Revue canadienne des sciences du comportement 8.



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. Depending on the jurisdiction(s) involved, services can include referrals for counselling, court preparation and support, 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 services**, which provide support, information, referrals and assistance to victims of crime through the RCMP, provincial police forces and/or local police forces or detachments, sometimes in partnership with 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.
- **Community-based services**, which provide support, information and assistance to victims, may take many forms, including generalized support for victims of crime or specialized services for victims of particular crimes such as sexual assault, domestic violence or human trafficking. These services are delivered by non-governmental organizations and may be able to offer longer-term recovery supports as well.

Further information on the types of services offered by each province and territory is provided below.<sup>252</sup> Depending on the model of service delivery, services that 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, provincial/territorial victim services 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

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<sup>252</sup> Starting in July 2023, provincial and territorial governments began entering into bilateral funding agreements with the Government of Canada to support the implementation of the National Action Plan to End Gender-Based Violence. As human trafficking is a gendered crime, this funding may result in enhanced services being made available to victims of human trafficking. Additional information on these agreements can be found here: <https://femmes-egalite-genres.canada.ca/en/gender-based-violence/intergovernmental-collaboration/bilateral-agreements.html>

of Justice, lists services available to victims of crime across Canada:  
<https://www.justice.gc.ca/eng/cj-jp/victims-victimes/vsd-rsv/index.html>.

Collaboration among police, prosecutors and victim serving organizations is essential to ensuring that victims of trafficking know about and receive appropriate support. Victims who receive appropriate services are better able to heal and cope with the trauma they have experienced and more likely to develop a support system as they rebuild their lives. This support can also assist in mitigating the potentially traumatic or re-traumatizing experience of participating in criminal justice proceedings.

Canada has a dedicated, confidential, free, 24/7 human trafficking hotline: 1-833-900-1010 (toll free). The hotline is for victims seeking help, people with a tip to report a potential case, members of the public wanting to learn more about the subject. You can also find services across Canada including Ontario, using the hotline's National Referral Directory.

## **6.2 Provincial Victim Service Programs**

### **6.2.1 British Columbia**

Part of the Ministry of Public Safety and Solicitor General, the Community Safety and Crime Prevention Branch (CSCP) provides an extensive network of programs and services for victims of crime across British Columbia. These programs comprise contracted services as well as programs delivered directly by CSCP.

#### **Contracted Services for Victims of Crime**

- VictimLinkBC is a toll-free multilingual, confidential service available across British Columbia and the Yukon 24 hours a day, 7 days a week and is accessible by telephone, text, and email. It provides information and referral services to all victims of crime and immediate crisis support to victims of family and sexual violence, including victims of human trafficking exploited for labour or sexual services.
- Police Based Victim Service programs serve victims of all types of crime and trauma and assist police and communities in situations involving multiple injuries or deaths. These programs operate out of British Columbia's RCMP detachments and municipal police departments.
- Community-Based Victim Service programs serve victims of family and sexual violence, ethno-specific and diverse communities, children and Indigenous people and operate out of non-profit organizations.
  - This includes nine Domestic Violence Units across the province. The Domestic Violence Units are an evidence-based model of co-located service delivery that pairs dedicated police officer(s), with community-based victim services and, in some communities, a child protection worker to improve case coordination and collaboration in highest risk cases of domestic violence.

- Stopping the Violence Counselling programs provide individual and group counselling for women who have experienced childhood abuse, sexual assault and violence in their relationships.
- Prevention, Education, Advocacy, Counselling and Empowerment (PEACE) programs serve children and youth, aged three to 18 years (and their non-offending caregiver), who have experienced abuse, threats or violence in the home.
- Outreach programs help women and children identify and access the services they need by providing supportive counselling, information, referrals, accompaniment and transportation to other services.
- Multicultural Outreach Programs provide service in up to 24 languages to ensure immigrant and visible minority women and children receive assistance by workers who speak their own language and are familiar with their culture.
- Sexual Assault Services Programs provide coordination services, including direct supports, and/or counselling services to survivors of sexual assault.
- **Legal Support:** CSCP contracts Legal Services Society of British Columbia for independent legal counsel to sexual assault victims to respond to applications by the accused for disclosure of their personal information/records (e.g., counselling/medical records).
- **Medical Forensic Protocol:** CSCP and the Ministry of Health have in place a payment protocol for medical forensic evidence in cases where the victim/patient has not involved the police. This protocol helps to ensure that victims of a sexual assault are provided with sufficient time to make decisions about justice system involvement when they attend a health care facility.

### **Victim Services Delivered by CSCP**

- The Crime Victim Assistance Program is a financial benefits program to assist victims, immediate family members, and some witnesses in dealing with the effects of violent crime. The Crime Victim Assistance Program helps to offset financial loss and aid recovery from the impacts of crime. Benefits include counselling, protective measures, and income support.
- The Victim Safety Unit provides safety and notification services to higher risk victims and works with Victim Service Programs to ensure victims are aware of and have access to safety services. Once registered with the Unit, victims can receive ongoing information while an accused is in the community (on bail or probation) and in custody in a provincial correctional institution.
- Victim Court Support Programs provide victims, witnesses and their families with information and support through the justice process by coordinating between victim service and justice system personnel (e.g., Crown).
- The Restitution Program assists victims of crime who have experienced financial loss and have unpaid restitution orders.
- The British Columbia Family Information Liaison Unit (FILU) provides dedicated support to the families of missing or murdered Indigenous women and girls to meet their information and referral needs. With office locations in both Vancouver and Prince George, the British Columbia FILU operates as a mobile unit and FILU staff will travel to meet families in their home communities throughout the

province. Services are available to all family members (blood and non-blood relations). Families may access services directly, or through referral.

For more information on Victim Service programs in British Columbia, please visit: <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/understanding-criminal-justice/key-parts/victim-services/victim-service-programs>

## **6.2.2 Alberta**

Alberta Public Safety and Emergency Services operates two core programs for victims of crime:

- A grant program that provides funding to police-based and community and specialized programs offering information, support and referrals to victims throughout their involvement with the criminal justice process; and,
- A Victim Assistance Program for eligible victims who have been impacted as a result of a violent crime.

### **Police-based Services**

Alberta provides funding to police-based victims services operating throughout the province. Services provided to victims include emotional support, information about their case and criminal justice proceedings, 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 the Victim Assistance Program. 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.

### **Community and Specialized Programs**

Funding agreements with community organizations and specialized programs are in place to deliver specialized assistance and programming to victims of crime including for vulnerable victims such as children, elders and those subjected to human trafficking.

### **Human Trafficking**

Funding is provided to organizations providing front-line services to victims of human trafficking across Alberta. The Ministry website provides information and resources on help for survivors and victims such as links to additional services, courses and applications for human trafficking protection orders.

### **Domestic Violence**

Organizations serving communities throughout Alberta are funded to provide specialized services to victims of domestic and family violence. There are also currently two Domestic Violence Justice Response programs in Alberta, in Edmonton and Calgary. These programs provide enhanced services and a collaborative response to victims of intimate partner violence and ensure they are supported through the criminal justice processes.

## **Sexual Assault**

Sexual assault services are funded throughout the province to provide specialized direct supports for victims of sexual assault and help survivors of sexual violence navigate the criminal justice system.

## **Children and Youth**

Child and Youth Advocacy Centres are specialized programs that partner with victim advocates, law enforcement, child protection, medical and mental health professionals to provide a coordinated response to address the needs of children and youth who have experienced abuse and their families.

## **Clare's Law**

The *Disclosure to Protect Against Domestic Violence (Clare's Law) Act*, gives people who feel at risk of domestic violence a way to get information about their partners so they can make informed choices about their safety. Victim serving organizations in Alberta can assist and support victims through this process.

## **Language supports for victims of crime**

Funded victim serving organizations can access tele-interpreter services through CanTalk so they have immediate access to interpretation services in over 110 languages to assist in their service delivery to victims.

## **Restitution**

Victims can submit a Statement of Restitution for consideration by the judge during sentencing if a person is found guilty of a crime. The form and guidelines are available on the Ministry's website and victim services providers can assist in submitting a Statement of Restitution.

The Restitution Recovery Program provides assistance to victims who opt-in to the program to recover unpaid portions of Court ordered restitution on their behalf if the offender has not paid by the specified due date.

## **Victim Impact Statements**

Victim Impact Statements give victims an opportunity to tell the court how they have been affected by a crime. A victim impact statement will be considered by a judge during sentencing if the accused has been found guilty. In addition to the forms being available on the Ministry's website, victim serving organizations across the province can provide the forms and assist with any questions.

## **Community Impact Statements**

Community Impact Statements are a chance to let the judge know how a community has been harmed because of a crime. The judge will consider the statement during sentencing if the accused has been found guilty. The forms are available on the Ministry's website and from victim serving organizations across the province who can also assist with any questions.

### **Services for Indigenous Victims**

The Victims Services FILU is a single point of contact for families of missing and murdered Indigenous women and girls. The unit helps families find information about the justice system and legal processes, updates and counselling and other supports. For further information on services for victims of crime in Alberta and contact information please visit: [www.alberta.ca/help-for-victims-of-crime.aspx](http://www.alberta.ca/help-for-victims-of-crime.aspx)

### **Victims of Crime Assistance Program**

The Victims of Crime Assistance Program provides direct services and supports to eligible victims of violent crimes including:

- Emergency financial assistance following a violent crime for urgently required needs
- Counselling services provides immediate access to short-term crisis supports or transitional specialized counselling to help deal with psychological impacts of a crime
- Physical injury supports and services provide extended medical benefit services or severe injury benefits to help with treatment of physical injuries related to the crime
- Specific to victims of Human Trafficking, the Victims of Crime Assistance Program includes available supports for emergency temporary accommodation and relocation expenses.

Victims may be eligible for emergency assistance if they were the victim of a serious *Criminal Code* offence that occurred in Alberta. They must report the crime to police within a reasonable period of time. 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 Victims of Crime Assistance Program please visit: [www.alberta.ca/programs-for-victims-of-crime.aspx](http://www.alberta.ca/programs-for-victims-of-crime.aspx)

### **6.2.3 Saskatchewan**

The Saskatchewan Ministry of Justice and Attorney General funds or directly delivers a range of services for victims of crime and traumatic events throughout the province. The Ministry's mandate for victim services falls primarily under its Victims Services Unit. Community-based organizations are funded to deliver many of the services for victims in Saskatchewan. Some specialized programs and services for victims are also funded and supported by the Ministry's Interpersonal Violence and Abuse Unit. Services include:

- **Police-based Services** to assist victims in the immediate aftermath of a crime or tragedy and throughout the criminal justice process, including crisis intervention, information, support, advocacy, and referral, as well as court related services.

- **Victim/Witness Services Program** provides court orientation and support to children and other vulnerable witnesses who are required to testify in court. Programs are based in regional Prosecutions offices, and services are available province wide.
- **Victims Compensation Program** reimburses victims for reasonable expenses resulting from criminal acts of personal violence. Victims may apply for compensation for harm resulting from a *Criminal Code* offence of personal violence, listed in the *Victims of Crime Regulations, 1997*, including personal violence such as robbery, sex crimes, assault causing bodily harm, manslaughter, murder, attempted murder, kidnapping, trafficking in persons, and trafficking of a person under the age of eighteen years old. 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 Indigenous healing methods; funeral expenses to a maximum of \$5,000 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.
- **Victim Impact Statement Program** makes it possible for victims to complete a victim impact statement to be considered by the judge at the time of an offender's sentencing. The form and guidelines for completing a victim impact statement as well as a Community Impact Statement are available on the [Ministry's website](#). Local victim services programs also provide the forms and assist victims with the process.

### **Specialized victim services:**

A variety of specialized services for victims of crime are available in Saskatchewan.

- **Domestic violence:**
  - **Domestic Violence Victim Services** provide specialized supports to victims of domestic violence after a report, including for those victims involved in the specialized Domestic Violence Court processes that operate in those cities.
  - **Transition House** services are funded in 11 communities to provide emergency accommodation and support for women who are victims of interpersonal violence and abuse and their children.
  - **Family Violence Outreach** services are funded in 14 communities to assist women who may not use a shelter or need help in accessing a shelter or other services. Services include supporting women, children and families in violent or potentially violent circumstances, and education on abuse and information about services available in the community.

- **Child victims:**
  - **Children Exposed to Violence** programs are funded in ten communities. These programs assist children and youth who have witnessed or experienced interpersonal violence or abuse (including human trafficking), with a goal of preventing them from becoming future victims or perpetrators of violence and abuse.
  - **Child and Youth Advocacy Centres** are child-friendly facilities that support integrated investigations of child abuse. Each centre is operated, managed, and funded jointly by staff of the local police service and the Ministry of Social Services. Each centre has one Victim Services Responder assigned to it from the local police-based victim services program to provide specialized, on-site support to victims and their families. The Regina centre also has access to a Facility Dog through Regina Police Service to assist in supporting children and families.
  
- **Sexual assault:**
  - **Sexual Assault Services** are funded in 17 communities and may include a 24-hour crisis telephone line, direct supports, and counseling for victims.
  
- **Services for Indigenous Victims:**
  - **Indigenous Resource Officer** positions are funded within six police-based victim services programs to support Indigenous victims of crime and their families.
  - **Indigenous Family Violence Programs** are funded in six locations to help Indigenous families living in urban areas deal with violence and abuse.
  - A **FILU** was established with federal project funding to assist families with finding the information they seek about their murdered or missing loved ones. The FILU collaborates with Indigenous and non-Indigenous agencies to support families in a trauma-informed, culturally sensitive manner and acts as a referral to other mental health supports in the community.
  
- **Services for Families of Missing Persons**
  - **Missing Persons Liaisons** support families of missing persons in their respective police-based victim services units in Regina, Saskatoon, and Prince Albert. They also identify best/promising practices, develop training materials, and provide expertise, advice, and training to all other police-based victim services units in Saskatchewan. Other supports for families of missing persons include specialized counselling and support groups to address the unique needs of families of missing persons, including the uncertainty of ambiguous loss.
  - **Specialized Services** including counselling sessions for families of missing Indigenous women and girls and other missing persons, educational sessions for professionals and family members, and homicide support groups.



- **Language Translation Services:** Victims Services Branch holds an agreement with CanTalk Inc. to provide immediate, phone-based interpretation and translation services in over 200 languages for police-based victim services, domestic violence victim services, and victim/witnesses services programs. This provides programs the ability to communicate with victims when language is a challenge.
- **Restitution:** The Ministry assists victims in preparing a Statement on Restitution to be considered by the judge at the time of an offender's sentencing. The form and guidelines for completing a Statement on Restitution are available on the [Ministry's website](#). Local victim services programs also provide the forms and assist victims with the process. Once restitution has been ordered by the court, victims are assisted in collecting restitution by two programs:
  - The **Adult Restitution Program**, working within criminal justice processes, provides information to victims about restitution, monitors payments and works with offenders to help ensure payments are made, and works with probation officers to enforce restitution orders.
  - The **Restitution Civil Enforcement Program** assists victims with enforcing restitution orders through civil processes. Victims can authorize the program to use civil measures to collect the restitution on their behalf.
- **Transportation:** ensures victims of violence across the province can access places of safety and sexual assault kits, by providing them with transportation (taxi, shuttle, air) and vouchers for essential supplies like formula, clothing, and sundries.
- Saskatchewan has also made recent legislative changes to better serve victims of crime:
  - *The Protection from Human Trafficking Act* provides further safeguards for victims and survivors of human trafficking. Victims can apply for a protection order on their own or be assisted by a shelter employee, a medical professional, or another prescribed individual. The legislation also enables victims to initiate a lawsuit against their traffickers and to seek financial compensation for harm suffered. Other measures include new provisions for law enforcement to seek search warrants for residences or vehicles to locate a victim and remove them from the premises for safety reasons.
  - *The Children's Law Act* was amended to align with *The Divorce Act*. Amendments to both Acts require family violence and its effects to be considered when making parenting arrangements.
  - Amendments to *The Saskatchewan Employment Act*, provides survivors of intimate partner violence with five days paid leave and a further five days' unpaid leave which allows survivors more financial security as they leave violent relationships.
  - Amendments to *The Victims of Interpersonal Violence Amendment Act* allow renters to end fixed-term tenancy agreements with 28 days'

- notice without penalty if they are intimate partner violence or sexual violence victims or victims of human trafficking and continue to be at risk.
- Amendments to *The Privacy Act* allows a person whose intimate image(s) have been distributed without their consent to sue the person who distributed the image. It also shifts the onus of proof to the person that circulated the image, requiring them to show that they had a reasonable basis to conclude consent had been granted to do so.
  - *The Interpersonal Violence Disclosure Protocol (Clare's Law) Act* allows police to disclose information that could help protect potential victims of interpersonal violence. Saskatchewan residents can make an application to their local RCMP or municipal police service for the release of information on an intimate partner's past violent or abusive behaviour.

For more information on the range of victim services offered by Saskatchewan's Ministry of Justice and Attorney General and contact information please see the following links: [www.saskatchewan.ca/VictimsServices](http://www.saskatchewan.ca/VictimsServices) & <https://www.saskatchewan.ca/residents/justice-crime-and-the-law/victims-of-crime-and-abuse/interpersonal-violence-and-abuse-programs>

#### **6.2.4 Manitoba**

Manitoba Justice provides services to victims of domestic violence, child victims, witnesses and victims of the most serious crimes as specified under Manitoba's *The Victims' Bill of Rights Act* and families of missing and murdered Indigenous persons.

*The Victims' Bill of Rights Act* includes the offence of human trafficking as well as offences often committed against trafficking victims such as assault, aggravated assault, sexual assault and procuring persons under 18 years to provide sexual services.

*The Victims' Bill of Rights Act* 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 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 (PBC), 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**, which deals with criminal court cases involving victims of serious crimes as defined under Manitoba's *The Victims' Bill of Rights*. Victim service workers guide victims through the process of dealing with police, prosecutions, courts and corrections officials, and advise about victims' options, rights and responsibilities under the Bill.
- **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. Victim Service Workers 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 Domestic Violence Support Service 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**, a co-operative effort between Bell 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 Cellphone Emergency Limited Link-Up 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](http://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: <https://www.gov.mb.ca/justice/vs/cvc/index.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.

Additionally, the Manitoba government is providing \$3 million in funding to the Clan Mothers, a grassroots, Indigenous women-led organization to support the construction of a healing village, which will provide supports for women who have been victims of multi-generational trauma, sexual violence, sexual exploitation and human trafficking.

### 6.2.5 Ontario

The Government of Ontario offers and supports a number of programs and services to assist victims of crime, some with specialized supports for victims and survivors of human trafficking. Police and a wide range of community-based organizations also provide specialized services to meet the needs of victims of crime in Ontario. Some of the programs and services offered in Ontario that assist victims and survivors of human 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. An online chat option is also available Monday to Friday from 7 a.m. – 9 p.m. Eastern Time.
- **Talk 4 Healing** is an Indigenous-specific, toll-free talking / texting / chatting crisis service that provides supports to Indigenous women across Ontario 24 hours a day, seven days a week. The service offers supports in 14 languages, including 13 Indigenous languages.
- The **Victim Notification Service** provides access to information on changes in release status of provincially sentenced offenders.

- The **Victim Services Directory** is an online database that provides information about services for victims of crime throughout Ontario.
- The **Victim Crisis Assistance Ontario Program** provides crisis intervention, immediate support and assistance to survivors of crime 24 hours a day, seven days a week, province-wide. Services offered by Victim Crisis Assistance Ontario Program providers include enhanced support to vulnerable survivors of crime, safety planning, needs assessments and customized service plans, assisting survivors to access supports through the Victim Quick Response Program+, and making referrals to appropriate community agencies for longer-term assistance.
- The **Victim Quick Response Program+** offers supports to survivors, their immediate family members and witnesses in the immediate aftermath of violent crimes by providing short-term financial support with essential expenses, including counselling and home safety supports, in order to lessen the impact of crime, enhance safety, and meet immediate practical needs arising from the commission of the crime.
  - Survivors of human trafficking are able to access additional supports, including tattoo/branding removal and residential treatment, as well as increased financial maximums for supports.
  - Survivors can access this program through one of 55 service providers (47 Victim Crisis Assistance Ontario Program organizations, 5 Indigenous communities and organizations, and 3 police-based organizations). Criminal charges do not need to be laid in order for a survivor to access this program.
- The community-based **Child Victim Witness Program** provides assistance to child victims/witnesses under eighteen (18) years of age who may be required to testify in court, often in cases of physical or sexual abuse, or intimate partner violence. The Program provides sensitive, informed, and effective assistance to child witnesses to lessen the trauma of communicating evidence in court.
- The 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** is a court-based program providing information, assistance and support to victims and witnesses of crime to increase their understanding of, and participation in, the criminal court process. Services include information about victims' rights, the criminal justice process, and a victim's specific case; trial preparation and court orientation; needs assessment and referrals to appropriate agencies; crisis intervention and emotional support; victim advocacy; information and assistance; and referrals to community agencies. Services begin once police lay charge(s) and continue until the court case is over. Services are voluntary and are free.

