



Canadian Council for Refugees
Conseil canadien pour les réfugiés

Human Trafficking and the Law

How to Protect Trafficked Persons

A GUIDE FOR LEGAL PRACTITIONERS

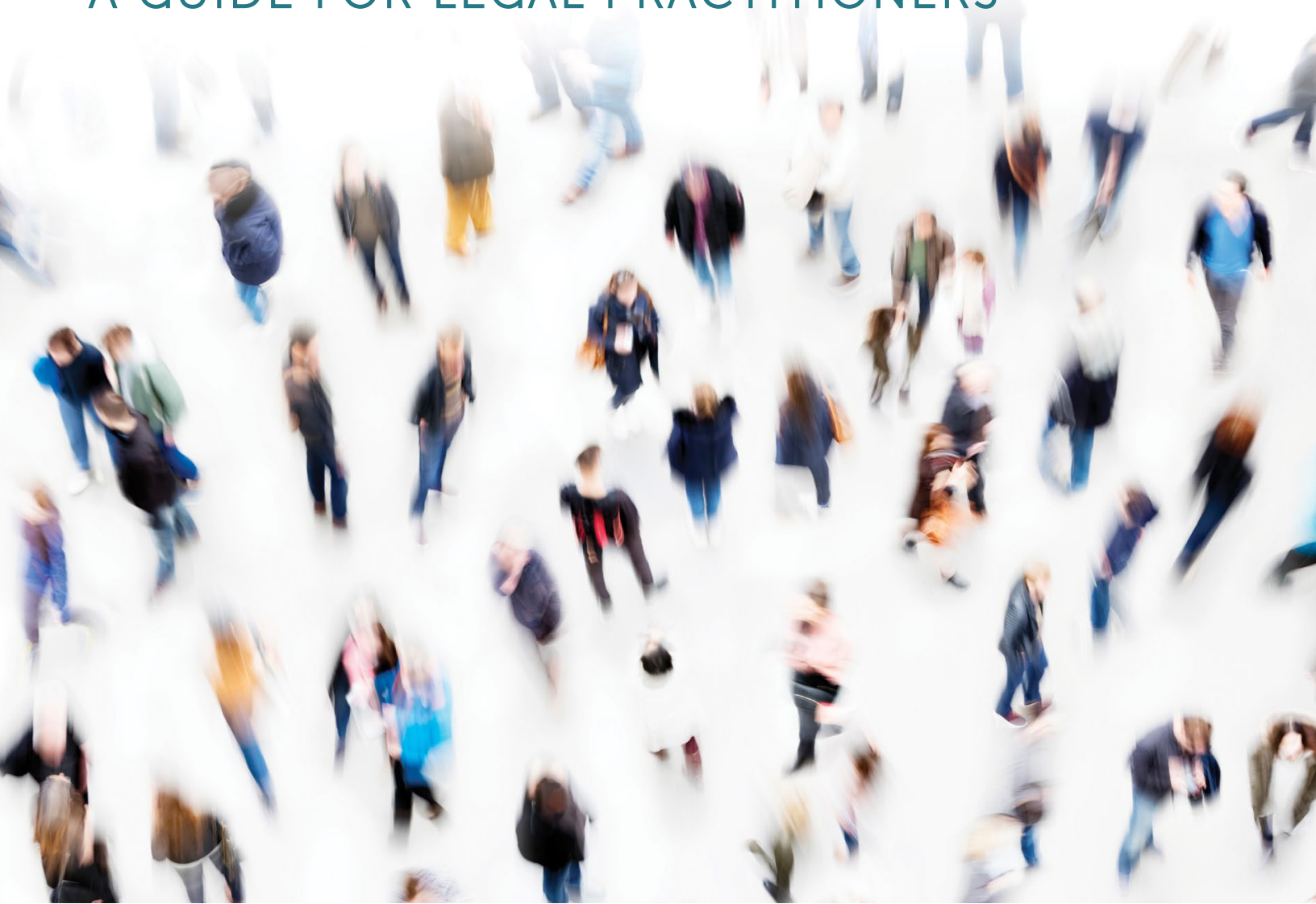


Table of Contents

Why read this guide?	3
SECTION 1 The face of human trafficking	3
1. What is Human Trafficking?	3
SECTION 2 Impacts and recourses under the law	7
1. Trafficking and Canadian Law	7
2. Legal Remedies	9
3. Canadian Human Trafficking Cases	15
SECTION 3 Professional best practices and collaborations	18
1. Trauma-informed relationships with survivors of trafficking, and those potentially trafficked	18
2. Collaborating with organizations in the community	20

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Why read this guide?

Since 2003, the Canadian Council for Refugees (CCR) has provided leadership and support at a national level for NGOs concerned about trafficked non-citizens, including women, girls, as well as other vulnerable communities in Canada. CCR's main anti-trafficking activities include creating and maintaining a national network, hosting regular national meetings, developing policy analysis and practical tools for service providers, and engaging with the government about access to protection for trafficked persons.

In the course of its work, the CCR has identified challenges in access to justice for trafficked and potentially trafficked persons. The intention of this guide is to increase the capacity of lawyers to identify and respond to the needs of trafficked or potentially trafficked persons.