- Victim/Witness Assistance Program has six Victim Witness Services Workers dedicated to supporting survivors of human trafficking throughout their involvement in the criminal court process. These workers are stationed in courthouses which see high volumes of human trafficking prosecutions.
  - These dedicated Victim Witness Services Workers share their experience with and provide guidance to Victim/Witness Assistance Program staff in other locations and work with Crowns to ensure that the needs of human trafficking survivors are met.
- The **Vulnerable Victims and Family Fund** provides financial support to vulnerable victims, including survivors of human trafficking. The fund improves access to court proceedings and information for vulnerable victims of crime, families of homicide victims, and families of motor vehicle fatality victims resulting in *Criminal Code* charges, and increases participation of vulnerable victims in the criminal court process. Survivors of human trafficking are eligible to apply for additional supports under the Vulnerable Victims and Family Fund. Information about Vulnerable Victims and Family Fund and eligibility is available through the Ministry of the Attorney General's Victim/Witness Assistance Program.
  - **Indigenous-specific Victim Services programs**, which are designed and developed using a culturally-relevant and trauma-informed approach, are delivered by 24 Indigenous communities and organizations across Ontario. Indigenous-specific Victim Services programs provide supports specifically designed for Indigenous Survivors, and consider factors such as language barriers, the remote geographic location of communities, and the legacy of assimilative laws and policies aimed at the destruction of Indigenous families and communities. Victims and survivors of human trafficking are able to access culturally-relevant services that meet their needs and support their family and community members.
  - The **FILU** assists families of missing and murdered Indigenous women and girls to access information related to the loss of their loved ones. The FILU serves as a direct link between families and government agencies and is intended to give families a centralized resource to gather the information they are seeking efficiently and in a culturally supportive manner.
  - In Ontario, FILU staff are housed in Indigenous organizations that provide health and cultural services to communities and are staffed by Indigenous community members who have years of experience working with Indigenous women and girls. The FILU in Ontario has innovated a process called "Family Circles," which connect families directly with investigating coroners, investigating police officers, and crown prosecutors where relevant, so that families can ask questions and gather and understand information relating to their loved one's case.

- **Free Legal Support Programs for Survivors of Human Trafficking.** There are two types of legal supports available to victims of human trafficking:
  - **Independent Legal Advice for Survivors of Sexual Assault Program:** A victim or survivor of sexual assault sixteen years of age or older living in Ontario, including a victim or survivor of human trafficking who has experienced sexual violence, may be eligible to speak to an independent lawyer for up to four hours by phone or video chat. This advice can help to inform what options are available, including but not limited to proceeding through the criminal justice system to hold the offender(s) to account. This service is confidential and is available any time after a sexual assault has occurred. Information is available at <https://www.ontario.ca/page/independent-legal-advice-sexual-assault-victims> or by calling 1-855-226-3904.
  - **Free Legal Support Program for Victims of Human Trafficking:** The program provides confidential legal advice and support to victims of human trafficking, as well as their parents/guardians and Customary Caregivers of child victims or children at risk. The program assists victims to access supports to provide for their emotional and physical safety while applying a trauma-informed approach; and empowering victims and survivors to determine and control the processes, services, and supports they choose to engage with. This support includes:
    - providing confidential legal advice to victims of human trafficking and to parents, guardians, or Customary Caregivers of child victims,
    - providing legal representation on applications for restraining orders on behalf of Applicants as appropriate.
    - assisting victims to access supports to provide for their emotional and physical safety and to apply a trauma-informed approach to victims.
    - conducting outreach and education to build awareness and knowledge of the Legal Support Program and how to access it, and on the relevant legislation and regulations as Program Counsel's time allows; and
    - liaising with legal representatives, community and legal organizations, Children's Aid Societies, victim support organizations, social service providers, ministry partners, and other anti-human trafficking stakeholders.

This program can be accessed by calling the Canadian Human Trafficking Hotline at 1-833-900-1010.
- **Community-based anti-human trafficking programs and services** for victims and survivors of human trafficking, including survivor-led programming, long-term recovery programs, outreach, education and prevention programs, emergency and crisis-response support, residential placement and treatment programs, peer support, health services, legal education/legal system navigation, and

wraparound support services. Services also include dedicated supports for children and youth who have been sexually exploited.

- **Indigenous-led, community-based anti-human trafficking services and supports** that are designed for, and by First Nation, Métis, Inuit and urban Indigenous organizations and communities, including 2SLGBTQQIA+ survivors. Services include wraparound services (e.g., emergency shelter, bed, transportation, food, and trauma-informed, culturally respectful care), survivor's circles, counselling, specialized staff, comprehensive programs that incorporate traditional Indigenous teachings, survivor-informed outreach services and supports, treatment services, community engagement and regional working groups. Services also include dedicated supports for Indigenous children and youth who have been sexually exploited.
- **Children at Risk of Exploitation Units** are specialized intervention teams that pair police officers and child protection workers (including Indigenous child protection workers) to identify, investigate, locate and engage children and youth who are victims of child sex trafficking, connect them to services and investigate offenders. Children at Risk of Exploitation Units are currently operating in the City of Toronto and Durham Region.
- **Specialized licensed children's residences for trafficked youth** provide community-based, residential accommodation and access to wraparound trauma-informed, non-stigmatizing services and supports for children and youth who have been trafficked for sexual exploitation. Residences are located in the City of Toronto and north of Durham Region and each home can accommodate up to six children and youth ages 12-17 at time of admission.
- The **Special Priority Policy**, for households with current or recent experience of domestic abuse or human trafficking, gives them priority access to Rent-Geared-to-Income Housing or Portable Housing Benefits. The Governments of Canada and Ontario also provide funding to help survivors of human trafficking in Ontario through **transitional housing and rent assistance**.
- **Human Trafficking Youth-in -Transition Workers** provide human-trafficking specific supports and referrals to youth in and transitioning from the care of children's aid societies who are at-risk of, or are survivors of, human trafficking.

On June 3, 2021, the *Combating Human Trafficking Act* received Royal Assent with Schedules being brought into force at varying dates. The Act is the first of its kind in Canada, as it requires the Province of Ontario to maintain an anti-human trafficking strategy and review/update the strategy every 5 years, with regard to specific principles and consultation requirements.

The Provincial Anti-Human Trafficking Coordination Office oversees the development, implementation and review of Ontario's response to human trafficking including the



mandated provincial strategy and associated anti-human trafficking efforts and initiatives - across the provincial government, among the community partners and Indigenous communities and organizations, and with other jurisdictions/levels of government.

Information about dedicated services and supports across Ontario that help victims, survivors and persons at risk of human trafficking can be found at:

<https://www.ontario.ca/page/human-trafficking-services-and-supports>.

Information about other programs and services for victims of crime generally may be found at: <https://www.ontario.ca/page/get-help-if-you-are-experiencing-violence>

### **6.2.6 Québec**

The Quebec Ministry of Justice is responsible for the Office for Victims of Crime or Bureau dédié à l'aide aux personnes victimes d'infractions criminelles (BAVAC) and the Victims of Crime Fund or Fonds d'aide aux personnes victimes d'infractions criminelles (FAVAC). These promote the rights of victims and the assistance and support services available to them. BAVAC also ensures that victims' rights are protected.

In terms of direct services, BAVAC and FAVAC are responsible for the establishment of Crime Victims Assistance Centres or l'établissement de centres d'aide aux victimes d'actes criminels (CAVAC) through funding and technical and professional assistance. CAVACs are non-profit community organizations that participate in the implementation of the Quebec Victims Assistance Program by offering a wide range of services throughout Quebec on a free, confidential and voluntary basis.

Services provided by the CAVACs include:

- legal support, including information on the various procedures, including the stages of the legal process and the role and responsibility of victims as witnesses
- information on rights and remedies
- technical assistance, in particular for filling out a claim for compensation;
- post-traumatic and psychosocial intervention;
- referral and support to specialised services.

It should be noted that the CAVAC Network will establish in the coming months a team specialized in supporting victims of sexual exploitation and human trafficking.

In addition, FAVAC provides funding for various programs and services through its grant program to promote research, information, awareness and training in the area of assistance for victims of criminal offences, as well as through funding for various other organizations such as the Montreal Sexual Assault Centre (Sexual Violence Info-Help Line), the Marie-Vincent Foundation, SOS Violence Conjugale and the Restorative Justice Services Centre.

### **Specialized court for sexual violence and spousal abuse**

On November 26, 2021, legislation to establish a specialized court for sexual and domestic violence was unanimously adopted by the Quebec National Assembly. The purpose of this law is to implement a pilot project for a specialized court over a period of four years. This court aims to improve the support and experience of victims in the judicial process and victims of sexual exploitation and human trafficking will be able to access it.

For further information on Victims Services in Quebec please see:  
<https://cavac.qc.ca/>.

### **Compensation**

The Act to assist victims of criminal offences and promote their recovery (*La Loi visant à aider les personnes victimes d'infractions criminelles et à favoriser leur rétablissement*) recognises the rights of victims and puts in place measures to meet their needs in order to promote their recovery. It provides for various financial assistance that can be paid to victims. Victim not only includes the person who suffers a violation of their integrity as a result of the commission of a criminal offence against them, but also their parent, child, spouse, dependant and relatives. A witness to the commission of a criminal offence or to the crime scene may also be recognised as a victim.

Any person who has been the victim of an offence against the person may apply to the Quebec Crime Victims Compensation Branch. The criminal offence may have been committed in Quebec or outside Quebec. The application must be made within three years of the victim becoming aware of the harm suffered as a result of the offence, or of the death of the victim. If the criminal offence involves sexual violence, intimate partner violence or child abuse, the application to the Quebec Crime Victims Compensation Branch may be made at any time.

The Act to assist victims of criminal offences and to promote their recovery provides for various forms of financial assistance, particularly in the event of after-effects or death, to compensate for loss of income or certain disabilities, for psychotherapeutic or psychosocial rehabilitation, for physical rehabilitation, or for professional and social reintegration. The law also provides for financial support for medical assistance, to contribute to the needs of a child born as a result of a sexual assault, as well as the reimbursement of certain expenses.

For further information on Quebec's Crime Victim Compensation Program please see:  
<https://www.ivac.qc.ca/Pages/default.aspx>.

### **6.2.7 New Brunswick**

The Department of Justice and 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:

- **Court Support Counselling:** Court Support Counselling through the Victim Services Program are available to victims who are experiencing symptoms of trauma directly related to the crime and/or their disclosure of the crime to an extent that impedes them from testifying effectively in court. Court Support Counselling is intended for a limited time only to prepare victims for 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](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 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 the province's Department of Public Safety can access information about accused found not criminally responsible because of mental disorder, 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 PBC Canada.

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

[https://www2.gnb.ca/content/gnb/en/departments/public-safety/community\\_safety/content/victim\\_services.html](https://www2.gnb.ca/content/gnb/en/departments/public-safety/community_safety/content/victim_services.html).

### 6.2.8 Nova Scotia

The Department of Justice Victim Services in Nova Scotia uses a court-system-based model and operates numerous province-wide programs that provide services to meet specific needs.

- Through its four regional offices and four 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).
- **Criminal Code Review Board Updates:** Eligible victims can access information about accused found not criminally responsible because of mental disorder, and, subject to Review Board approval, read initial and updated victim impact statements during Review Board hearings.
- The **Criminal Injuries Counselling Program** pays for professional short term counselling services to support victims of violent crime in dealing 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.
- **Indigenous Victim's Case Coordinator** provides culturally appropriate services to Indigenous victims of crime.
- **Human Trafficking Navigators:** There are four Human Trafficking Navigators that provide navigational support and services to Human Trafficking and Sexual Exploitation survivors and their families throughout the Province.
- **FILU** assists families of missing and murdered Indigenous women and girls to access information related to the loss of their loved ones. The FILU serves as a direct link between families and government agencies and is intended to give families a centralized resource to gather the information they are seeking efficiently and in a culturally supportive manner.
- **Restitution Coordinator program** provides assistance to victims of crime who are owed restitution to recover the restitution they are owed.
- **Independent Legal Advice Program** provides up to four hours of free independent legal advice for adult victims/survivors of sexual assault (16 years and over).
- **Sexual Offence Legal Representation** for cases making their way through the Court process where 276 and 278 applications are involved.
- **Victim Notification of Release of Provincial Incarcerated Offenders:** Eligible victims registered with the province's Department of Justice Correctional Services can obtain information on an offender's release and transfer from a

provincial institution. Victim Services can assist with the application process for victims.

For further information on Nova Scotia's Victim Services Programs, please visit: [www.novascotia.ca/just/victim\\_Services/programs.asp](http://www.novascotia.ca/just/victim_Services/programs.asp).

### 6.2.9 Newfoundland and Labrador

The Department of Justice and Public Safety'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 goals of assisting victims to: access services that promote healing and recovery and participate meaningfully in the criminal justice process. Services are available at any point after an offence has occurred, and anytime during the criminal justice process and beyond. Services are available to adult victims (16 years of age and over) regardless of their decision to report a crime to the police and whether or not they participate in the criminal justice system. Services for children/youth (under 16 years of age) and their parent/caregivers are available once a criminal charge has been laid. Services are available for the child/youth whether they will be called to testify by Crown or Defense. Consent of a parent/caregiver is required. Children/youth's caregivers are also eligible for services. Program services are free of charge, voluntary and confidential (with identified limits).
- Available services include: general information about the criminal justice system; specific information regarding the case prior to, during and after criminal court proceedings; 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; safety planning; and travel funding to counseling, court preparation and presentation of victim impact statements.
- **FILU**: Provides assistance and support for families of missing and murdered Indigenous women and girls. FILU staff work with families to coordinate information gathering from government agencies and services. They provide healing opportunities as defined by the families, liaise with external agencies and build relationships to promote reconciliation and decolonization. Services are confidential, culturally responsive, trauma informed and victim centered.

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

### 6.2.10 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 Prince Edward Island 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: <https://www.princeedwardisland.ca/en/topic/victim-services>.

### 6.3 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 (NWT) and Nunavut are significantly higher than elsewhere in Canada. There are eight Indigenous languages in the Yukon, spoken by 75 percent of the population. There are 11 official languages in the NWT, where an Indigenous 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.

### **6.3.1 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/](http://www.justice.gov.yk.ca/prog/cor/vs/).

### **6.3.2 Northwest Territories**

The Department of Justice of the 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: <https://www.justice.gov.nt.ca/en/victim-services/>.

### **6.3.3 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.



## 6.4 Federal Services to Victims of Crime

### 6.4.1 Correctional Service of Canada

The Correctional Service of Canada (CSC) is responsible for the management of all individuals sentenced to two years or more while they are serving sentences in custody or under conditional release in the community.

Victims and their family members can receive information about the offender who harmed them; however, this does not happen automatically. In order to receive this information, victims must register with CSC (or with the PBC) by using the request form available on the CSC website or through the Victims Portal (<https://www.csc-scc.gc.ca/victims/>). Registering allows victims and family members to:

- receive information about changes in the offender's location and other aspects of the management of the case;
- be informed about the offender's correctional plan and rules about the offender's release;
- submit a victim statement for consideration in decisions that will impact the offender; and,
- address the needs and the rights of victims who are minors (under 18 years old) by registering to receive information on behalf of the minor.

The information about an offender that can be accessed by registered victims is listed in subsection 26(1) of the *Corrections and Conditional Release Act*. This includes:

- the offender's name;
- the offence for which the offender was convicted and the court that convicted the offender;
- the start date and length of the sentence that the offender is serving; and
- the offender's eligibility dates and review dates for temporary absences or parole.

Other information can be shared with registered victims following a review by CSC to determine if the victims' interest outweighs the potential invasion of the offender's privacy. This information may include:

- the offender's age;
- whether the offender is in custody and, if not, why;
- the name and location of the institution where the offender is being held;
- information about an offender transferring from one institution to another;
- information about the programs in which the offender is participating or has participated;
- the serious disciplinary offences committed by the offender;
- information about an offender's progress in relation to their correctional plan
- the date when an offender has been removed from Canada by the CBSA; or
- information about CSC's victim-offender mediation services.

Registered victims can receive information about the offender's conditional release unless the disclosure would have a negative impact on the safety of the public:

- the date on which the offender is to be released;
- the conditions attached to the offender's release;
- the destination of the offender on any release and whether the offender will be in the vicinity of the victim while travelling to that destination;
- the reasons for any temporary absence; and
- access to a photograph of the offender taken on or after the offender's first escorted temporary absence from the institution, and any subsequent photograph of the offender taken by CSC.

Throughout the offender's sentence, registered victims are able to provide victim statements expressing how the crime has impacted them and any concerns they may have about their safety. These are different from Victim Impact Statements used at the sentencing stage of the trial and which CSC receives as part of offenders' court files. CSC considers victim statements when planning and managing offenders' cases and when preparing recommendations for the PBC about release decisions.

CSC works collaboratively with the PBC and the provinces and territories to strengthen continuity of services for victims when offenders move between jurisdictions.

#### **6.4.2 Parole Board of Canada**

The PBC, through their Regional Managers of Community Relations and Training and Regional Communications Officers, provide the following services to victims:

- receive requests for information;
- inform victims, in writing, of their status and their entitlements as well as information about both CSC and PBC;
- provide notifications to victims relating to their specific case;
- maintain information regarding victim contacts, as required;
- ensure that relevant information provided by victims is forwarded to decision-makers and if required, shared with offenders;
- inform victims about other sources of information or opportunities to participate in the conditional release process such as their right to attend PBC hearings as observers and/or to present a Victim Statement;
- upon request, provide a victim with a copy of any PBC decision concerning the offender who harmed them and the reasons for the decision,
- advise victims of victim-related services available to them nationally, provincially/territorially and locally; and
- preparing, accompanying and debriefing victims who attend PBC hearings.

Any member of the public may attend hearings conducted by PBC as an observer. Hearings usually take place in the penitentiary where the offender is held. Applications should be made to PBC, in writing and as early as possible (preferably at least 30 days

before the hearing). This allows time to conduct a required security check on the individual in order to obtain clearance to enter a penitentiary. A support person can also accompany the victim. This support person does not need to attend the hearing; however, if they do, they must also apply to be approved for entry into a penitentiary.

Registered victims may apply to the Victims Fund, administered by the Policy Centre for Victim Issues at the Department of Justice, for financial assistance to attend PBC hearings of the offender who harmed them. Financial assistance is also available for a support person to accompany a registered victim at PBC hearings, which covers travel, hotel and meal expenses, according to the current Government of Canada Treasury Board Directive. In order to receive this financial assistance, victims must be registered with CSC or PBC and must have been approved to attend the hearing.

For further information regarding financial assistance to attend PBC hearings, victims may contact the Victims Fund Manager by email at: [victimsfundmanager@justice.gc.ca](mailto:victimsfundmanager@justice.gc.ca) or by calling toll-free at 1-866-544-1007 from anywhere in Canada or the United States. Victims may also visit the Department of Justice website at <https://www.justice.gc.ca/eng/fund-fina/cj-jp/fund-fond/attend-audience.html>.

Victims may provide a Victim Statement to PBC for consideration at hearings that includes information regarding the physical, emotional or financial impact, including property damage or economic loss, the offence has had on them, their family and/or the community. A Victim Statement is a short text that is written for a parole hearing, describing the continuing impact of the crime. Registered victims may attend a hearing and read their statement to Board members, designate a support person who will attend the hearing with them to read the statement on their behalf, or present their statement by recording (regardless of whether the victim attends the hearing).

PBC has developed a victim statement checklist to assist victims in preparing their statement. The checklist may be found at <https://www.canada.ca/en/parole-board/corporate/publications-and-forms/victims-statement-checklist.html>.

## Annex A

Jurisprudence		
Issue	Analysis	Select Cases
Trafficking in persons related case law	Convictions are entered under a range of offences in human trafficking cases, including sex trade offences (sections 286.2 to 286.4) and others (e.g., forcible confinement, assault and sexual assault). <sup>253</sup>	<p><i>R v Sinclair</i>, 2020 ONCA 61, trafficking in persons and theft</p> <p><i>R v Gallone</i>, 2019 ONCA 663, acquittal on trafficking and sex trade charges overturned; new trial ordered</p> <p><i>R v Antoine</i>, 2019 ONSC 3843, conviction for trafficking and sex trade offences</p> <p><i>R v Majdalani</i>, 2017 ONCJ 145, conviction for trafficking, sex trade and related offences (decision upheld in <i>R v Majdalani</i>, 2019 ONCA 513)</p> <p><i>R v Evans</i>, 2017 ONSC 4028, conviction for trafficking and related offences</p> <p><i>R v AS</i>, 2016 ONSC 6965, conviction for trafficking, prostitution and other related offences</p> <p><i>R v S</i>, 2015 ONSC 7749, conviction for trafficking and other related offences</p> <p><i>Urizar c R</i>, 2013 QCCA 46, conviction for trafficking and other related offences confirmed</p> <p><i>R v Byron</i>, 2013 ONSC 6427, conviction for trafficking, prostitution and other related offences</p>
	Some human trafficking cases result in convictions for offences other than human trafficking.	<i>R c Ayala Tafur</i> , 2020 QCCQ 3357, convictions for sex trade offences and other related charges, acquittal on trafficking charges

<sup>253</sup> “Sex trade offences” refer to offences enacted in 2014; “prostitution offences” refer to offences in force prior to 2014.

		<p><i>R v Gracia</i>, 2020 ONCJ 31, conviction for sex trade offence and assault, acquittal on trafficking charges</p> <p><i>R v AM</i>, 2020 ONSC 4191, conviction for sex trade offences, acquittal on trafficking charges</p> <p><i>R v Lucas-Johnson</i>, 2018 ONSC 2370, conviction for sex trade offences, acquittal on trafficking charges</p> <p><i>R v Moradi</i>, 2016 ONCJ 842, conviction for possession of property obtained by crime (section 354), acquittal on trafficking and sex trade charges</p> <p><i>R v Dagg</i>, 2015 ONSC 2463, conviction for theft (section 322), acquittal on trafficking charges</p> <p><i>R v Moazami</i>, 2014 BCSC 1727, conviction for prostitution and related offences, acquittal on trafficking charges</p> <p><i>R v Salmon</i>, 2014 ONCJ 542, conviction for assault (sections 266 and 267) and breach of recognizance (section 145), acquittal on trafficking charges</p> <p><i>R v Mouzannar</i>, [2014] OJ No 6560 (OCJ), conviction for breach of recognizance, acquittal on trafficking and prostitution charges</p> <p><i>R c Tynes</i>, 2010 QCCQ 9767, convictions for prostitution and other related offences; acquittal on trafficking charges</p>
Jurisdiction	The court of one province has jurisdiction where a human trafficking scheme continues from that province to another and back.	<i>R c Ibeagha</i> , 2019 QCCA 1534, Quebec had territorial jurisdiction, acquittals quashed and new trials ordered

	<p>It is an error to acquit where the court lacks territorial jurisdiction. The appropriate remedy is a stay to allow a competent court to be seized of the prosecution.</p>	
Bail	<p>Bail may be denied on secondary (public safety) and/or tertiary (maintain confidence in the administration of justice) grounds.</p>	<p><i>R v Mohsenipour and Albashir</i> 2020 BCCA 112, interim bail pending appeal denied on secondary and tertiary grounds, impact of COVID-19 considered</p> <p><i>R v SM</i>, 2020 ONCA 427, interim bail pending appeal denied on tertiary grounds (decision reversed on basis of material change in circumstance; <i>R v SM</i>, 2020 ONCA 610)</p> <p><i>R v Brown</i>, 2020 ONSC 2626, prior decision to deny bail on secondary grounds upheld, impact of COVID-19 considered</p> <p><i>R v Davidson</i>, 2020 ONSC 2775, prior decision to deny bail on secondary and tertiary grounds upheld, impact of COVID-19 considered</p> <p><i>R v Hammoe</i>, 2016 ONSC 1790, decision to deny bail on secondary grounds upheld</p> <p><i>R v Domotor</i>, [2012] OJ No3630 (OSCJ), accused denied bail on secondary and tertiary grounds; see also <i>St-Cloud</i>, 2015 SCC 27, interpreting tertiary ground broadly</p>
<i>Charter of Rights and Freedoms</i>	<p>Human trafficking offences have been found to comply with the Charter.</p>	<p><i>R v D'Souza</i>, 2016 ONSC 2749, upheld constitutionality of sections 279.01, 279.011 and 279.02</p> <p><i>R v Beckford and Stone</i>, 2013 ONSC 653 and <i>R v Ahmed et al</i>, 2019 ONSC 4822 upheld constitutionality of section 279.011</p>

	Mandatory minimum penalties pose Charter concerns under section 12 (cruel and unusual punishment).	<p><i>R v Webber</i>, 2019 NSSC 147, 4 years for child trafficking, sex trade offences and child sex offences; child trafficking mandatory minimum penalties unconstitutional</p> <p><i>R v Finestone</i>, 2017 ONCJ 22, 4 years for child trafficking, 5 year MMP unconstitutional but no declaration of invalidity</p>
Statutory Interpretation	The Ontario Court of Appeal, the Quebec Court of Appeal and the British Columbia Court of Appeal have interpreted the human trafficking provisions broadly.	<p><i>R v AA</i>, 2015 ONCA 558, interprets trafficking provisions broadly, consistent with Parliamentary intent</p> <p><i>R v Gallone</i>, 2019 ONCA 663, broad interpretation, followed <i>AA</i></p> <p><i>R v Sinclair</i>, 2020 ONCA 61, broad interpretation, followed <i>Gallone</i> and <i>AA</i></p> <p><i>Chahinian c R</i>, 2022 QCCA 499, broad interpretation, followed <i>AA</i>, <i>Gallone</i> and <i>Sinclair</i></p> <p><i>R v Wilson</i>, 2022 ONCA 857, broad interpretation, followed <i>AA</i>, <i>Gallone</i>, <i>Sinclair</i> and <i>Chahinian</i></p> <p><i>R v Mohsenipour</i>, 2023 BCCA 6, broad interpretation, followed <i>AA</i></p>
Evidence	KGB statement and corroborating evidence assist in proving victims' allegations.	<p><i>R v AN</i>, 2019 ONCA 741, trial judge's decision to admit video-recorded statements of victim after she recanted upheld</p> <p><i>R v Jeffers</i>, [2019] OJ No1711 (OCJ), recanting victim; conviction for trafficking and sex trade offences based on victim's KGB statement to police and corroborating evidence</p> <p><i>R v Crosdale</i>, 2018 ONCJ 800, victim credibility issues but corroborating evidence (paragraph 9); conviction for trafficking, sex trade and related offences</p>

		<i>R v NA</i> , 2017 ONCJ 196, recanting victim; conviction for trafficking and related charges based on victim’s KGB statement to police and corroborating evidence
	Other types of evidence may be relevant in sex trafficking cases.	<p><i>R v PO</i>, 2020 ABQB 542, Instant Messages (prior consistent statements) admitted as evidence (voir dire)</p> <p><i>R v NC</i>, 2019 ONCA 484, text messages between complainant and NC were “highly cogent evidence” of the appellant’s control over the complainant’s sexual, physical and financial autonomy</p> <p><i>R v Appiah</i>, [2019] OJ No 3907 (OSCJ), evidence that accused provided drugs to the complainant is relevant to exploitation; evidence of violent/ threatening behaviour witnessed by complainant is relevant to state of mind of complainant</p> <p><i>R v Bright</i>, 2017 ONSC 377, accused’s posts promoting the idea of women selling sexual services under the guidance/control of a pimp, with praise for those who bring in money and scorn for those who are poor but do not sell sexual services, admitted as relevant evidence</p> <p><i>R v Bright</i>, 2016 ONSC 7641, detective (Truong) qualified as an expert to offer opinion evidence on sex trade, including terminology and methods of advertising used in sex trade</p> <p><i>R v Moradi</i>, 2016 ONCJ 843, book on accused’s laptop, “Pimpology – The 48 Laws of the Game”, admitted as relevant evidence</p>
	Accused may be required to apply to the court to admit evidence of complainant’s sexual	<i>R v MD</i> , 2020 ONSC 951, accused must bring application under common law to introduce evidence of complainant’s sexual history (willing involvement in the sex trade) in trafficking/sex trade offence cases to



	<p>history. The law is currently unsettled.</p>	<p>ensure fair trial (section 276 applications do not apply)</p> <p><i>R v Miller</i>, [2020] OJ No 1934, section 276 application required where accused charged with child trafficking and child sexual offences, according to reasoning in <i>R v Barton</i>, 2019 SCC 33</p> <p><i>R v LR</i>, 2019 ONSC 6860, application under section 276 respecting evidence of complainant's sexual history (willing involvement in the sex trade)</p>
	<p>Testimonial aids have been used to facilitate victim testimony.</p>	<p><i>R v SLC, LJA, EDW</i>, 2020 ABQB 515, complainant allowed to testify by video conference</p> <p><i>Appiah</i>, [2019] O.J. No. 3907 (OSCJ), complainant allowed to testify by CCTV and have support person present</p> <p><i>R v Lucas-Johnson</i>, 2018 ONSC 2370, complainant allowed to testify by video link due to her vulnerability</p>
	<p>Traffickers who dissuade victims from giving evidence.</p>	<p><i>R v Gashi</i>, 2014 ABPC 72, conviction for attempting to dissuade trafficking victim from giving evidence (obstructing justice, subsection 139(2))</p>
Victim / Public Protection	<p>Peace bonds are an option in cases where evidence is insufficient to convict.</p>	<p><i>R v Butler</i>, [2017] OJ No 7026 (OCJ), acquittal on trafficking, sex trade and related charges (inconsistent victim testimony); peace bond imposed</p>
	<p>Some traffickers have been designated as dangerous offenders or long-term offenders.</p>	<p><i>R v Burton</i>, 2018 ONCJ 153, long term offender designation granted; offender committed trafficking and other related offences; although no overt violence,</p>

		<p>offender created a context of fear and control</p> <p><i>R c Mataev</i>, 2016 QCCS 650, dangerous offender designation granted; offender committed trafficking and other related offences</p>
IRPA	Section 118 found to comply with the Charter.	<i>R v Ng</i> , 2006 BCPC 111, section 118 held not to violate section 7 of the Charter.
	Additional charges in cross-border trafficking cases may assist.	<p><i>R v Ye Win</i>, [2018] OJ No 5006, accused acquitted, teenage girl adopted by accused, brought to Canada and treated as a domestic servant; no proof of inducement to come to Canada through deception but evidence of exploitation.</p> <p><i>R v Orr</i>, 2016 BCSC 2064, 3 month conditional sentence for employing as foreign national w/o authorization (section 124 IRPA).</p> <p><i>R v Ng</i>, 2008 BCCA 535, Crown's sentence appeal allowed, 27 months imposed for prostitution and immigration offences.</p>
Sentencing	See Annex B	

## **Annex B: Sentencing Chart – Trafficking in Persons**

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This Annex is intended to provide prosecutors with guidance on the appropriate range of sentences for human-trafficking offences and reflect sentencing decisions published prior to December 1, 2023. Unless otherwise stated, the sentence indicated in the top right represents the global sentence that would have been imposed without credit for pre-trial or pre-sentence custody. Breakdown of the sentence by offence is noted where that information is provided by the sentencing court.

### ***R v Reid, 2023 ONSC 4452***

**6 years**

Reid received a global sentence of 6 years imprisonment: 2190 days for trafficking in persons (s 279.01); 365 days for assault causing bodily harm (s 267(b)); 180 days for unlawful confinement (s 279(2)); 180 days for receiving a material benefit from trafficking in persons; and 365 days for attempted procurement (s 463).

**Ancillary Orders:** DNA order; weapon prohibition order (s 109); non-communication order for the surviving victim and female accused (s 743.21).

**Summary:** The offender pled guilty to five offences perpetrated against two victims, SR and SW. SR was an Indigenous woman and addicted to drugs. The offender and a female accused exploited SR for two weeks. The offender supplied SR with alcohol, posted advertisements for SR's sexual services, booked the hotels, communicated with and scheduled clients, and retained all the proceeds. The offender used significant physical violence and left SR in the middle of the road, not fully clothed and either unconscious or barely alert. The offender attempted to recruit SW into participating in the sex trade. He tried to arrange for SW to accompany SR on an overnight call.

**Mitigating factors:** The Court noted the following mitigating factor: the guilty plea.

**Aggravating factors:** The Court noted the following aggravating factors: the "sheer cruelty of the [offender's] exploitation and abuse of the SR", the very high degree of coercion and control, the money received, the violence, the use of drugs or alcohol, the victim impact and the vulnerability of the victims, especially with respect to SR.

### ***R v Downey, 2023 ONSC 3776***

**15 years**

Downey received a global sentence of 15 years imprisonment: 4 years consecutive for trafficking in persons (s 279.01(1)); 3 years concurrent for procuring (s 286.3(1)); 6 months concurrent for assault (s 266); 4 years consecutive for trafficking in persons (s 279.01(1)); 3 years concurrent for procuring (s 286.3(1)); 4 years consecutive for trafficking in persons (s 279.01(1)); 3 years concurrent for procuring (s 286.3(1)); 3 years consecutive for trafficking in persons (s 279.01(1)); 2 years concurrent for procuring (s 286.3(1)); 3 years concurrent for advertising sexual services (286.4); and 3 years concurrent for receiving a material benefit from trafficking in persons (s 279.02).

**Ancillary Orders:** DNA order; weapons prohibition order for 10 years (s 109); non-communication order (s 743.21); forfeiture order of funds seized.

**Summary:** The offender was convicted of 16 counts of human trafficking-related offences involving four victims. The four victims, PC, MM, ST and PG, were financially and emotionally vulnerable when recruited by the offender. He operated an agency whereby he recruited women and they would provide him 100% of their earnings from engaging in the sex trade in exchange for accommodation and the promise of future riches. He also received portions of the victims' savings, family income or child tax credit. The offender engaged in sexual relationship with PC, MM and ST for the duration of their exploitation, requiring unprotected sex whenever he desired it, which resulted in the three victims becoming extremely sick with gonorrhoea and vaginitis. The offender required the victims to continue providing sexual services when they were extremely sick. While the offender did not engage in physical violence, the offender exercised a high degree of emotional and psychological control such that the victims had to seek his permission to purchase supplies for themselves or the home, including food or basic necessities, to obtain medical attention, to engage in any non-work-related activities, and to take time off work.

**Mitigating factors:** The Court did not find any mitigating factors except perhaps that the condition under which the victims were trafficked did not involve the level or frequency of violence that are often prevalent in sex trafficking cases.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's prior criminal record, which includes a human trafficking conviction; there were multiple victims who were all young adults and highly vulnerable; the presence of violence and intimidation; the size and sophistication of the offender's operation, including the profits he made over the lengthy offence period; and the financial and psychological impact on the victims.

***R v Dolman-Kencher, 2023 ONSC 2752* **5 years and 3 months****

Dolman-Kencher received a global sentence of 6 years, which was reduced to 5 years and 3 months imprisonment: 2 years less 2 days for trafficking a person under the age of eighteen years (s 279.011) and six months concurrent for breach of probation (s 733.1(1)) (offender was given credit for pre-trial custody).

**Ancillary Orders:** DNA order; SOIRA order for 20 years (s 490.012); lifetime weapon prohibition order (s 109); non-communication order (s 743.21).

**Summary:** The victim and offender met through social media in 2018 and made personal contact in February 2020. At this time the offender was on probation, which included a condition not to engage in any activity related to the sex trade. They corresponded through social media during the ensuing months, which resulted in the victim trusting the offender. She disclosed her drug use, family issues and that she was making money through a "sugar daddy" website sending photos of herself to clients in exchange for payment. The victim and offender began a romantic relationship. The offender told her that he was in debt and needed her assistance to pay it off or he would be killed. The offender convinced her to engage in the sex trade, using his position of trust and the victim's feelings for him to manipulate her.

**Mitigating factors:** The Court noted the following mitigating factors: the guilty plea at a relatively early stage of the proceedings; the offender's youth; his remorse and willingness to take responsibility for his actions; and the difficult conditions he experienced while in custody.

**Aggravating factors:** The Court noted the following aggravating factors: the offender breached a relationship of trust; provided the victim with cocaine, knowing that she was addicted to the drug; repeatedly put the victim in harm's way; and was placed on probation three months prior to the commission of this offence; the significant impact on the victim; and the fact that the offence constituted abuse of a person under the age of 18.

### ***R v McEwan, 2023 ONSC 1608***

**5 years**

McEwan received a global sentence of 5 years imprisonment: 5 years for trafficking in persons (s 279.01); 30 months concurrent for receiving a material benefit from trafficking in persons (279.02); 12 months concurrent for withholding travel or identity documents (s 279.03); and 12 months concurrent for fraud under \$5,000 (s 380). The charges for procuring (s 286.3) and receiving a material benefit from sexual services (s 286.2) were stayed pursuant to *Kienapple*.

**Ancillary Orders:** DNA order; non-communication order (s 743.21).

**Summary:** The victim was an 18-year-old female at the time of the offence, had a difficult and traumatic upbringing, was isolated and did not have a stable residence. She grew up with her mother and had very limited contact with her father. At age 16, she left home because of conflict with her mother. She quit high school after the first semester of grade 12. She lost all of her identification when she was approximately 16 years old. When she met the offender, she was providing sexual services at a spa and wanted a more stable life. The offender portrayed himself as a successful businessperson and convinced the victim that he could provide her with a way out, suggesting a joint venture with shared profit in a condo purchase, which was a deception used to take the victim's money. The offender did not use physical violence, but abused the victim's vulnerabilities to traffic her, using the promise of an exit from the victim's disadvantaged and vulnerable state as a means of ensuring her continued participation in the sex trade. The offender took the majority or all of the profits and, after assisting the victim to get identification, withheld it.

**Mitigating factors:** The Court noted the following mitigating factors: the offender's difficult upbringing; his supportive family and friend group; his desire to be present for his children; his potential for rehabilitation; and the conditions of pre-sentence custody and the time spent on restrictive bail conditions.

**Aggravating factors:** The Court noted the following aggravating factors: the offender was motivated by greed; the extreme vulnerability of the victim; the impact on the victim; and the offender knew of and exploited the victim's vulnerability by employing a scheme involving the false hope of a secure and stable future.

**R v Greaves, 2023 ONSC 5474****4 years**

Greaves received a global sentence of 4 years imprisonment: 4 years for trafficking in persons (s 279.01); 3 years concurrent for receiving a material benefit from trafficking in persons (279.02); 3 years concurrent for procuring (s 286.3); 4 years concurrent for trafficking of a person under the age of eighteen (s 279.011); and 4 years concurrent for procuring (s 286.3).

**Ancillary Orders:** DNA order; SOIRA order for 20 years (s 490.012); non-communication order with the victims (s 743.21).

**Summary:** The offender was convicted of three offences perpetrated against one victim, LF, and pled guilty to two offences perpetrated against a second victim, HT, after being convicted for the offence against LF. The offender trafficked the two victims at different time periods. The offender met HT on a dating website in January 2018 and told HT that he wanted a relationship with her and that they could build a life together. LT met the offender in December 2018. The offender convinced both victims to engage in the sex trade, supplied the victims with alcohol and drugs, posted advertisements, set the rates, arranged for the clients, and confiscated at least 60% of LF's proceeds and all of HT's proceeds. With respect to HT, the offender brought her to an unfamiliar location with no monetary means to leave and was continuously present during the five days of exploitation.