The information in this guide will help legal practitioners, especially immigration and refugee lawyers to:

- Recognize the signs of human trafficking
- Understand the provisions against human trafficking in Canadian law and the various legal remedies for supporting trafficking survivors
- Understand best practices for respecting professional ethics

SECTION 1 | The face of human trafficking

1. What is Human Trafficking?

In keeping with the United Nations definition,¹ human trafficking involves an action taken through various means for the purpose of exploiting a person. Yet this is not always so clear cut in practice since exploitation can take many forms and interacts with various psychosocial factors. In fact, thinking around trafficking has

THE SPECTRUM OF EXPLOITATION



¹ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Crime*, 15 November 2000 (also known as the Palermo Protocol).

evolved over the last decade and at the CCR we understand trafficking along a spectrum of exploitation, with varying gradations of exploitation. These gradations can occur concurrently, at different times, and may not necessarily follow a linear path. For example, someone facing labour law violations may return to decent work only to find themselves facing human rights violations at another point in time.

How does it happen?

How does a person end up at the trafficking end of the spectrum?

Key elements of trafficking

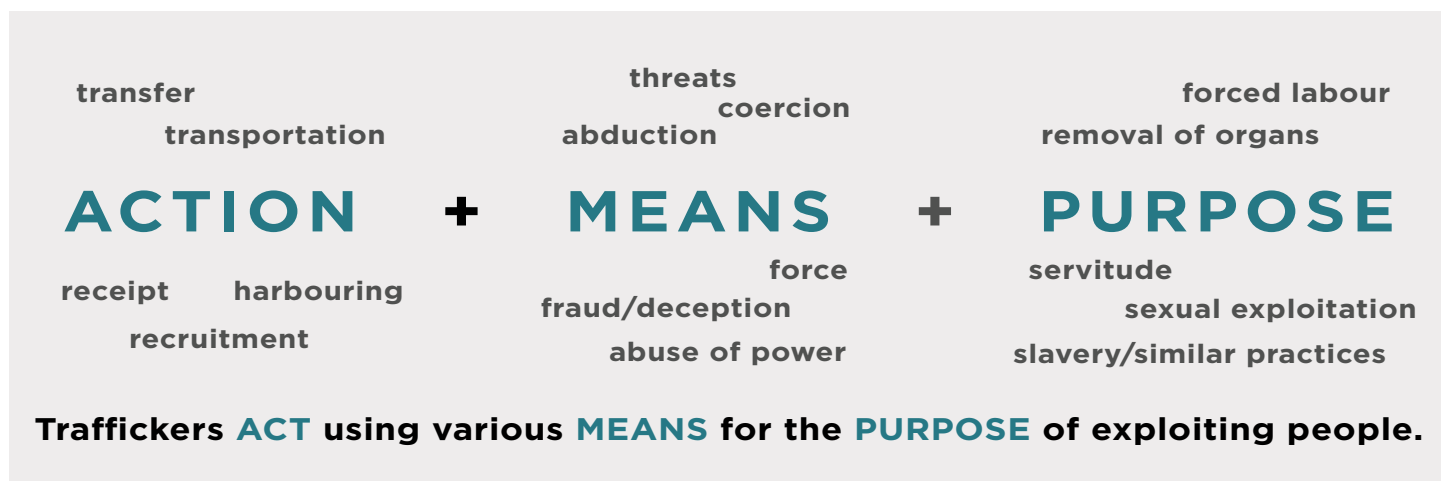
Reiterating the earlier definition, trafficking in persons can be identified by the combination of **three factors**.

Action (*what*): the act used to place a person in a situation with a trafficker.

Means (*how*): the strategies used to keep the person with the trafficker; those strategies are based on the person's vulnerabilities.

Purpose (*why*): the exploitation of the person through some type of work or activity.

Here is a closer look at each element of trafficking²:



The many faces of trafficking

Under “purpose”, you will see that trafficking can take many forms.

- sexual exploitation (can also be considered forced labour)
- forced labour
- forced marriage
- organ removal
- servitude

Exploitation is at the heart of every human trafficking situation.

All forms of trafficking:

- Exploit people for another person's gain
- Exploit vulnerable people
- Impact people who are above all human beings with their own stories (not simply victims with no agency)

Who is the most vulnerable and why?

The causes of trafficking are rooted in social and economic inequalities, as well as political instability. Evidence suggests that various interacting psychosocial factors can make a person vulnerable to trafficking. Some of these factors include: language barriers, developmental deficits, social isolation, history of abuse, drug addictions, socio-economic conditions and immigration status. These factors also interact with gender.

For example:

- In sex trafficking – if a girl has a drug addiction, issues at home or is already isolated, the trafficker will manipulate those weaknesses to control the girl.
- In labour trafficking – almost all labour trafficking involves migrants, usually from developing countries – the trafficker usually manipulates the economic vulnerability of the migrant.³

Human trafficking versus human smuggling

Trafficking in persons is sometimes confused with migrant smuggling. These two are distinct in terms of the location of the act, consent and liberty of the individual, and source of profits from the act.