**Mitigating factors:** The Court noted the following mitigating factors: the offender's age, lack a criminal record, supportive family, acknowledgement of responsibility and remorse, potential for rehabilitation, and guilty plea for offences related to HT.

**Aggravating factors:** The Court noted the following aggravating factors: the offender was motivated by greed; the fact that there were two victims and one of the victims was 17 years old; both victims were introduced to the sex trade by the offender; the offences were part of an organized scheme; and the offender exploited the victims' addictions to control them.

**R v Gonzalez-Valbuena, 2023 ONCJ 537****8 years**

Gonzalez-Valbuena received a global sentence of 8 years imprisonment: ten counts of trafficking in persons (s 279.01); a global count of receiving a material benefit from trafficking in persons (s 279.02); and eight counts of withholding travel or identity documents (s 279.03).

**Ancillary Orders:** DNA order; lifetime weapon prohibition order (s 109); non-communication order with the 21 individuals listed in the plea package (s 743.21).

**Summary:** Over four years, the offender housed approximately 60 Mexican foreign nationals in five different homes. She recruited Mexican foreign nationals to come to Canada for work and a better life, promising them jobs and housing through a fake employment agency. Some victims fled Mexico due to persecution for reasons that include their sexual orientation, while other fled due to safety concerns. All of the victims

were vulnerable once in Canada as they did not have authorization to work and were not able to speak English. The offender took their passports as "deposits" and controlled their work, often paying them less than minimum wage if she paid them at all. The offender charged illegal rent, made arbitrary deductions and the living conditions were abysmal. The offender exploited the victims' unfamiliarity with the laws in Canada, convincing the victims that she had the police and judges "in her pocket". The offender verbally abused victims, including threatening to call immigration and making repeated derogatory comments about their nationality or sexual orientation, to create an environment of fear and insecurity. She profited from their labour, making them provide services like childcare and housekeeping. She withheld passports for control and trafficking purposes. The elaborate regime she established was only interrupted by the execution of a search warrant at two of her homes. During the course of the search, the police found 26 Mexican passports in the offender's purse, none of which were in her name. Upon her arrest, she provided an inculpatory statement admitting to many of the allegations, except for those related to threatening behaviour.

**Mitigating factors:** The Court noted the following mitigating factors: the offender's guilty plea; her desire to take responsibility for her conduct; her difficult life experiences; the harsh circumstances of her time in presentence custody; the potential immigration consequences and the psychological threat of those consequences.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's age and prior criminal record; the duration of the exploitation; her exploitation of each victim's specific vulnerabilities; the fact that there was no meaningful gap between her prior involvement with the criminal justice system and when she began trafficking (she had previously been convicted of dangerous operation of a motor vehicle, assault with a weapon and failing to comply with a probation order); the fact that she expertly took advantage of the vulnerabilities associated with working illegally in a foreign country; her threats of deportation; her systemic violations of the *Employment Standards Act*; the victims' living conditions; the cruel, sophisticated and carefully executed regime of human trafficking; and the significant impact on the victims.

**R v PO, 2023 ABKB 656**

**20 years**

PO received a global sentence of 20 years imprisonment: 6 years for trafficking in persons (s 279.01) consecutive to all other convictions; 21 months concurrent for assault with a weapon (s 267(a)); 1 year consecutive for using a firearm in commission of offence (uttering threats) (s 85(1)(a)); 6 years consecutive for sexual assault with a weapon (s 272(2)(a)); 2 years concurrent for aggravated assault (s 268); 3 years and 6 months consecutive for sexual assault (s 271); 3 months consecutive for possession of a firearm knowing its possession is unauthorized (s 92(1)); 3 months consecutive for possession contrary to order (s 117.01(1)); 15 months concurrent for disobeying order of court (s 127(1)); 15 months concurrent for disobeying order of court (s 127(1)); 3 years consecutive to all other charges, but concurrently with breach of no-contact prohibition, for obstruction of justice (s 139(2)). After the convictions were entered for the above counts, the Crown withdrew the charges for receiving material benefit from

sexual services (s 286.2(1)), procuring (s 286.3(1)), and advertising sexual services (s 286.4).

**Ancillary Orders:** DNA order; SOIRA order for 20 years (s 490.012); lifetime weapon prohibition order (s 109); non-communication order (s 743.21).

**Summary:** The offender was in a romantic relationship with the victim, which the court found to be a relationship of trust that the offender exploited. The offender used sexual violence against the victim, made threats against her family and moved her around western Canada. During interviews with the police and court proceedings, the victim provided contradictory exculpatory and inculpatory evidence. The court found that the victim's statements were inconsistent when she was under the offender's influence. When she was less concerned about preserving her relationship with him, her statements were both internally consistent and consistent with corroborating evidence (e.g., cellphone records, photos, other witness testimony). The court also found that PO willfully attempted to dissuade the victim from testifying and tried to influence her testimony during the trial.

**Mitigating factors:** The Court noted the following mitigating factors: the offender's treatment while incarcerated; COVID-19 restrictions; and the offender's remorse.

**Aggravating factors:** The Court noted the following aggravating factors: the fact that the offender was the victim's intimate partner; the damage to the victim's health and financial situation; and the victim's vulnerability, including her youthfulness and naivete.

### ***R v Taylor*, 2023 ONSC 5334**

**15 years**

Taylor received a global sentence of 15 years imprisonment: 4 years for trafficking in person (s 279.01(1)); 3 years concurrent for sexual assault (s 271); 6 months concurrent for obtaining sexual services for consideration (s 286.1(1)); 1 year consecutive for trafficking in persons (279.01(1)); 1 year concurrent for sexual assault (s 271); 6 months concurrent for obtaining sexual services for consideration (s 286.1(1)); 2 years consecutive for procuring (s 286.3(1)); 6 months concurrent for obtaining sexual services for consideration (s 286.1(1)); 2 years consecutive for procuring (s 286.3(1)); 6 months concurrent for obtaining sexual services for consideration (s 286.1(1)); 4 years consecutive for trafficking in persons (s 279.01(1)); 2 years consecutive for receiving a material benefit from trafficking in persons (s 279.02(1)); 2 years concurrent to receiving a material benefit from trafficking in persons for receiving a material benefit from sexual services (s 286.2(1)); 1 year concurrent for advertising sexual services (286.4) and 6 months concurrent for breach of recognizance (145(5)(a)). Three charges for procuring (s 286.3(1)) were stayed pursuant to *Kienapple*.

**Ancillary Orders:** DNA order; SOIRA order for 20 years (s 490.012); forfeiture order; weapon prohibition order for 10 years (s 109); non-communication order for the victims and another individual (s 743.21).



**Summary:** The offender ran an “escort service” out of his home for 13 years. The offender exercised his authority and power over the victims, controlling almost every aspect of the agency. This included the advertising, rates charged, rank received in the agency, and how much they would receive for their services. The victims were forbidden to see the clients of the agency on their own. Prior to 2013, the offender sold drugs to those who were in the agency.

**Mitigating factors:** The Court noted the following mitigating factors: the offender came from a “pro-social” family that experienced some hardships, the offender’s short, dated, and unrelated criminal record, that the offender demonstrated remorse for being intimate with the complainants and has prospects for rehabilitation; and limited support in the community. The Court also noted the fact that the victims were able to keep a portion of their profits was marginally mitigating.

**Aggravating factors:** The Court noted the following aggravating factors: the significant degree of control and coercion; the extent of control the offender exercised over the victims; the age, number, and vulnerability of the victims; the working conditions; the degree of planning and sophistication of the offender’s operation; the size and duration of the operation; the impact on the victims; the offender’s encouragement of the use of drugs and alcohol and demands for personal favours; the steps taken to avoid detection; the techniques used to prevent the victims from leaving; the use of a firearm to threaten a victim into delivering drugs; and the fact that the offender abused his position of power over the victims.

### ***R v Myers, 2023 ONSC 1015***

**6 years and 8 months**

Myers received a global sentence of 6 years and 8 months: five years and two months for trafficking in persons; three years concurrent for receiving a material benefit from trafficking in persons; two years concurrent for advertising sexual services; six months concurrent for uttering threats; and one year and six months consecutive for possession of a firearm. The charges for receiving a material benefit from sexual services and procuring were stayed pursuant to *Kienapple*.

**Ancillary Orders:** DNA order; weapon prohibition order (s 109).

**Summary:** The victim was sexually assaulted by seven men while severely intoxicated at a party. A man, Musara, invited her into his room after the assaults, and allegedly sexually assaulted her. The victim and Musara met two weeks after the party and did cocaine together. Myers showed up at Musara’s apartment and recruited the victim into engaging in the sex trade. Myers exerted significant control, especially at the beginning, including by posting the ads, setting the prices, buying her lingerie, speaking with the clients and arranging the hotels.

**Mitigating factors:** The Court noted the following mitigating factors: the offender had strong family and friend support; there was prospect of rehabilitation; the offender and his family have encountered anti-Black racism; the offender is working towards

becoming an electrician, completed several courses while in custody, and complied with strict bail conditions.

**Aggravating factors:** The Court noted the following aggravating factors: the victim was a vulnerable, self-harming 18-year-old; the offender was considerably older at 27, was experienced in the illegal ways of the world, dealt drugs, knew how the sex trade worked, had access to illegal weapons, introduced the victim to and recruited her into the sex trade, lured her with the promise of money and a lifestyle she could only dream of, exerted significant control, got the victim addicted to cocaine to ensure control over the victim; manipulated the victim's emotions; had a firearm and got the victim to assist in getting rid of the gun, placing the victim in legal jeopardy, retained significant money from the victim's sexual services, threatened to kill the victim if she left and demanded she find a substitute if she did; the working conditions placed the victim at risk; the significant impact on the victim; and, the offender's prior criminal record.

***R v Gordon, 2023 ONSC 1036***

**7 years**

Gordon received a global sentence of 7 years imprisonment: 6 years for trafficking in persons (s 279.01(1)); 1 year consecutive for receiving a material benefit from trafficking in persons (279.02(1)); 1 year consecutive for pointing a firearm (s 87(1)); 1 year consecutive for unlawful confinement (s 279(2)); and 1 year consecutive for assault causing bodily harm (s 267(b)).

**Ancillary Orders:** DNA order; weapons prohibition order (s 109), non-communication order (s 743.21).

**Summary:** The victim was employed as a dancer at an adult entertainment club and a co-worker introduced her to the offender. They became friends and started what she believed to be an exclusive romantic relationship. The offender looked after the victim's rent, transport, food, and security and, in exchange, the victim provided him with all her earnings. The offender manipulated the victim into a romantic relationship to exploit her financially. The offender had significant control over the victim, using manipulation, physical violence and threats of violence. The offender took control of her earnings and used them to support his lifestyle and inflicted significant injuries on her.

**Mitigating factors:** The Court noted the following mitigating factors: the guilty plea; and harsh conditions of custody.

**Aggravating factors:** The Court noted the following aggravating factors: the age and vulnerability of the victim; the offender engaged in "classic pimping behaviour", exercised control over the victim using manipulation, threats of violence, and actual violence for a significant period of time, took control of her earnings and used them to support his lifestyle, respected no boundaries regarding her living arrangements or her person, inflicted significant injuries on her, had a significant criminal record, had limited prospects for rehabilitation, took steps to prevent the victim from leaving, including telling the victim that she must pay an exit fee, and assaulted the victim and confined her in a vehicle.

**R v H-O, 2022 ONSC 4900****8 years and 6 months\***

H-O received a global sentence of 8 years and 6 months reduced due to the “disgraceful occupancy conditions” to 7 years and 3 months imprisonment: 4 years and 3 months for trafficking in persons (s 279.01); 4 years concurrent for receiving a material benefit from trafficking in persons (s 279.02(1)); 18 months concurrent for assault causing bodily harm (s 267(b)); 3 years consecutive for trafficking in persons (s 279.01); 2 years concurrent for advertising sexual services (s 286.4); 12 months concurrent for assault (s 266).

**Ancillary Orders:** DNA order; weapon prohibition order (s 109); non-communication order for both victims (s 743.21); restitution order for \$48,000 for HS.

**Summary:** The offender pled guilty to six offences perpetrated against two victims, HS and EL, who were 21 and 18 years old at the time the offence was committed, and went to trial on offences related to a minor complainant. The offender convinced HS to engage in the sex trade with promises of protection and a better life, and began an intimate relationship with her. EL knew the offender through Instagram for a few years and the offender convinced her to meet in person. The offender considered EL to be his girlfriend. Both victims provided sexual services for consideration from hotel rooms. The offender exploited HS for a period of one year and EL for a period of two to three months by: controlling their engagement in the sex trade, including advertising their sexual services; determining what sexual services would be provided; confiscating their earnings; and, exercising a high degree of control through physical and sexual violence, threats, providing drugs and requiring the victims to be tattooed with his name.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was a youthful first-time offender with no prior criminal record, pled guilty, accepted responsibility, was remorseful, had family and community support, completed programming to address anger management and to develop life skills, was working to complete his high school education, sought help for managing his mental health issues and family trauma; and, he was subjected to harsh jail conditions.

**Aggravating factors:** The Court noted the following aggravating factors: the offender’s demand of sexual favours from the victims; his efforts to prevent the victims from leaving; his capitalizing on the victims’ vulnerabilities; his use of control, manipulation, violence and threats; the length of his exploitation as well as the exploitation the victims continue to endure by his posting of their nude photos posted online; the retention of the victims’ earnings; the degradation and humiliation experienced by the victims; the age of the victims; and, the lasting physical, emotional, and mental effects on them.

**R v Augustin, 2022 ONSC 5901 8 years (Augustin); 5 years (St. Armand)**

Augustin received a global sentence of 8 years: trafficking in persons (s 279.01(1)); receiving a material benefit from trafficking in persons (s 279.02(1)); and advertising sexual services (s 286.4). The convictions for procuring and receiving a financial benefit from procuring were stayed pursuant to *Kienapple*.

St. Armand received a global sentence of 5 years: trafficking in persons (s 279.01(1)); advertising sexual services (s 286.4). The conviction for procuring was stayed pursuant to *Kienapple*.

**Ancillary Orders for Augustin:** DNA order (s 487.051); weapon prohibition order for 25 years (s 109); non-communication order for the period of imprisonment (s 743.21)

**Ancillary Orders for St. Armand:** DNA order (s 487.051); weapon prohibition order for 10 years (s 109); non-communication order for the period of imprisonment (s 743.21)

**Summary:** Augustin, twenty-eight years old, and St. Armand, twenty-four years old, procured the twenty-two year old victim to engage in the sex trade. They exercised control, direction, and influence over the victim 24 hours a day, 7 days a week, over the course of several weeks. The offenders exploited her by exercising significant control over all aspects of her life and activities, including by renting the hotel room where she provided sexual services, determining when she would work, which clients she would see, what sexual services would be provided and the rates charged. They manipulated her, used violence, threats of violence and controlled her social media use, her food intake, her sleep and shower schedule, and exploited her addiction to cigarettes and 'speed' drugs.

**Mitigating factors for Augustin:** The Court noted the following mitigating factors: the offender's experience of traumatic events; his remorse and the insights he offered the Court into his circumstances, the offences and their consequences.

**Mitigating factors for St. Armand:** The Court noted the following mitigating factors: the offender's difficult background and youthful age; absence of a criminal record; and, potential for rehabilitation.

**Aggravating factors:** The court noted the following aggravating factors for both offenders, including: the inhumane working conditions they imposed; their exploitation of the victim's addictions; the level of planning and deliberation; the duration of the exploitative conduct; their control of the victim through intimidation, violence, threats of violence; their control over her working conditions; their emotional manipulation; the use of photos of another woman to advertise the victim's sexual services, which placed the victim at risk of violence from clients; and, the impact of the exploitation on the victim.

### ***R c Casanova, 2022 QCCQ 938***

**10 years**

Casanova received a global sentence of 10 years imprisonment: 6 years for trafficking in persons (s 279.01(1)(b)); 4 years concurrent for receiving a material benefit from trafficking in persons (s 279.02(1)); 2 years concurrent for advertising sexual services; (286.4(a)); 2 years concurrent for assault (s 266(a)); 2 years concurrent for assault with a weapon (s 267(a)); 6 months concurrent for uttering threats (s 264.1(1)(a)); 6 months concurrent for assault (s 266(a)); 1 year consecutive for using a firearm while committing assault or uttering threats (s 85(1)(a)); 2 years consecutive for assault with a weapon (s. 267(a)); 6 months concurrent for uttering threats (s 246.1(1)(a)); 2 years

concurrent for assault causing bodily harm (s 267(b)); 1 year consecutive for using a firearm while committing assault or uttering threats (s 85(1)(a)); 2 years concurrent for sexual assault (s 271(a)); 1 year concurrent for assault (s 266(a)); 2 years concurrent for assault causing bodily harm (s 267(b)); 2 years consecutive for sexual assault (s 271(a)); 1 year assault causing bodily harm (s 267(b)); 6 months concurrent for uttering threats (s 246.1(1)(a)); 2 months concurrent for failure to comply with a non-communication condition (s 145(3)(a)); 3 months concurrent for failure to comply with a non-communication condition (s 145(3)(a)); and 3 months concurrent for failure to comply with a non-communication condition (s 145(3)(a)). Charges of receiving material benefit from sexual services (s 286.2(1)) and procuring (s 286.3(1)) were stayed pursuant to *Kienapple*.

**Ancillary Orders:** DNA order (s 487.051); SOIRA order for life (s 490.012); weapon prohibition order for 10 years after imprisonment and restricted weapon prohibition for life (ss 109(2) and 109(2)(b)); non-communication order (s 743.21).

**Summary:** The victim met the offender when her friend purchased drugs from him while visiting Toronto. He brought the two women to an apartment where the victim understood that she and her friend would provide sexual services until they earned enough money to pay for their way home, which was in a different city. The offender transported the victim to her first “out-call” and she handed over all of the proceeds of that transaction. The victim and her friend established an escape plan where her friend would be able to leave and come back to rescue her. Her friend successfully escaped, but did not return.

The offender instilled fear in the victim through violence and threats of violence. He retained all her money, ensuring her dependency on him and isolation from others. The victim was estranged from her family and had no money, no home and no support system. The offender conditioned her to believe that she was his object, that she could not refuse him and, if she did, that she would suffer physical and psychological harm. As their relationship evolved, he exploited her emotions, increasing her dependency and maintaining control and influence over her, including while living in different cities. The offender required the victim to strip naked for inspections to see if anyone had touched or “damaged” her while they were apart. He controlled her work schedule and required her to seek permission before purchasing items, including food.

**Mitigating factors:** The Court noted the following mitigating factors: the age of the offender; his absence of a criminal record; and support from his mother and sister.

**Aggravating factors:** The Court noted the following aggravating factors: the degree of coercion and control; inducement by providing drugs at the beginning of the exploitative conduct; the retention of earnings; the age and vulnerability of the victim; the lasting impact on the victim; the poor working conditions of the victim; the duration of exploitation; the level of planning for the operation; the degree of violence; and, the high risk of the offender reoffending.

**R v McIntosh, 2022 ONSC 6437****6 years and 2 months**

McIntosh received a global sentence of 6 years and 2 months imprisonment: 6 years and 2 months for trafficking in persons (s 279.01(1)); and, 3 years concurrent for receiving a material benefit from trafficking in persons (s 279.02)). The section 212 charge was conditionally stayed pursuant to *Kienapple*.

**Ancillary Orders:** DNA order (s 487.051); weapon prohibition order for 10 years after imprisonment and restricted weapon prohibition for life (ss 109(2)(a) and 109(2)(b)); and non-communication order (s 743.21).

**Summary:** The twenty-three-year-old offender was a drug dealer when he met the twenty-year old victim, who wanted to buy marijuana from him. The victim was a single mother of a one-year old. The offender and victim entered an intimate relationship and the victim expressed interest in engaging in the sex trade. The offender controlled her engagement in the sex trade by booking hotel rooms and taking and posting pictures to use for online ads. He confiscated her earnings. The offender provided the victim with alcohol and marijuana, and required her to keep him updated at all times. When the victim expressed unwillingness to participate in the sex trade, the offender would always persuade her to continue.

**Mitigating factors:** The Court noted the following mitigating factors: the relatively young age of the offender; his support from this family; his difficult time in custody; his absence of any criminal convictions since 2019; his difficult upbringing and experience of racism; his remorse; and the fact that he did not recruit the victim into the sex trade.

**Aggravating factors:** The Court noted the following aggravating factors: the lengthy criminal record of the offender; the retention of earnings; the duration of exploitation, the capitalization of the victim's vulnerabilities; the control that forced the victim to keep working and prevented her from leaving; the profound impact on the victim, her age and vulnerability; the fact that the offender insisted that the victim have an abortion and then forced her to continue working shortly after, despite the fact that she suffered with ongoing medical complications from the procedure.

**R v TT, 2022 ONSC 722****8 years**

TT received a global sentence of 8 years: 5 years for trafficking in persons (s 279.01); 2 years concurrent for advertising sexual services (s 286.4); 4 years concurrent for receiving a material benefit from trafficking in persons (s 279.02); 1 year concurrent for possessing child pornography for publication (s 163.1(3)); 1 year concurrent for making child pornography (s 163.1(2)); and 3 years consecutive for sexual assault (s 271(1)). Charges of receiving material benefit from sexual services (s 286.2(1)), procuring (s 286.3(1)), possessing child pornography (s 163.1(4)) were stayed pursuant to *Kienapple*.

**Ancillary Orders:** DNA order; SOIRA order for life; weapon prohibition order for life (s 109); non-communication order (s 743.21).

**Summary:** The forty-year old offender met the victim at the mall. The victim was seventeen-years old and living in a group home. The offender and his friend persuaded the victim to go to the friend's home where the offender sexually assaulted her. The offender and his friend took photos to post as online ads for the victim's sexual services. The offender controlled the victim's movements and participation in the sex trade, confiscated all her earnings and provided her with alcohol and narcotics.

**Mitigating factors:** The Court noted the following mitigating factors: the offender's minimal criminal record; his prospects for rehabilitation; family support; his intelligence and that he could be a contributing member of society; his difficult upbringing; extreme remorse; and, possible deportation.

**Aggravating factors:** The Court noted the following aggravating factors: the profound impact on the victim; the age of the victims and age difference between the victim and offender; the victim's inability to leave; the fact that the offender took steps to avoid detention; the victim's vulnerability and re-victimization from the online ads; the offender's intent to earn a profit; the sexual assault on the victim; and the fact that the offender supplied cocaine and alcohol to the victim.

### ***R v MED, 2022 ONSC 1899***

**6 years**

MED received a global sentence of 6 years imprisonment: 4 years for trafficking in persons (s 279.01(1)); 4 years concurrent for receiving a material benefit from trafficking in persons (s 279.02(1)); 4 years concurrent for procuring (s 286.3(1)); 4 years concurrent for procuring (s 286.3(1)); 2 years concurrent for advertising sexual services (s 286.4); and 2 years consecutive for sexual assault (s 271). A charge of receiving material benefit obtained from sexual services (s 286.2(1)) was stayed.

**Ancillary Orders:** DNA order; SOIRA order for 20 years (s 490.012); weapon prohibition order for life (s 109); non-communication order (s 743.21); restitution order of \$10 000.

**Summary:** The offender met the 22 year-old victim while she was studying at York University and was living in a rooming house, after being kicked out of her mother's house. The offender and victim soon began living together. The offender persuaded the victim to engage in the sex trade after she anticipated that she would not have enough money for the school year. The offender and victim moved to different hotels and her sexual services were advertised online. The offender controlled and managed the victim's engagement in the sex trade. He confiscated her earnings and, during this time, sexually assaulted her and used violence when she refused to perform fellatio on him. The victim was required to pay the offender for her freedom from him and from the sex trade.

**Mitigating factors:** The Court noted the following mitigating factors: the offender's age at sentencing; difficult upbringing; mental health issues; minimal criminal record; and the support from his father; the fact that he showed some insight and suffered due to the

conditions of his presentence incarceration and his bail conditions; and, the fact that COVID-19 may make his incarceration difficult because of his health issues.

**Aggravating factors:** The Court noted the following aggravating factors: the profound impact on the victim; her re-victimization from having online photos of her posted; the offender's intent to earn a profit; retention of earnings; depleting of the victim's credit and savings account; the duration of the control; the sexual assault on the victim; and requiring the victim to purchase her freedom.

***R c SV, 2021 QCCQ 7297***

**18 years**

SV received a global sentence of 18 years imprisonment: 10 years for sexual interference (s 151); 10 years concurrent for an invitation to sexual touching (s 152); 8 years consecutive for trafficking of a person under the age of 18 years (s 279.011); 3 years concurrent for distributing child pornography (s 163.1(3)); 20 months concurrent for accessing child pornography (s 163.1(4.1)); and 2 years concurrent for possessing child pornography (s 163.1(4)).

**Ancillary Orders:** DNA order (s 487.051); SOIRA order for life (s 490.012); 10 years after imprisonment and restricted weapon prohibition for life (s 109); prohibition order (s 161); non-communication order (s 743.21).

**Summary:** The victim's mother, who was dating the offender, sent her eight-year-old daughter from the Ivory Coast to stay with the offender in Montreal so that the victim could obtain a better education. The offender sexually exploited the victim for three years, during which time he had complete control over her. He created a contract outlining that she had to submit to him at all times.

**Mitigating factors:** The Court noted the following mitigating factors: his plea on four of the six charges; and, the fact that he had no criminal record.

**Aggravating factors:** The court found that the offender did not show remorse or understand the severity of his action and had a high risk of recidivism.

***R v Clayton, 2021 CarswellOnt 18367; [2021] OJ No 6732***

**8 years**

Clayton received a global sentence of 8 years imprisonment after being convicted of several offences, including human trafficking, unlawful confinement and assault causing bodily harm.

**Ancillary Orders:** DNA order; SOIRA order for life; and weapon prohibition order for life (s 109).

**Summary:** The offender enticed the twenty-five-year-old victim, who was engaged in the sex trade, to meet him by exploiting her severe addiction to crack cocaine. He exploited her over a period of 5 months by: controlling the victim's activities, including when she worked and the types of advertisements posted; confiscating the majority or all of the profits from the sale of the victim's sexual services; and, exercising a high



degree of control through violence, providing drugs, confining the victim and failing to provide her with food.

The victim, before passing away from a drug overdose, recorded a Victim Impact Statement. The court noted the victim's significant vulnerabilities: she had a severe addiction, a predominant speech impediment and was young. The offences had significant physical and psychological effects on her.

**Mitigating factors:** The Court noted the following mitigating factors: that the offender was relatively young and had family support.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's criminal record; the high degree of control over the victim; the use of violence; the retention of earnings; the duration of exploitation; the exploitive nature of their relationship; the victim's significant vulnerabilities, including her severe addiction, a predominant speech impediment and her age; and, the offences' significant physical and psychological effects.

**R c Losse, 2021 QCCQ 13745**

**9 years**

Losse received a total sentence of 9 years imprisonment: 4 years for trafficking in persons (s 279.01(1)(b)); 2 years concurrent for receiving a material benefit from trafficking in persons (s 279.02(1)); 1 year concurrent for advertising sexual services (s 286.4(a)); 1 year concurrent for encouraging a person to commit suicide (s 241); 1 year concurrent for assault (s 266(a)); 2 years concurrent for assault with a weapon (s 267(a)); 18 months concurrent for forcible seizure (s 279(2)(a)); 1 year concurrent for uttering threats to cause death or bodily harm (s 264.1(1)(a)); 1 year concurrent for receiving a material benefit from sexual services by persons under eighteen years (s 286.2(2)); 5 years consecutive for procuring a person under eighteen years (s 286.3(2)); 1 year concurrent for advertising sexual services (s 286.4(a)); 2 years concurrent for sexually touching a part of the body of a person under the age of 16 years (s 151(a)); and 2 years concurrent for inviting a person under the age of 16 years to sexually touch him (s 152(a)). Charges of receiving material benefit obtained from sexual services (s 286.2(1)) and procuring (s 286.3(1)) were stayed pursuant to *Kienapple*.

**Ancillary Orders:** DNA order (s 487.051); SOIRA order for life (s 490.012); non-communication order (s 743.21); 10-year firearm and weapon prohibition (s 109(1)); unspecified surcharge.

**Summary:** The offender began a relationship with each victim during two different time periods. With each victim, the offender proposed engagement in the sex trade as a solution to their financial difficulties. He instructed both victims on how to engage in the sex trade and controlled their engagement in the sex trade. The offender was twenty-five years old when he began a relationship with X, a fifteen-year old, after meeting on social media. The accused took photos to post as online ads for her sexual services. He took X to a motel to perform sexual services for consideration, and confiscated half of

her earnings. The offender later began a relationship with KL, a twenty-one-year-old, after meeting through a mutual friend. KL provided sexual services for consideration from hotel rooms and the offender initially confiscated half of her earnings but later confiscated all of it. The offender used sexual and physical violence, violence with a weapon, and threats of violence to keep her complicit, and uttered death threats towards her. The offender controlled KL's engagement in the sex trade, her food consumption, and her movements. He gave KL methamphetamines to keep her awake to provide sexual service for long hours.

**Mitigating factors:** The Court noted the following mitigating factors: the offender had no previous convictions.

**Aggravating factors:** The Court noted the following aggravating factors with respect to both victims: the high degree of control over the victims and their engagement in the sex trade; the use of manipulation under the appearance of a relationship; the duration of exploitation; and, the lasting negative effect the crimes had on the victims.

The Court noted the following aggravating factors with respect to X: her introduction to the sex trade; her ill treatment (718.2(ii.1)); and, the offender's recklessness in engaging in unprotected sexual relations leading to pregnancy and the possibility of an STI.

The Court noted the following aggravating factors with respect to KL: the confinement to unsanitary rooms; the deprivation of food; the offender's use of severe violence; his retention of her earnings; and the fact that he drugged the victim.

### ***R v Gardner, 2020 ONSC 5954***

**5 years**

Gardner received a global sentence of 5 years: 4 years for sexual assault (s 271); 5 years consecutive for trafficking in persons (s 279.01(1)); 3 years concurrent for receiving a material benefit from trafficking in persons (s 279.02(1)); 2 years concurrent for advertising sexual services (s 286.4), 6 months concurrent for assault; and 90 days concurrent for breach of recognizance on new indictment (s 145). A charge of receiving a material benefit from sexual services (s 286.2(1)) was stayed pursuant to *Kienapple*.

**Ancillary orders:** DNA order, SOIRA order for life, weapons prohibition order for 10 years (s 109), and non-communication order (s 743.21).

**Summary:** The victim engaged in the sex trade of her own volition. The offender then used pressure, psychological game playing, criticism, and manipulation to keep the victim engaged in the sex trade and generating revenue. He imposed quotas, confiscated all earnings, and arranged her travel and her engagement in the sex trade. When the victim did not want to engage in the sex trade anymore, he forced the victim to do so, giving her drugs (ecstasy) to facilitate her engagement. When the victim spoke to another "pimp", the offender required her to perform fellatio on him. When she did not do so to his satisfaction, he bound her hands and feet and sexually assaulted her in front of his other girlfriend. The offender violently assaulted the victim when she tried to leave in the presence of hotel staff.

**Mitigating factors:** The Court noted the following mitigating factors: the offender's age; he demonstrated initiative and discipline; completed high school; had no criminal record at the time of the offence; had some employment history; pled guilty to the assault charge; was involved in sports and his church; has a good relationship with his child and the mother of his child; has family support; and his potential for rehabilitation.

**Aggravating factors:**

The Court noted the following aggravating factors: the denigration and humiliation of the sexual assault, which was designed as a punishment and was conducted in the presence of another person; the significant degree and control exerted over the victim; the duration of exploitation; the degree of violence; retention of money; the inducement of drugs and the victim's subsequent dependency on the drugs provided; and, the lasting negative effect on the victim's health and financial situation.

***R v Eftekhar, 2020 ONSC 1386***

**4 years**

Eftekhar received a global sentence of 4 years imprisonment: 4 years for trafficking in persons (s 279.01); 2 years concurrent for procuring (s 286.3(1)); 3 months concurrent for obtaining sexual services for consideration (s 286.1(1)); and 6 months concurrent for common assault (s 266).

**Ancillary orders:** DNA order; lifetime weapons prohibition (s 109); and a non-communication order (s 743.21).

**Summary:** The victim, an Inuit teenage, was unemployed, out of school and extremely vulnerable. She reported that she was sexually abused as a child and ran away from home. The offender, who was in his mid-50s, exposed the victim to the sex trade, was domineering and controlling throughout the duration of the activities, and threatened the victim's safety if she did not continue to engage in the sex trade from his apartment. The difference in age, maturity and relative economic status, which provided the offender with authority and influence over the victim, created a drastic power imbalance.

**Mitigating factors:** The Court noted the following mitigating factors: The offender's short and unrelated criminal record; the fact that he demonstrated remorse and had good rehabilitative prospects; his son still supported him; his consistent employment history, which indicated that he has the ability to contribute to society through lawful employment; and the fact that he did not receive a material benefit from the victim's engagement in the sex trade.

**Aggravating factors:** The Court noted the following aggravating factors: the victim's significant vulnerability; the fact that she was from a marginalized community; the threatened and real violence used; and, the duration of the offence.

***R v Antoine, 2020 ONSC 181***

**8 years**

Antoine received a global sentence of eight years imprisonment: 3 years for trafficking in persons (s. 279.01(1)); 6 years consecutive for trafficking in persons (279.01); and

4 years concurrent for receiving a material benefit from trafficking in persons (s 79.02(1)). Two charges of procuring a person under 18 years (s 286.3(1)) were stayed pursuant to *Kienapple*.

**Ancillary order:** DNA order (s 487.04)

**Summary:** There were two separate victims whom the offender had involved in the sex trade during two separate time periods, one for less than two weeks and one for many months over two separate calendar years. One victim had been previously engaged in the sex trade. The offender approached young women who had few family supports, were vulnerable, and had significant problems with drug usage. The offender supplied both victims with drugs. He made promises to the victims, exploiting their desire for a better life.

**Mitigating factors:** The Court noted the following mitigating factors: the offender had a supportive relationship with his family and his children; participated in a number of rehabilitation programs in jail; and suffered abuse from his father.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's very significant criminal record, which includes numerous offences of greed and dishonesty undertaken for personal gain; the young age and vulnerability of the victims due to their struggles with addiction; and, with respect to one of the victims, the duration of the offence.

***R v Reginald Louis Jean, 2020 ONSC 624***

**8 years**

Reginald Louis Jean received a global sentence of 8 years imprisonment: 4 years consecutive for trafficking in persons (s 279.01(1)); 659 days consecutive for trafficking in persons (s 279.01(1)); 3 years concurrent for receiving a material benefit from trafficking in persons (s 279.02(1)); 30 days concurrent for breach of recognizance (conviction); and another 30 days concurrent for breach of recognizance (conviction).

**Ancillary orders:** DNA order (s 487.051(2)), firearms restriction for ten years (s 109), and a non-communication order (s 743.21(1)).

**Summary:** One of the victims was 18 at the time of the offence and was trafficked for six to seven months. The offender trafficked the second victim for about two and a half years, when she was between 19 and 21 years of age. She believed she was in a romantic relationship with him. The offender used coercion, manipulation, and deception to control and exploit the victims, and confiscated much of their earnings.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was 30 years old; had no prior criminal record; had family support and a normal upbringing; had a partner and a young child; plead guilty to assaulting one of the victims and received a conditional discharge; established a delivery business while on bail, demonstrating that he had leadership abilities; received a positive pre-sentence report;; and expressed remorse in his statement to the court at his sentencing hearing.

**Aggravating factors:** The Court noted the following aggravating factors: the significant degree of control exerted over the victims; the retention of money; the duration of exploitation; the verbal, emotional, and physical abuse directed at the victims; the lasting negative effect on the victims; the young age of the victims and the fact that there were two of them; the victims' emotional vulnerability; the fact that the offender prevented the victims from leaving and took steps to avoid the authorities.

***R v Leduc, 2019 ONSC 6794***

**12 years**

Leduc received a global sentence of 12 years imprisonment: 4 years concurrent for four counts of conspiracy to possess a firearm (s 465(1)(c)); 3 years consecutive for instructing a person to traffic a firearm for the benefit of a criminal organization (s 67.13); 3 years concurrent to the s 467.13 count, but consecutive to the s 465(1)(c) count for conspiracy to possess firearms (s 467.12); 2 years concurrent to the s 467.13 count and s 467.12 counts, but consecutive to the s 465(1)(c) count for recruiting another person to join a criminal organization (s 467.111); 5 years to be served consecutively to all other counts for trafficking in persons (s 279.01); and 2 years concurrent to the s. 279.01 count and consecutive to other counts for assault causing bodily harm (s 267(b)).

**Ancillary orders:** Order to serve half of global sentence for counts regarding ss 467.13 and 467.12 and half of totals for counts regarding s 465(1)(c) before eligible for parole (ss 743.6(1.2) and 743.6(1.1) respectively), order to pay \$45,000 in lieu of forfeiture (s 462.37(3)) with 2 years to pay or 18 months incarceration in default (s 462.37(4)(iii)), forfeiture order for the money seized payable to the victim, non-communication order, DNA order (s 487.051), and a firearm prohibition for life (s 109).

**Summary:** The offender met the victim through Facebook. After a number of interactions online and in Montreal, the offender paid for the victim to fly to Toronto, where she began dancing at a strip club. He became aggressive about the victim providing "extras" (i.e., sexual services). The offender maintained financial control over the victim by: renting a condo in the victim's name; requiring her to pay all rent and other expenses; amassing significant credit card debt in the victim's name; and, confiscating all of her earnings. He engaged in violence, threats of violence, and "discipline" to exploit the victim. After her family helped her return to Montreal, the offender contacted the victim apologizing and professing his love, manipulating her to return to Toronto where he continued to exploit the victim.

**Mitigating factors:** The Court noted no mitigating factors. Additionally, the Court noted that the offender's display of remorse in his statement rang hollow and fell far short of providing mitigation.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's previous criminal record, which includes violent crimes; the physical and psychological control used to exploit the victim; evidence establishing the offender's character,

reputation and risk of re-offending; and the effect on the victim's psychological and physical well-being as described in her victim impact statement.

***R v Strickland-Prescod, 2019 ONCJ 755***

**21 months**

Strickland-Prescod received a global sentence of 21 months: 21 months for trafficking in persons (s 279.01).

**Ancillary orders:** DNA order, SOIRA order for 20 years and mandatory weapons prohibition order for life (s 109).

**Summary:** The victim, who struggled with addiction, contacted the offender for illicit drugs. The offender agreed to provide her with drugs but required her to engage in the sex trade. Although she did not want to engage in the sex trade, she agreed in order to obtain the drugs. The offender took pictures of the victim dressed in lingerie, advertised her sexual services, determined what to charge, the services she would provide, arranged for clients and confiscated all profits. The offender took control of the victim's vehicle by keeping the keys and prohibiting her from driving it. When they were pulled over by police at a traffic stop, the offender threw a bag of marijuana at her and both parties were arrested. The victim told police she did not believe she could leave the situation, as she had no money, no phone, no family or friends in town, and the offender was in possession of her car and her ID.

**Mitigating factors:** The Court noted the following mitigating factors: the incident was of short duration; no violence or threats were used; the offender pled guilty; the offender was young; had significant family support, an underlying drug addiction, a home, and a job waiting for him.

**Aggravating factors:** The Court noted the following aggravating factors: the degree of control over the victim; the fact that it appeared to be a longer-term plan; the exploitation of the victim's drug addiction; the slight degree of sophistication involved by taking photos, placing ads, and attempting to find someone else to work with; the fact that the victim was alone in Guelph without friends or family; and the offender's criminal record.

***R v Ahmed et al, 2019 ONSC 4822***

**18 months (Ahmed);**

**11 months (Ngoto)**

Ahmed received a global sentence of 18 months: 14 months for each of the two counts of trafficking in persons under the age of eighteen years (s 279.011); and 6 months concurrent for advertising sexual services (s 286.4).

Ngoto receive a global sentence of 11 months for ten months for each of the two counts of trafficking in persons under the age of eighteen years (s 279.011).

**Ancillary orders for Ahmed:** Ahmed received a mandatory 20-year SOIRA order (s 490.013(2.1)), a DNA order (s 487.051(1)) and an order of prohibition for life (s 161(1)(a.1)).

**Ancillary orders for Ngoto:** Ngoto received a mandatory 20-year SOIRA (s 490.013(2.1)), a DNA order (s 487.051 (1)), and an order of prohibition for 10 years (s 161).

**Summary:** The two offenders, both women in their thirties, met the two teenage “runaway” victims, early in the morning while the victims were consuming alcohol. The two offenders accompanied the victims to a hotel room and gave them additional alcohol and speed. The victims were brought to an apartment, and photographs were taken of them by the offenders and posted on Backpage, advertising the victims’ sexual services without the victims knowing about the advertisement. The offenders brought the victims to meet a number of males, who touched the victims in a sexual manner. The offenders advised the victims they must rest because they have to work later that evening. The court found that offenders were preparing the victims for “escorting”.

**Mitigating factors for Ahmed:** The Court noted the following mitigating factors: the offender received counselling; attended some Alcoholics Anonymous and Narcotics Anonymous meetings while in custody; showed some remorse; previously worked in the sex trade; participated in the “escort” business in an effort to cope with her past trauma of being sexually assaulted while working as an “escort”; demonstrated an intention to return to school; and had some supports.

**Aggravating factors for Ahmed:** The Court noted the following aggravating factors: the fact that there were two underage victims who were runaways; providing alcohol and drugs to the victims; deceiving the victims; the commencement of grooming; and the offender’s criminal record.

**Mitigating factors for Ngoto:** The Court noted the following mitigating factors: Ngoto took significant steps to receive counselling and other supports; attended some Narcotics Anonymous meetings; provided evidence that she is a victim of the sex trade; demonstrated an active desire to parent her four children; secured accommodations for her family; reached out and participated in supports at Harmony House; expressed regret for her actions while taking some accountability; and her drug and alcohol addiction.

**Aggravating factors (Ngoto):** The Court noted the following aggravating factors: the fact that there were two underage victims who were runaways; providing alcohol to the victims; deceiving the victims; the commencement of grooming; and the offender’s criminal record.

### **R v NC, 2019 ONCA 484**

**5 years and 6 months**

\*Appeal decision: ONCA dismissed the appellant’s appeal of his convictions; trial decision unrecorded.

NC received a global sentence of 5 years and 6 months incarceration: 11 human-trafficking, sexual, and violent offences in relation to his former girlfriend: robbery (s 343); assault causing bodily harm (s 267(b)); procuring (s 286.3(1)); financial

benefit from sexual services (s 286.2(1)); proceeds of indictable offence (s 355(a)); sexual assault causing bodily harm (s 272(2)); assault (s 266); and procuring (s 212(1)(a)).

**Summary:** The appellant was arrested following a violent incident in the parking lot of an apartment building, during which several witnesses heard the victim scream and saw her being dragged out of the offender's car. Screenshots taken by police of over 400 iPhone text messages between the offender and the victim were admitted at trial with the consent of the offender. The text messages were "highly cogent evidence of the offender's control over the victim's sexual, physical, and financial autonomy".

**Mitigating factors:** Not mentioned in the case by the judge.

**Aggravating factors:** Not mentioned in the case by the judge.

### ***R v Crosdale, 2019 ONCJ 3***

**6 years**

Crosdale received a global sentence of 6 years: 5 years for trafficking in persons under the age of eighteen years (s 279.011); 5 years concurrent for procuring a person under the age of eighteen years (s 286.3); 4 years concurrent for procuring a person under eighteen years (s 286.3(1)); 2 years concurrent for advertising sexual services (s 286.4); 1 year concurrent for possession of child pornography (s 163.1(4)); 1 year concurrent for accessing child pornography (s 163.1(4.1)); 1 year concurrent for making child pornography (s 163.1(2)); 1 year concurrent for distributing child pornography (s 163.1(3)); 6 years concurrent for trafficking in persons (s 279.01); 2 years concurrent for receiving a material benefit from sexual services (s 286.2(1)); 2 years concurrent for advertising sexual services (s 286.4, conviction); 4 years concurrent for procuring (s 286.3(1)); 1 year concurrent for assault (s 266); and 1 year concurrent for withholding travel or identity documents (s 279.03(1)).

**Ancillary orders:** No contact condition (s 743.21); DNA order (ss 487.051(1), (2), (3)); firearms prohibition (s 109(1)(a)); SOIRA order (s 490.013(2.1)); forfeiture order of \$860 to be released to the first victim (s 491.1(2)(a)).

**Summary:** The offender contacted the first victim after finding her information through her backpage.ca advertisement. They discussed her work with her current "pimp" and how things could be better with the offender. She decided to move to a hotel, as she had nowhere to live, and work with the offender after her previous "pimp" assaulted her. The offender collected all the money she earned and, over a period of time, took control of posting her advertisements. There was a period where the victim did not work for him and returned to her previous "pimp". She returned to the offender after her previous "pimp" became abusive again. The offender selected the location she worked at, set the rates, took all her identification documents, controlled who she could associate with, and had his name tattooed on her neck. He used coercion and violence to keep the victim working.



The second victim followed the first victim on Instagram and added her on Snapchat. She presumed the first victim was an “escort” as she knew her previous “pimp”. She was introduced to the offender after a few exchanges with the first victim. The second victim was interested in engaging in the sex trade, but had no experience. The offender controlled whom the second victim could contact, both in person and over social media.

The offender facilitated transportation of both victims. He used psychological coercion and/or implied threats of violence that could reasonably be expected to cause the victims to believe their safety would be threatened if they refused to work for him. He controlled the money and both victims had to ask for permission before leaving the condominium.

**Mitigating factors:** The Court noted the following mitigating factors: the offender had no prior criminal record; the limited duration of exploitation for one victim and that she retained all the money from her engagement in the sex trade; and, the offender had the support of his friends, family, and church community.

**Aggravating factors:** The Court noted the following aggravating factors: the offences were motivated by greed; the photos posted online remained available, causing an ongoing impact to both victims; the photos of one victim constitute child pornography; the victims were young and vulnerable with troubled backgrounds; one victim indicated that they had nowhere else to go or live; the offender used physical and sexual violence and threatened further violence and exploited one of the victims for four months; the exploitation was deliberate and planned as he actively recruited her and exercised significant control over her; the victim was dependent on him for the necessities of life as he took all of her earnings; and, the offender recruited the second victim to engage in the sex trade for the first time.

### ***R v Salmon, 2019 ONSC 1574***

**6 years**

Salmon received a global sentence of 6 years imprisonment: 6 years for trafficking in person (s 279.01(1)); and, 2 years concurrent for receiving a material benefit from trafficking in person (s 279.02(1)). The convictions for procuring (s 286.3(1)) and receiving a material benefit from sexual services (s 286.2) were stayed pursuant to *Kienapple*.

**Ancillary orders:** Non-communication order (s 743.21); DNA order (s 487.051); weapon prohibition order for life (s 109(1)(a)); forfeiture of any electronic devices seized by police during the investigation; a SOIRA order for 20 years.

**Summary:** The offender, a man in his mid-40s, exercised a significant degree of control and coercion over the victim, using threats of violence. He pressured her into offering sexual services that the victim did not want to provide, engaging in the sex trade during her menstrual cycle and updating her advertisements. The period of exploitation lasted for five and a half months.

**Mitigating factors:** The Court noted that there were a few mitigating factors, which did not affect the sentence in any appreciable way.

**Aggravating factors:** The Court noted that there were a few aggravating factors, which did not affect the sentence in any appreciable way.

***R v Abedini, 2019 CarswellOnt 24260* **8 years and 6 months****

Abedini received a global sentence of 8 years and 6 months imprisonment: 8 years and six months for trafficking in persons; 8 years and 6 months concurrent for receiving a material benefit from trafficking in persons; 6 years concurrent for trafficking a person under the age of eighteen; 6 years concurrent for living on the avails of prostitution (under age eighteen) under aggravated circumstances; 6 years concurrent for procuring; and 2 years concurrent for procuring. Two sex trade offence charges were stayed pursuant to *Kienapple*.

**Ancillary orders:** DNA order (s 467.051); a mandatory weapons prohibition order for 10 years after released from prison (s 109); non-communication order (s 743.21); SOIRA order for life (s 490.013(2.1)); forfeiture order for items seized during the investigation; restitution order in the amount of \$955.00 (s 737.1 and 738); fine in lieu of forfeiture in the amount of \$185,000 to be paid within 10 years following her release from custody (s 462.37(4)).

**Summary:** Over seven years, the offender operated as a “pimp” in the GTA and elsewhere in Ontario. The offender hired three underage victims. S.O. (nearly 16 years old) and S.L. (16 years old) were high school students with no experience working in the sex trade when they began working for the offender. M.W. (17 or 18 years old) was previously an “escort”. The victims worked for different periods of time ranging from twenty-four hours (S.L.), to four months (S.O.), to a number of years separated into two stints (M.W). The offender claimed that there would be a 50-50 split of the victims’ earning for providing sexual services, but the offender took nearly all the profits and gave the victims only a very small amount. The offender had full control of the operation; she made and posted ads, determined what the victims would wear, arranged meetings with clients, found locations to meet with clients, and determined the rates of pay and what sexual services were to be provided. The accused was imposing, domineering and demanding; she used intimidation, threats and verbal abuse to control the victims. She also used psychological pressure and physical violence.

**Mitigating factors:** The Court found the following mitigating factors: the offender’s lack of prior record, compliance with bail terms, family support, and rehabilitative efforts. The Court also noted that there was an absence of some aggravating features commonly seen in similar cases and that M.W. acknowledged that for much of the time, the offender treated her reasonably well.

**Aggravating factors:** The Court noted numerous aggravating factors, including: the offender's decision to establish and operate her own “escort” service that exploited young and vulnerable victims was carefully considered, planned, and executed; some of

the victims were under the age of 18; the offender instructed the victims to lie about their age and to tell the police that they were independent sex workers, falsely enticed the three victims with the promise of a 50-50 earnings split, demanded an exit fee of \$10,000 from M.W., knowingly and recklessly took photos of her young victims to post as advertisements on Backpage.com, which contributed to a continuous re-victimization, used verbal abuse if the victims did not comply with her rules, intimidated, threatened, and exploited S.O. and M.W, and threatened to harm their families, ordered the victims to work gruelling schedules and to see multiple clients in a day, forced them to work while menstruating, forced M.W. to work right after having abortion, which conflicted with medical advice; for M.W., the offender set a quota of \$1,000 earnings per day and forced her to work while she was pregnant and occasionally without protection; and, the significant impact the offender's conduct had on the victims.

\*The Ontario Court of Appeal dismissed a sentence appeal in *R v Senoubari Abedini*, 2020 ONCA 520.

### **R v SC, 2019 ABQB 793**

**23 years and 6 months**

SC received a global sentence of 23 years and 6 months incarceration: 8 years and 6 months for trafficking in persons under the age of eighteen years; 8 years concurrent for sexual assault; 7 years concurrent for sexual exploitation; 7 years and 6 months consecutive for incest; 8 years concurrent for sexual assault with a weapon; 1 year consecutive for making child pornography; 5 years concurrent for sexual assault; 5 years consecutive for incest; 1 year and six months consecutive for invitation to sexual touching; 1 year concurrent for careless storage of a firearm (count 23).

**Ancillary orders:** *SOIRA* order for life; DNA order; weapons prohibition for life (ss 109 and 110); order of prohibition for life (ss 161 and 161(a)(b)(c)(d)); and non-communication order (s 743.21); and, forfeiture of all items seized.

**Summary:** There were three victims, who were the offender's daughters—KC, CC, and EC—of whom, only KC was trafficked. The offender made and posted child pornography of KC when she was 16 years old on the website “adultfriendfinder.com”. The offender arranged for men to meet and sexually assault KC by providing the location, rules of the meeting, and any other details. The offender blindfolded, gagged, and tied up the victim before placing her in the back of his vehicle. The unknown man was instructed to sit in his vehicle at a secluded location, pretend to be on the phone, wear a blindfold, and wait for the offender who would then ask for a code word. If the man replied correctly, he would be instructed to get into the back of the vehicle with KC. The offender then drove the unknown male and KC to another location where the sexual assault would take place. The offender talked to six or seven unknown individuals about potential meetings; however, only two unknown males attended the meeting locations.

**Mitigating factors:** The Court noted the guilty plea as a mitigating factor.

**Aggravating factors:** The Court noted the following statutory aggravating factors: all three victims were under the age of 18; the offender was the victims' father, who was in a position of trust and authority; the continued significant impact on KC, CC, and EC; the multiple occurrences; the sexual assaults were violent (KC was bound and blindfolded, her hair was pulled); the sexual assaults included penetration of her anus with objects; a nude picture that included her face was posted on the website that advertised her; the offender participated in sexually assaulting her together with the unknown males; the breach of trust; and the gratuitous degradation and objectification of KC; the offender abused multiple children in the family resulting in the destruction of the family unit; and, all members of the accused's immediate family and several members of his extended family suffered psychological and emotional harm as a result of his offences.

***R v Kassongo, [2019] OJ No 6689***

**3 years**

Kassongo received a global sentence of 3 years imprisonment: trafficking in persons under the age of 18 (s 279.011); receiving a material benefit for trafficking in persons under the age of 18 (s 279.02(a)); and advertising sexual services (s 286.4).

**Ancillary orders:** weapons prohibition order for ten years (s 109); DNA order; and a lifetime SOIRA order (s 490.011(b)).

**Summary:** The offender, 20 years old at the time, met the victim, 15 years old, on Instagram before meeting in person. The offender, the victim, and a 14-year-old female went to a motel to use marijuana with two other unidentified males. The offender asked the two girls if they wanted to make money and proposed that they engage in the sex trade. The next day, the victim ran away from home and was picked up by the offender who took her to a hotel. The offender had sexual intercourse with her. Following this, the victim provided sexual services for one week, moving from hotel to hotel. The offender retained all the money and took nude pictures of the victim to advertise her sexual services. The victim continued to provide sexual services to the offender. There were times where she wanted to leave but did not know how to leave.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was youthful, appeared remorseful, took full responsibility for his actions, pled guilty, was engaging in counselling at the time of sentencing, was said to be a talented musician, had strong family support, was not involved in a sophisticated organization, did not use the victim's actual photo in his advertising, only has one entry on his adult criminal record; and, the lack of significant coercion, absence of violence, and the short duration of exploitation.

**Aggravating factors:** The Court noted the following aggravating factors: the age and vulnerability of the victim; the harm suffered by the victim; the offender exerted control over the environment where the victim engaged in the sex trade; and, the number of clients that the victim was required to service.

**R v Tazike, 2019 ONCJ 819****7 years and 5 months**

Tazike received a global sentence of 7 years and 5 months imprisonment: 6 years reduced to 5 years for trafficking in persons under the age of 18 (s 279.011); 5 years concurrent for receiving a material benefit from trafficking in persons (s 279.02); 3 years concurrent for receiving a material benefit from sexual services (s 286.2); 6 years concurrent reduced to 5 years for procuring a person under the age of 18 (s 286.3(2)); 3 years concurrent for advertising sexual services (s 286.4); 2 years consecutive for sexual assault (s 271); 2 years concurrent for sexual assault (s 271); 6 months consecutive for criminal harassment (s 264 (3)); 6 months concurrent for mischief to property under \$5000 (s 430(4)).

**Ancillary Orders:** DNA order (s 487.051); 20 year SOIRA order (s 490.013(2)(b)); 10 ear weapons prohibition order (s 109); non-communication order (s 743.21).

**Summary:** The victim was 16 years old and living in a youth shelter when she met the offender. The offender's friends raised the possibility of making over \$1000 a day to the victim. She found the offer attractive despite not knowing exactly what was involved. The offender persuaded her into engaging in the sex trade and controlled her engagement, including by taking sexually suggestive photos of the victim, advertising her sexual services online, renting hotel rooms and receiving most, if not all, of the profits. Prior to advertising her sexual services, the offender had sex with the victim to determine if she would be a "skilled prostitute". During her two years under the offender's control, the victim was romantically involved with the offender, subjected to physical and sexual violence, and introduced to and provided drugs by the offender.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was a young man with a supportive family, had a high school education, and demonstrated ability to work.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's demand for sexual favours, including non-consensual ones; his efforts to evade authorities; his posting sexually suggestive images of a 16 year old on the internet; the exploitation of a vulnerable 16 year old living in a youth shelter; the violence used against the victim; the duration of the exploitation; the intimate-partner relationship; the sexual assaults; and, conduct aimed at re-establishing a sexually exploitative relationship with the victim.

**R v Alexis-McLymont and Elgin and Hird 6 years (Alexis-McLymont); 2018 ONSC 1389 and 2018 ONSC 1152 7 years (Elgin); 9 years (Hird)**

\*There were 3 offenders

Alexis-McLymont received a global sentence of 6 years: 6 years for trafficking of a person under the age of 18 years (s 279.011(1)); 6 years concurrent for procuring a person under the age of 18 (s 286.3(2)); 3 years concurrent for receiving a material benefit from trafficking in persons under 18 years (s. 279.02).

Elgin received a global sentence of 7 years imprisonment: 7 years for trafficking of a person under the age of 18 years (s. 279.011(1)); 7 years concurrent for procuring a person under the age of 18 (s 286.3(2)); 3 years concurrent for receiving a material benefit from trafficking in persons under 18 years (s 279.02); 3 years concurrent for sexual interference (s 151); 2 years concurrent for unlawful confinement (s 279(2)). The sexual assault conviction (s 271) was conditionally stayed pursuant to *Kienapple*.

Hird received a global sentence of 9 years: 9 years for trafficking in persons under the age of 18 years (s 279.011(1)); 7 years concurrent for procuring a person under the age of 18 (s 286.3(2)); 4 years concurrent for receiving a material benefit from trafficking in persons under 18 years (s 279.02); 3 years concurrent sexual interference (s 151); 2 years concurrent for unlawful confinement (s 279(2)). The sexual assault conviction (s 271) was stayed pursuant to *Kienapple*.

**Ancillary orders for Alexis McLymont:** Alexis-McLymont received a mandatory weapons prohibition order for life (s 109(1)(a)); DNA order (ss 487.04 and 487.051); SOIRA order for life (s 490.013(2.1)); victim surcharges totalling \$600 (s 737); non-communication order (s 743.21); discretionary forfeiture order in relation to two cellular telephones seized (s 490.1); prohibition order (ss 161(1)(a.1), (b), (c), and (d)).

**Ancillary orders for Elgin:** Elgin received a mandatory weapons prohibition order (s109(1)(a)); DNA order (ss 487.04 and 487.051(1)); SOIRA order for life (s 490.013(2.1)); victim surcharges totalling \$1000 (s 737); non-communication order (s 743.21(1)); order of forfeiture for cellphone (s 490.1); prohibition order (ss 161(1)(a.1), (b), (c) and (d)).

**Ancillary orders for Hird:** Hird received a mandatory weapons prohibition order for life (s 109(1)(a)); DNA order (ss 487.04 and 487.051(1)); SOIRA order for life (s 490.013(2.1)); victim surcharges totalling \$1000 (s 737); non-communication order (s 743.21(1)); prohibition order (ss 161(1)(a.1), (b), (c), and (d)).

**Summary:** Alexis-McLymont had a social media friendship with a third party, who housed the victim, and offered money to the third party to help with locating and recruiting young females. The victim was a 15-year-old female who had run away from home and was addicted to crystal methamphetamine. Alexis-McLymont contacted the victim through the third party and led the victim to believe that she would be selling drugs. She agreed to meet Alexis-McLymont at a bus station in a city unknown to her. She was brought to a motel where Elgin and Hird persuaded her to engage in sexual intercourse with a stranger in exchange for drugs. Elgin and Hird prevented the victim from leaving when she attempted to do so later that evening, forcing her to stay in the motel room and to continue to engage in sexual intercourse with strangers for payment. She was not permitted to touch or retain any of the money earned. Elgin and Hird took the victim's cellular phone and gave her drugs to keep her dependant and compliant. The judge highlighted the particularly appalling conditions in which the victim was exploited. In particular, she was: confined to one or two poorly kept hotel rooms;

deprived of communication with the outside world and basic toiletries; and, starved and plied with drugs to make her amenable to her captors' manipulations.

**Mitigating factors for Alexis-McLymont:** The Court noted the following mitigating factors: Alexis-McLymont was a youthful first time offender and had family and informal support from his spouse, which may assist in his rehabilitation prospects.

**Mitigating factors for Elgin:** The Court noted the following mitigating factors: Elgin expressed responsibility and remorse and demonstrated his determination to complete steps towards his rehabilitation, was a youthful offender who faced some extraordinary challenges during the course of a difficult childhood, including neglect, abandonment, learning disabilities, and forced independence, and had familial and informal support from his spouse, which may assist in his continued rehabilitation.

**Mitigating factors for Hird:** The Court noted the following mitigating factors: Hird was a youthful offender whose criminal record only contained property offences in youth court, and he had his family, friend and support from his partner, which may assist in his rehabilitation prospects.

**Aggravating factors Alexis-McLymont:** The Court noted the following aggravating factors: the abuse of a person under the age of 18; the serious and profound impact of the misconduct on the victim and on her family; the evidence that the offence was committed for the benefit of, at the direction of, or in associate with a criminal organization; and, the appalling conditions in which the victim was exploited.

**Aggravating factors Elgin:** The Court noted the following aggravating factors: in addition to those noted for Alexis-McLymont, the offender's obvious and unmitigated sense of entitlement to use the victim sexually; and the offender's prior criminal record.

**Aggravating factors for Hird:** The Court noted the following aggravating factors: in addition to those noted for Alexis-McLymont, the offender's obvious and unmitigated sense of entitlement to use the victim sexually.

### ***R v Oliver, 2018 NSSC 230***

**8 years**

Oliver received a global sentence of 8 years imprisonment: five years for trafficking in persons under the age of 18 (s 279.011(1)); 1 year concurrent for sexual interference (s 151); two years consecutive for receiving a material benefit from trafficking in persons under eighteen years (s 279.02(2)); 1 year consecutive for making child pornography (s 163.1(2)); and, 2 years concurrent for sexual assault (s 271).

**Ancillary orders:** prohibition order (s 161); DNA order; mandatory prohibition order for life (s 109); victim fine surcharge.

**Summary:** The offender met the first victim, a minor, through Snapchat where he identified himself as being 18 years old. After grooming her online, they met at a residence in Halifax. Once together, he started touching the victim directly on her

breasts and on her buttocks. The offender later brought the victim to a hotel and directed her to a specific room. She was then met by two men in the room who sexually assaulted her. She was given \$440.00, and she gave the offender a portion of this money. The offender refused to take the victim home but the victim was able to text a friend for help who then called the police. The victim was able to sneak out of the house and was walking down the road where the police found her.

After communicating online, the offender and the second victim met in Halifax. During the evening, Oliver said that he would pay her to 'service' his adult friends. She said no but eventually agreed. Over the course of 5 days, the victim serviced 10 calls where she received between \$75 to \$150 per call but all the money went to the offender.

**Mitigating factors:** The Court noted that there were mitigating factors, but did not specify the factors in the judgement.

**Aggravating factors:** The Court noted that there were significant aggravating factors, but did not specify the factors in the judgement.

### ***R v Burton, 2018 ONCJ 153***

**8 years and 6 months**

Burton received a global sentence of 8 years and 6 months imprisonment followed by a ten year long term supervision order: 8 years and 6 months concurrent for two counts of human trafficking (s 279.01(1); 5 years concurrent for two counts of exercising control (conviction); 5 years concurrent for two counts receiving material benefit from trafficking in persons (conviction); 3 years concurrent for two counts of withholding passports (conviction); 2 years consecutive for obstructing justice (conviction).

**Ancillary orders:** SOIRA order for life; DNA order; weapons prohibition for life (s. 109); non-communication order with the victims.

**Summary:** V.C. and A.O., both 19, were from Kingston when they met the offender in Toronto. The offender used V.C.'s love for him and her vulnerabilities to control her and coerce her into engaging in the sex trade, while he used intimidation to coerce A.O. into engaging in the sex trade. The offender exercised significant control over both victims, confiscating their passports and all the profits, requiring the victims to clean the apartment and follow his rules, handing out food, cigarettes and alcohol at his discretion, requiring the victims to call him "daddy" and kiss his ring. The exploitation lasted for a week, during which the victims were required to provide sexual services at a number of different hotels, and ended when a client took both victims away from the offender and another client called the police.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was abused and neglected as a child and despite the fact that the offender obviously needed intense intervention at a young age, his mother and the state failed to ensure that he had access to support.

**Aggravating factors:** The Court noted the following aggravating factors: there were multiple victims; the victims were vulnerable and suffered severe harm by the offender's



conduct; the offender exercised a significant degree of control over the victims, retained all the profits, demanded sexual favours from both victims, has a criminal record, had just been released from custody when he committed these offences, and obstructed justice through his continued communication with V.C. after his arrest.

***R v Gray, 2018 NSPC 10***

**30 months**

Gray received a global sentence of 30 months imprisonment: 24 months for receiving a benefit from sexual services (s 286.2(1)); 24 months concurrent for receiving a benefit from trafficking in persons (s 279.02(1)); 6 months consecutive for uttering threats (s 264.1(1)(a)); and 4 months concurrent for advertising sexual services (s 286.4).

**Ancillary orders:** Mandatory victim fine surcharge for \$800; mandatory weapons prohibition order for 10 years (s 109); SOIRA order for 20 years; DNA Order.

**Summary:** The 20-year-old victim knew the offender as a friend of her boyfriend. She was addicted to drugs, had previously engaged in the sex trade and experienced victimization by “pimps”. She and her boyfriend moved in with the offender. Once living with the offender, he advertised her sexual services online, set up the appointments, having her attend as many as 20 calls per day, and took all her earnings. During this time, the victim contracted HIV. The victim moved out of the residence when her boyfriend was incarcerated but soon moved back in after she was kicked out of her mother’s house. The offender told her she would not have to do calls but he started posting ads again for her sexual services. She went on the calls and gave all her money to the offender. The victim had to resort to stealing food to feed herself. The offender used threats of violence and in her presence discussed with others how they would kill and dispose of her body. The victim believed that she would end up dead if she came forward to the police.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was relatively youthful, pled guilty, has a limited criminal record that was generally unrelated, experienced challenges in his life, including substance abuse, learning challenges, and exposure to violence as a child, had family support and had previous employment with the ability to return after he was released from custody.

**Aggravating factors:** The Court noted the following aggravating factors: the victim was vulnerable due to her addiction and background; explicit and implicit threats were used; the offender took all of the victim’s earnings and became angry when she withheld any, which contributed to his control over her; the time period was 6 months, which is relatively long; and he had a previous record that included offences as an adult and a youth.

***R c Murenzi, 2018 QCCQ 7950***

**5 years**

Murenzi received a global sentence of 5 years imprisonment: 5 years for trafficking in persons (s 279.01(1)(b)); 3 years concurrent for assault causing bodily harm (s 267(b)); and 4 years concurrent for procuring (s 212(1)(h)).

**Ancillary orders:** Non-communication order (s 743.21); mandatory weapons prohibition order for firearms for 10 years (s 109); DNA order (s 487.051).

**Summary:** The victim was 20 years old when she met the 27 year old offender through a mutual friend. She fell in love and moved in with him. After a month, the offender became violent toward the victim and a relationship of dependence and submission started. The offender required the victim to dance at bars, claiming they had no money, and required her to provide him with all the money she earned each night. Exhausted from working everyday, the victim started using cocaine. The offender controlled of the victim's identity documents, such as her health card and passport. The offender controlled the victim through violence, emotional manipulation, and isolation as he took her cell phone and cut her off from contacting her parents.

**Mitigating factors:** The Court noted that there were no mitigating factors.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's criminal record; the offender had significant control over the victim that led to emotional and financial dependence that took place in a climate of fear, manipulation, isolation, submission, and violence, confiscated a significant amount of money, exploited the victim for four years, engaged in some planning and sophistication; the degree of violence used; the victim was 20 and the offender's spouse; the working conditions; and the significant psychological and physical impact of the offender's conduct on the victim.

### ***R v Lopez, 2018 ONSC 4749***

**5 years**

Lopez received a global sentence of 5 years imprisonment: trafficking in persons; receiving a material benefit from trafficking in persons; advertising sexual services; assaulting the victim with a weapon; uttering threats; wilfully attempting to obstruct the course of justice in a judicial proceeding; assault; breach of a recognizance by communicating with the victim; and, being within 100 meters of any place the victim was known to live, work or attend school. The convictions for procuring and receiving a material benefit from sexual services were stayed pursuant to *Kienapple*.

**Ancillary Orders:** DNA order (s 487.051); mandatory weapons prohibition (ss 109(1)(a), 109(1)(a.1)(i), and 109(3)); non-communication order (s 743.21); victim surcharge in the total amount of \$2,000 (s 737(2)(b)(ii)).

**Summary:** The victim, 19 years old, met the offender, 21 years old, and they began a casual intimate relationship. The victim proposed an arrangement that they engage in the sex trade. She would provide sexual services in exchange for money and the offender would take care of her by posting online advertisements, booking hotels, driving her to the "out calls," and providing her with security while she worked. The offender proposed a 60/40 financial split of the profits with the offender taking 60% and the victim taking 40%, and the victim accepted. The offender soon started keeping all of the money, providing her with some funds for "bare necessities," like personal hygiene products. He exercised significant control through verbal and physical violence, and determined where, when and what sexual services the victim would provide.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was remorseful, started to turn his life in a more positive direction since his arrest and detention, and had been working towards a successful reintegration into society by continuing his education with a view to obtaining employment in the automotive industry.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's criminal offences were serious, numerous, and committed over an extended period of time; the offender had a criminal record, continued to commit the crimes after being arrested for "assault with a weapon" against the victim, wilfully attempted to obstruct justice to prevent his conviction, threatened to kill the victim when the victim threatened to report him to the police for violating the conditions of his recognizance, demanded an exit fee from the victim, exploited, physically abused, and coerced the victim into giving him all her earnings; the victim was emotionally vulnerable; the significant impact of the offender's conduct on the victim; the working conditions; the offender insisted the victim provide unprotected sexual services which led to her contracting sexually transmitted infections; and the offender's operation was not unsophisticated.

**R v AE, 2018 ONSC 471**

**10 years**

AE received a global sentence of 10 years imprisonment: 7 years for trafficking in persons (s 279.01(1)(b)); 4 months for assault (s 266(a)); 1 year for criminal harassment (s 264(3)(a)); 2 years for possessing cocaine for the purpose of trafficking (CDSA, s 5(3)(a)); 6 months for possessing marijuana for the purpose of trafficking (CDSA, s 5(3)(a.1)); 1 month for careless storage of firearm (s 86(3), conviction); 4 years for knowingly possessing a loaded, prohibited firearm (s 95(2)(a)); 4 months for knowingly possessing a firearm with an altered serial number (s 108(2)(a)); 5 years for human trafficking (s 279.01(1)(b)); 1 month for assault (s 266(a)); and 1 month for breach of non-communication order (s 145(3)(a)). Charges for possession of a prohibited weapon without a license and knowingly possessing a prohibited firearm without a license were stayed pursuant to *Kienapple*.

**Ancillary orders:** SOIRA order for life; DNA order; weapons prohibition for life (s 109); non-communication order.

**Summary:** The two victims, KJ and AB, approached the offender to provide assistance in establishing themselves in the sex trade. KJ, 18 or 19 years old, had previously engaged in the sex trade, found herself in a "tough spot" and turned to the offender for assistance. AB, 19 years old, had been living on her own since the age of 16 and longed for a better life. Both victims thought they were building an empire with the offender but, in reality, he was exploiting them. The offender exercised significant control over the victims, including intimidation and violence, directed the locations where the victims would work, provided a list of rules for the victims to follow with clients, dictated working hours, drove them to and from work, kept tabs on them, and retained their earnings, resulting in their dependence upon him.

**Mitigating factors:** The Court noted the following mitigating factors: the offender continued to have significant support in the community and had a difficult childhood; the use or threat of violence was at the lower end and there was no sexual violence; and, the offender did not procure or coerce the victims into the sex trade as they both sought out his assistance.

**Aggravating factors:** The Court noted the following aggravating factors: the victims were young, financially vulnerable, and not well-educated; KJ was exploited for three to four years and AB was exploited for roughly three months; the various methods of control, including violence; the offender exercised significant control, threatened KJ with pursuit and violence if she attempted to leave and followed through with those threats when she did leave; the combination of guns, drugs, and human trafficking made for a toxic mix; and, the offender had a youth record.

***Director of Criminal and Penal Prosecutions of Québec c Valcourt,***  
**2017 QCCQ 6798** **7 years**

Valcourt received a global sentence of 7 years imprisonment: 6 years for trafficking in persons for Victim 1 (s 279.01(1)(b)); 42 months concurrent for procuring, in relation to Victim 1 (s 286.3(1)); 6 years concurrent for trafficking in persons for Victim 2 (s. 279.01(1)(b)); 42 months concurrent for procuring, in relation to Victim 2 (s 286.3(1)); 1 year concurrent for forcibly sequestering, imprisoning or forcibly seizing Victim 2 (s 279(2)(a)); 6 months concurrent for assaulting Victim 2 (s 266(a)); 42 months concurrent for receiving material benefit obtained from the consideration of sexual services (s 286.2(1)); 6 months concurrent for possessing a weapon for a dangerous purpose (s. 88(2)); 6 months concurrent for a possession of money obtained by a crime (s. 354); 2 months consecutive for failure to comply with non-communication order (s 145(3)); 2 consecutive months for a failure to comply with a probation order (s 733.1); 2 consecutive months for a failure to comply with an order (s 145(3)(a)); 2 months consecutive for failure to comply with non-communication order (s 145(3)); 2 months consecutive for failure to comply with non-communication order (s 145(3)); and 2 months consecutive for failure to comply with non-communication order (s 145(3)).

**Ancillary Orders:** DNA order (s 487.051); weapon and restricted weapon prohibition order for life (s 109(1)(a)); SOIRA order for life (s 490.012); non-communication order (s 743.21).

**Summary:** KC met the offender on social media and used flattery to gain her trust. The offender took KC to his apartment where he lived with JB, who was engaged in the sex trade. The offender and KC went to Mexico and his attitude towards her abruptly changed. The offender became verbally, physically and sexually violent toward KC, and suggested she engage in the sex trade like JB. KC provided sexual services for consideration from a motel room. The offender controlled her engagement in the sex trade by posting ads, taking pictures, and arranging meetings with clients. He confiscated both victims' earnings and used manipulation, threats, and violence to prevent the victims from leaving. KC was between twenty-three and twenty-four years

old when staying with the offender and JB was between twenty-four and twenty-six years old.

**Mitigating factors:** The Court noted the following mitigating factor: the offender's cooperation in preparing the pre-sentence report.

**Aggravating factors:** The Court noted the following aggravating factors: the offender received benefits from the exploitation of others and was motivated by greed; the duration of exploitation; the degree of control and violence towards the victims; the fact that there were two victims; their age, their degree of vulnerabilities and the impact of the offending on them; the offender's long criminal record; and, his continued communication with the victims while in custody.

**R v AS, 2017 ONSC 802**

**13 years**

AS received a global sentence of 13 years: 12 years for trafficking in persons (s 279.01); 5 years concurrent for receiving a material benefit from trafficking in persons (s 279.02); 6 years concurrent for aggravated assault; 2 years and 6 months concurrent for sexual assault; 1 year for each of three simple assaults; 8 years concurrent for procuring; 8 years concurrent for the exercise of control over the victim for the purposes of working in the sex trade (conviction); and 1 year consecutive for the offence of choking (conviction). A conviction for assault with a weapon was stayed pursuant to *Kienapple*.

**Ancillary orders:** DNA order; mandatory weapons prohibition order for life (s 109); 20-year SOIRA order.

**Summary:** The victim received the offender's phone number from her cellmate while she was serving an adult sentence. When in Toronto, the offender picked her up and spent the next few days grooming her, making her dependent on him, and persuading her to give him all her money. The offender got her to start working in strip clubs as a dancer and to start providing sexual services for money. If the victim did not earn enough money, the offender would beat and berate her. The offender used significant physical and sexual violence and threats of violence, as well as psychological control. This relationship continued for two years and ended in 2010. During this time, the victim met another man and they had a baby. However, the father was murdered and thereafter, because of her "alcohol abuse issues", her baby was taken into care by the Children's Aid Society. The offender reconnected with the victim while on bail and said he would help the victim get her child back if she would work as an "escort" for him and gave him all her earnings. The offender continued using violence against the victim. The relationship ended when the offender assaulted the victim, half-severing her foot, and then drove off. He disappeared until he was arrested two years later.

**Mitigating factors:** The Court noted no mitigating factors and found that the pre-sentence report indicated no remorse by the offender.

**Aggravating factors:** The Court noted the following aggravating factors: the offender's significant control exerted over the victim; his high degree of physical, psychological and sexual violence; his psychological manipulation/inducement; his confiscating all of the victim's money; his imposing an earnings target; the victim's youth and vulnerability (she is Indigenous and was isolated with no family and friends in the area); the dangerous locations; the significant number of clients she was required to service; the duration of the exploitation; the significant impact on victim; and the offender's "atrocious" criminal record.

***R v NA, 2017 ONCJ 665***

**18 months**

NA received a global sentence of 18 months imprisonment: 18 months for trafficking in persons (s 279.01); 18 months concurrent for receiving a material benefit from trafficking in persons (s 279.02); and 90 days concurrent for assault (s 266).

**Ancillary orders:** DNA order; mandatory weapons prohibition order (s 109); probation.

**Summary:** The victim met the offender when purchasing cocaine from him and they became friendly. He suggested she work at a strip club as a dancer and that he would assist her with earning money. She started dancing, and, over time, the offender began exercising control, direction, and influence over the victim's movements. He did not force her to work at the strip club, but strongly encouraged her to do so and played a direct role in her working at various strip clubs. The offender had influence over the victim's movements to and from the strip clubs, ensuring that she went to work and gave him her earnings after working. Further, he used violence and threats of violence.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was a young person and did not have a criminal record.

**Aggravating factors:** The Court found the following aggravating factors: the offender took advantage of the victim who he knew was vulnerable because of her drug addiction and the effect of the offence on the victim.

***R v Deiacco, 2017 ONSC 3174***

**8 years**

Deiacco received a global sentence of 8 years months imprisonment: 7 years for kidnapping (s 279(1)(a)); 5 years concurrent for trafficking in persons (s 279.01(1)); 3 years concurrent for receiving a material benefit from trafficking in persons (s 279.02(1)); 3 years concurrent for assault causing bodily harm (s 267(b)); and 1 year consecutive for use of an imitation firearm while committing an indictable offence (s 85(2)(a)).

**Ancillary orders:** Mandatory weapons prohibition order for life (s 109); DNA order; SOIRA order for life.

**Summary:** The victim was living in a shelter after being asked to leave a drug rehabilitation facility. She was unfamiliar with Toronto and had few friends but no family there. She got lost one day and asked the offender, whom she did not know, for help

getting back to the shelter. He agreed to drive her back and while in the car they discussed her current circumstances. She told him she would work for him if he could get her money and opiates. The victim thought that the offender would keep her high, that she would be making money, that he would get her a hotel, and that they would live together. The offender directed a colleague to take pictures of the victim and to post them as ads on backpage.com. The offender required the victim to have sexual relations with him before she could start working. The offender dictated how much to charge clients and had her give him all her earnings. The victim saw 3 to 5 clients a day for the next 5 days. When there was an out-call, the offender would drive her to and from it. The victim felt trapped and isolated with nowhere to go, no money, and no freewill.

The victim escaped and soon posted her own ad on backpage.com. The offender and someone else showed up to an appointment booked under a false name to force the victim to return to him using violence. The victim's boyfriend, who was also present, managed to call 911 and the police tracked the victim's phone to the hotel where the offender had taken the victim.

**Mitigating factors:** The Court noted the following mitigating factors: the offender had some supportive family, had a difficult upbringing with an abusive father, was sexually abused as a child, and pled guilty; the victim was not required to testify at trial; the offender apologized to the victim and to the Court for his conduct; and, while incarcerated, the offender was in a facility where lockdowns occurred due to staff shortages, and he was triple bunked for 59 days.

**Aggravating factors:** The Court noted the following aggravating factors: the victim was vulnerable as she was drug dependent with few friends and no family; the offences had significant impact on the victim; the offender exercised a considerable degree of control, assisted with the advertising of the victim's services, isolated and lied to her by failing to provide her with the drugs he promised; the victim was emotionally and financially dependent on the offender since he took all her earnings; the victim was exploited for six days; the offender induced the victim with the promise of drugs, a place to stay, steady business, and companionship, demanded sex from the victim; was violent when the victim tried to escape, had a significant criminal record, including offences of violence, was found guilty of 27 instances of misconduct while incarcerated, resulting in a sentence of 180 days in segregation; there was nothing to indicate that he would *not* be a danger to society; the offender demonstrated no insight into his behavior or the impact it had on his victims; and, the victim had to testify at the preliminary hearing.

### **R v KOM, 2017 ONCA 106**

**6 years and 6 months**

\* Ontario Court of Appeal dismissed the offender's sentence appeal.

KOM received a global sentence of 6 years and 6 months imprisonment: 23 offences, including trafficking in persons, unlawful confinement, uttering threats, robbery, assault, sexual assault, procuring and making and possessing child pornography.

**Summary:** The offender, who was 15 years old at the time of the offence, was a ringleader for an “organized and vicious human trafficking enterprise”. She forced several teenage girls into the sex trade through the use of threats, violence, confinement, and/or blackmail with sexually explicit pictures of the girls. Three victims, aged 13, 16, and 17 years old, alleged that, on separate occasions, they were lured to the offender’s house through promises of a sleepover or party. When they arrived, they were forced to put on provocative clothing and the offender took photos to advertise their sexual services to clients. The offender would solicit and arrange meetings for men to have sex with the girls for money and three of the victims testified they performed oral sex on men during these meetings.

**Mitigating factors:** The Court noted the following mitigating factors: the offender’s age and intelligence; she was a first-time offender, completed many of her high school credits and accessed services in detention, had a very difficult background, and expressed remorse.

**Aggravating factors:** The Court noted the following aggravating factors: the offence included the exploitation of multiple vulnerable victims who were significantly impacted and some had suicidal thoughts; the offender’s actions were predatory, well-organized and premeditated; there was troubling violence; she abused drugs and alcohol and forced the victims to do the same; her activities were for her own profit; her conduct in custody was not exemplary; and, her risk of re-offending was high.

***R v Maxwell, [2017] OJ No 1719***

**10 years**

Maxwell received a global sentence of 10 years imprisonment: 10 years for trafficking in person (s 279.01); and 5 years concurrent on each remaining count except where the maximum is lesser than that—in all those cases it will be the maximum sentence available.

**Ancillary orders:** Non-communication order (s 743.21); DNA order; weapons prohibition for life; victim fine surcharge of two hundred dollars, concurrent on all 25 counts, with one year to pay it.

**Summary:** Oral decision; little information on the facts available.

**Mitigating factors:** The Court did not discuss mitigating factors, but the offender pled guilty.

**Aggravating factors:** The Court did not discuss the aggravating factors, but victim impact statements were mentioned.

***R v Estrella, [2011] OJ No 6616***

**30 months**

Estrella received a global sentence of 30 months imprisonment: 30 months for trafficking in persons (s 279.01); 30 months concurrent for procuring (s 212(1)(d)); and



60 days concurrent for assault. Another procuring charge was stayed pursuant to *Kienapple*.

**Summary:** The victim was a 16-year-old high school student when the offender and her colleague procured her into the sex trade. The colleague was an older man who was the primary “pimp” in the organization. The offender was more of a lead hand than a co-venturer, but her role was still serious. There was no information to suggest that the offender was manipulated, exploited, or coerced into playing the role that she did. The victim had no experience working in the sex trade and there was no evidence to suggest she wanted to do this work. In the beginning, the victim started to resist and eventually went into hiding to try to avoid the offender so that she did not have to be a victim of trafficking anymore.

**Mitigating Factors:** The Court noted the following mitigating factors: the offender was young, had no criminal record, and the operation was at its very beginning.

**Aggravating Factors:** The Court noted the following aggravating factors: the offender’s very active role in recruiting, training, coaching, and motivating the victim; arranging for liaisons with clients at a hotel; taking the victim to a strip club to demonstrate how to engage in the sex trade; taking pictures of the victim and putting them up on the internet; the very direct forms of coercion used to persuade the victim to continue down this path; and the age and vulnerability of the victim.

### ***R v DA*, 2017 ONSC 3722**

**3 years and 6 months**

DA received a global sentence of 3 years and 6 months imprisonment: 3 years and 6 months for trafficking in persons; 2 years concurrent for receiving a material benefit from sexual services; 2 years concurrent for procuring.

**Ancillary orders:** DNA order; a SOIRA order for 20 years; discretionary prohibition order (s 110); victim fine surcharge.

**Summary:** The victim and offender developed a relationship in 2014. The victim proposed that the offender be her protector while she engaged in the sex trade and he would receive 50% of the money. This was an arrangement the victim had previously entered with other men. Two days after this arrangement, the offender brought a second male and both men kept all the victim's earnings. Both men assaulted the victim.

**Mitigating Factors:** The Court noted the following mitigating factors: the offender had no criminal record, had the support of his family, did not recruit the victim into the sex trade, was a relatively unsophisticated person who was introduced to the sex trade by the victim, did not compel or coerce the victim to engage in “illegal sexual activity”, and was on a restrictive recognizance since the incident and had not reoffended since his release.

**Aggravating Factors:** The Court noted the following aggravating factors: the victim was subjected to physical violence; the offender took all of the victim's money, while

only providing her five dollars a day for food; the offender took the victim's identification to maintain control over her; and, the sexual exploitation lasted approximately ninety days.

***R v Finestone, 2017 ONCJ 22***

**4 years**

Finestone received a global sentence of 4 years: 4 years for trafficking in persons under the age of eighteen years (s 279.011(1)).

**Ancillary orders:** DNA order; mandatory weapons prohibition order for 10 years (s 109); and, SOIRA order for 20 years.

**Summary:** The victim, a vulnerable 14-year-old girl, was forced to engage in the sex trade by the offender and Ms. Robitaille, who was the offender's girlfriend and had engaged in sex trade for the offender. They met through a mutual acquaintance and the offender provided the victim with a place to stay other than at a group home. The offender posted an advertisement for the victim's services stating that she was 19 years old and forced her to engage in the sex trade day and night, servicing approximately 20-30 clients with oral and vaginal sex. The offender and Ms. Robitaille retained all of the proceeds. When the victim expressed her desire to leave, she was confined to the hotel room with an individual placed outside of the door, her cellphone was confiscated and she was not allowed to contact anyone. The offender then unplugged the hotel room telephone and asked the hotel to block all calls to the victim's room.

**Mitigating factors:** The Court noted the following mitigating factors: the offender was youthful, remorseful, was taking responsibility for his conduct, did not have criminal record, pled guilty, was actively engaging in counselling and residential treatment in order to address his criminality, had some difficulties as a child, which were linked to his mental health issues and his alopecia, had strong family support, had very good rehabilitative prospects, and had Asperger's Syndrome.

**Aggravating factors:** The Court noted the following aggravating factors: the age and vulnerability of the victim; the offender's involvement with a second under-aged victim; the harm suffered by the victim; the offender exerted complete control over the work environment; the number of clients that the victim was forced to service; the offender worked with others, was able to direct others to do certain acts in furtherance of exploiting the victim; and, the increase in control and coercion during the last few hours of the offence.

***R v S, 2016 ONSC 2939***

**5 years**

S received a global sentence of 5 years imprisonment: 5 years for trafficking in persons (s 279.01(1)(b)); 3 years concurrent for receiving a material benefit from trafficking in persons (s 279.02(1)); 6 months concurrent for withholding travel or identity documents (s 279.03); 1 year concurrent for assault (s 266); 6 months concurrent for uttering threats (s 264.1); and 6 months concurrent for breach of an undertaking (s 145(5.1)).

\*A sentence appeal was allowed in *R v RS*, 2017 ONCA 141. The appellant was credited with 1033 days of pre-sentence custody.

**Ancillary orders:** A lifetime weapons prohibition order (s 109); non-communication order; DNA order (s 487.051).

**Summary:** The victim was an exotic dancer and “escort” who worked in the Ottawa area. She met the offender when she was 19 years old and they entered into a romantic relationship. The exploitation lasted four months with the victim “escorting” under the offender’s direction. After a few weeks of allowing the victim keep some of her earnings, the offender took all of her earnings. While the victim had a say in which cities she would perform, the offender determined what sexual services she would provide. The offender would post online advertisements, clients would call the cell number provided, and arrangements would be made for an appointment. The offender controlled the victim through physical violence, threats of physical violence, emotional manipulation, and financial dependency, which made it difficult for the victim to leave, He also kept her cell phone. The victim’s estranged relationship with family, young age, lack of financial resources, and pregnancy made her vulnerable.

**Mitigating factors:** The Court had trouble identifying any factor that mitigated the concern that, once released, the offender would continue to be a danger to women and operate in an environment outside of the law.

**Aggravating factors:** The Court noted the following aggravating factors: the offender’s lengthy criminal record, which includes many offences relating to assaults and other offences against women; no previous form of sentence deterred the offender from criminal behaviour or got him to assume responsibility for his actions; the offender posed a serious threat to women for whom he seemed to lack any respect, took advantage of a young 19-year-old woman that he realized was vulnerable, was significantly older than the victim, refused to speak with police or turn himself in for a period of 10 months despite knowing that the police were looking for him, seemed incapable of taking any direction or supervision from his family or any authority figure, and showed a total unwillingness to engage in any form of programming that could be of assistance to him in avoiding criminal behaviour—be it counselling or job training.

***R v Moazami*, 2015 BCSC 2055**

**23 years**

Moazami received a global sentence of 23 year imprisonment: 1 year concurrent for procuring; 2 years concurrent for “living on the avails of prostitution” (now-repealed s 212(1)(j)); 6 months concurrent for trafficking in person (s 279.01(1)(b)); 2 years concurrent for sexual assault. The other counts dealt with 10 other complainants and did not relate to human trafficking. The aggregate sentence was 48 ½ years, which was reduced to 23 years due to the totality principle.

**Ancillary orders:** DNA order (ss 487.051 and 487.04); mandatory SOIRA order for life (ss 490.012(1) and 490.013(2.1)); mandatory weapons prohibition for life (s 109(1)); a

non-communication order (s 743.21); and an order for forfeiture of all items seized by the police (s 490.1).

**Summary:** The victim, 19 years old, was introduced to the offender through her friend. At the time, the victim was forced to leave a residential treatment facility for drug addictions and had no place to live. The offender knew that the victim's life at home was unstable, that she was unhoused, had a drug addiction and no way to support herself. During a party and after the offender supplied the victim with alcohol, cocaine, and several doses of GHB, the offender persuaded the victim to work in the sex trade by glamorizing it and promising her money and his protection. The offender transported the victim to Calgary and Edmonton to facilitate her engagement in the in the sex trade. He exercised significant control, including through sexual violence, isolating the victim, providing drugs to facilitate the victim's dependency and violently assaulting and threatening to kill the dog he purchased for the victim. The offender determined what the victim could eat, where she went and with whom she could associate. The offender oscillated from mean and angry to a "nice guy". While in Calgary, the offender forced the victim to remain in a hotel room for four hours, servicing clients every half hour, to make up for the money she lost the night before.

**Mitigating factors:** The Court noted that there were few mitigating circumstances regarding the counts related to this victim.

**Aggravating factors:** The Court noted that offender's moral culpability was high due to his egregious treatment of the victim.

***R v Williams, 2014 ONCJ 425***

**5 years**

Williams received a global sentence of 5 years imprisonment for human trafficking (s 279.01).

**Ancillary orders:** SOIRA order for 20 years; mandatory weapons prohibition order for life (s 109); DNA order.

**Summary:** The offender was 23 years old with a criminal record, including convictions for robbery. He confined and exploited a 15-year old for his financial benefit. The offender preyed upon the victim while she was living in a foster home. He confined and compelled her to engage in the sex trade. Both counsel jointly submitted that a 5-year sentence would be appropriate.

**Mitigating factors:** Not discussed.

**Aggravating factors:** Not discussed.

***R v Byron, 2014 ONSC 990***

**6 years**

Byron received a global sentence of 6 years incarceration: living on the avails of prostitution (now repealed s 212(2.1)); trafficking in persons under the age of eighteen years (s 279.011(1)); receiving a material benefit from trafficking in persons (s 279.02);

assault (s 266); breaches of a recognizance (s 811 and s 145(3)). Charges under now repealed prostitution offences were stayed.

**Ancillary orders:** SOIRA order for 20 years (s 490.012(1) and s. 490.013(2)(b)); mandatory weapons prohibition order for 10 years (s 109(1)(a)); mandatory DNA order (s 487.051(2)); non-communication order (s 743.21).

**Summary:** The victim was a 17 year old living as a ward of the Children's Aid Society. She had a learning disability and was diagnosed with bipolar disorder and potential Fetal Alcohol Spectrum Disorder. The offender lured her from Windsor to Montreal on the premise that he desired a romantic relationship with her. In Montreal, the offender informed the victim that she belonged to him and would be working for him. The offender threatened and physically assaulted her when she tried to resist. For two months, the victim was forced to provide sexual services for money to over 100 men. The offender kept all the money, giving a small amount to the victim for food and clothes. If she refused to perform any sexual services or give the offender her money, the offender used force against her. The offender moved the victim around different cities including Montreal, Toronto, Barrie, and Ottawa.

**Mitigating factors:** The Court noted the following mitigating factors: the offender had a modest criminal record, having been convicted of possession of marijuana and failing to comply with an undertaking, had the support of family and a former girlfriend, and was only 21 years old at the time of the offences.

**Aggravating factors:** The Court noted numerous aggravating factors, including the following: the offender knew the victim was 17 years old, deliberately destroyed her identification, ignored conditions under a recognizance of bail, forced the victim to have sex with over 100 men while moving her across different cities and keeping the money she earned, required her to engage in increasingly risky sexual acts, posted semi-nude photos of the victim online as advertisements to sell her sexual services, which remain on the internet where they continually serve to victimize the victim; the victim was controlled through the use of force to continue providing sexual services and comply with the offender; the offender lied more than 25 times about his activities when interviewed by the police; and, after claiming that he had accepted responsibility for his conduct, the offender then accused the victim and the police of pursuing him on these charges as a form of revenge.

***R v McFarlane*, [2012] OJ No 6566**

**8 years and 9 months**

McFarlane received a global sentence of 8 years and 9 months: 8 years concurrent for two counts of kidnapping using a firearm and one count of trafficking in persons; and, 9 months consecutive for dangerous driving, with a 24-month driving prohibition.

**Ancillary orders:** DNA order; mandatory prohibition order for possession of any firearm, crossbow, restricted weapon, ammunition, explosive substance for 10 years, and weapons prohibition order for life (s 109); and, SOIRA order for life.

**Summary:** AC met the offender at a strip club where she was dancing and eventually started dating the offender. As the offender increasingly spent time at AC's residence, he duplicated a set of AC's keys without her knowledge and refused to return the new keys. He also started to date VV, another dancer at a strip club. When the offender confined both victims in a vehicle, he put his gun to AC's neck, pulled the trigger several times and told her that she must work for him by engaging in the sex trade or he would shoot her. AC agreed to work for his so that she would not be hurt. The offender controlled the two women through violence and threats of violence, including at gunpoint.

**Mitigating factors:** The Court noted the following mitigating factors: the guilty plea; the offender's remorsefulness and desire to turn his life around; the medical evidence concerning the offender's mental health and the influence that it had on the offence; and, the offender's recognition that he needs assistance and that he must be on medication.

**Aggravating factors:** The Court noted the following aggravating factors: the duration of the confinement; the victims were vulnerable individuals; the impact on the victims; the dangerous driving to avoid police in a residential neighbourhood; the offender's criminal record; his removing AC from her home; his use of a firearm; and, the physical violence and threats to use the gun and pulling the trigger with the gun to AC's neck.

***R v Domotor, Domotor, and Kolompar, [2012] OJ No 3630***  
**7 years (Domotor Sr.); 5 years (Domotor Jr.); Time served (Kolompar)**

Domotor Sr. received a global sentence of 7 years imprisonment: 108 months for human trafficking (s 279.01); an unspecified concurrent sentence for participating in a criminal organization (s 467.11); and 6 months concurrent for counselling misrepresentations that induced error in the administration of the IRPA.

Domotor Jr. received a global sentence of 5 years imprisonment: 60 months for human trafficking; an unspecified concurrent sentence for participating in a criminal organization; and 3 months concurrent for misrepresentation.

Kolompar received a sentence of time served for misrepresentation.

**Ancillary orders for Domotor Sr.:** firearms prohibition for 10 years (s 109); and, DNA order (s 487.051).

**Ancillary orders for Domotar Jr.:** firearms prohibitions for 10 years and DNA order.

**Summary:** The offenders were major players in a large family organization that carried out criminal activities in Hungary and Canada, including human trafficking, welfare frauds, thefts from mail, and fraudulent dealings with stolen cheques. The organization began trafficking victims from Hungary into Canada after visa requirements were lifted for Hungarian visitors. In total, 19 victims were brought into Canada by the organization. Once in Canada, the victims were required to live in the offenders' basements and work

for the offenders for little or no pay. The victims spoke no English, were taken to make false refugee claims and their social services benefits were taken by the offenders. The victims were taken to open bank accounts that only the offenders could access. The victims' families in Hungary were threatened and intimidated to withdraw complaints when charges were laid in Canada.

**Mitigating factors for Domotor Sr.:** The Court found the following mitigating factors: the guilty plea; and, the offender waived a preliminary hearing.

**Mitigating factors for Domotar Jr.:** The Court found the following mitigating factors: the guilty plea; the offender was in his late teens when the offences were committed, played a lesser role in the operation, was groomed by his father, and had no criminal record.

**Mitigating factor for Kolompar:** The Court found the following mitigating factor: the guilty plea.

**Aggravating factors for Domotor Sr.:** The Court found the following aggravating factors: the offender had a minor criminal record and groomed his son to follow in his footsteps; the offences were part of a premeditated criminal scheme, which lasted over a long period of time; the offences continued to be perpetrated even after the offender was arrested; the welfare fraud offences were a breach of society's trust; and, other members of the criminal organization threatened victims and their families in Hungary.

**Aggravating factors for Domotor Jr.:** Similar to those that applied to Domotor Sr.

**Aggravating factors for Kolompar:** Similar to those that applied to Domotor Sr.

***R v Nakpangi*, [2008] OJ No 6022**

**60 months**

Nakpangi received a global sentence of 60 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)); 6 months concurrent for the possession of a counterfeit mark (s 376(2)(b)).

**Ancillary orders:** None mentioned.

**Summary:** The 25 year-old offender became a "pimp" for the first victim when she was 15 years old. She worked in the sex trade almost daily and turned over a total of \$360,000 over three years until she contacted police. Over the course of the relationship, the offender threatened the victim and her family, assaulted her, and imposed an exit fee of \$100,000. The second victim was 14 years old and met the offender when she was a ward of child welfare. The offender acted as a "pimp" for her and she gave approximately \$65,000 in earnings to him.

**Mitigating factors:** The Court noted the following mitigating factor: the guilty plea.

**Aggravating factors:** The Court noted the following 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 using assaults, threats against her and her family, and the imposition of exit fees and showed little remorse or chance of rehabilitation; and, the victims were both young.

**R v St Vil, [2008] OJ No 6023**

**37 months**

St Vil received a global sentence of 37 months imprisonment: trafficking in persons (s 279.01) and living on the avails of prostitution (s 212(1)(j)).

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

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

**Mitigating factors:** The Court noted the following mitigating factors: the offender entered a guilty plea and demonstrated a strong potential for rehabilitation.

**Aggravating factors:** The Court noted the following aggravating factors: there was domestic violence in the relationship; and the offence was serious and must have had a serious impact on the victim (no victim impact statement was adduced).