TABLE 1: SMUGGLING AND HUMAN TRAFFICKING

SMUGGLING	TRAFFICKING
○ Human smuggling is, by definition, a transnational crime.	○ Trafficking in persons is not necessarily transnational; it also occurs domestically.
○ Smuggling generally involves the consent of the person smuggled.	○ A trafficked person has not consented, or their consent is rendered meaningless by the improper means used by the trafficker.
○ A smuggled person is free to do what they want once they arrive at their country of destination.	○ A trafficked person's freedom is restricted and they are forced to provide labour services.
○ The source of profit for human smuggling is the fee associated with the smuggling act.	○ Profits are made through the ongoing exploitation of the victims.

³ Thinking Outside the Box: Developing Case Law on Trafficking, CCR Webinar, Presented by Michelle Ferguson, Federal Crown Prosecutor: ccrweb.ca/en/webinar-case-law-trafficking

“Smuggling is a contract and the profit for the smuggler is the fee for smuggling... the profit for the trafficker is the ongoing exploitation of the person.”

— Shelley Gilbert, Legal Assistance of Windsor

While trafficking and smuggling are different, it is possible for a migrant who is being smuggled to become trafficked if any of the **means** within the trafficking definition come into play and if they are **exploited**.

How can you identify human trafficking?

There are many things that indicate that someone has been exploited and potentially trafficked. In 2015, the CCR developed a **National Human Trafficking Assessment Tool** with indicators related to each of the key elements of trafficking: an **action** undertaken through coercive **means** for the **purpose** of exploitation.

The guide begins with three key **pre-assessment** questions. The answers to these questions will provide clues on whether to proceed with a full assessment to determine the probability of trafficking:

1. Was your client misled or lied to about a better job/situation than they have?
 - Are their working conditions unreasonable? Are they unable to leave without fear of retaliation?
2. Are their living conditions unreasonable, are they isolated or are their movements being controlled?
3. Are their money, finances, identity or travel documents out of their control?
4. In their current situation, have they been pressured or forced into doing something that they did not want to do for the profit of someone else, or to remain in a living/working situation they didn't want to be a part of?

The assessment tool can be found at ccrweb.ca/en/national-human-trafficking-assessment-tool-full

International and domestic trafficking

According to the Trafficking in Persons Report (U.S. Secretary of State)⁴, all countries are places of origin, transit or destination for trafficking in persons. Canada is considered a **source, transit, and destination country** for men, women, and children subjected to sex trafficking, and a **destination** country for men and women subjected to forced labor.

Research suggests that documented cases of sex trafficking in Canada largely involve Canadian-born women. On the other hand, labour trafficking overwhelmingly involves foreign-born people, all with precarious immigration status⁵.

4 2017 Trafficking in Persons Report, U.S. Department of State

5 The Intersection of Exploitation and Coercion in Cases of Canadian Labour Trafficking, Beatson, Hanley et al

SECTION 2 | Impacts and recourses under the law

There are many things a legal practitioner needs to consider in order to determine what comes next for someone who may fit the trafficking criteria.

- What legal remedies are available to them under the Immigration and Refugee Protection Act (IRPA) or the Criminal Code?
- Are there any other relevant laws that apply?
- What legal strategies can be used to protect the rights of trafficked and potentially trafficked persons?

1. Trafficking and Canadian Law

In Canadian law, human trafficking offences are found under both criminal legislation (Criminal Code) and immigration legislation (Immigration and Refugee Protection Act - IRPA).

What's the difference?

Criminal Code human trafficking charges can be for either domestic or international trafficking – these charges are prosecuted by the **Province**.

IRPA human trafficking charges require the survivor to have crossed the border (“entered Canada”). These are **federal charges**.

Overview of the Trafficking Offences under the Criminal Code

The Criminal Code of Canada (Criminal Code) contains tools to hold traffickers accountable and includes various indictable offences to address human trafficking, namely:

TRAFFICKING IN PERSONS

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

EXPLOITATION

279.04 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.

Factors in determining exploitation

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

- used or threatened to use force or another form of coercion;
- used deception; or
- abused a position of trust, power or authority.

However, many other Criminal Code offences can also apply to human trafficking cases depending on the facts and circumstances of the case. They include:

- Kidnapping
- Forcible confinement
- Uttering threats
- Extortion
- Assault
- Sexual assault
- Aggravated sexual assault
- Prostitution-related offences
- Criminal organization offences

Overview of the IRPA Offences

The Immigration and Refugee Protection Act (IRPA) has included human trafficking as a federal offence since 2002. **Section 118** of IRPA makes it an offence to use abduction, fraud, deception or the use or threat of force or coercion to organize bringing people into Canada. This includes recruiting and transporting people, as well as receiving and harbouring them in Canada. The offence carries a maximum penalty of a fine of up to \$1 million and/or up to life imprisonment.

Other offences under IRPA that can apply to human trafficking cases include:

- s. 117 – human smuggling
- s. 122 – passport offences
- s. 124(a) – “catch-all” offence – any breach of the Act or Regulations
- s. 124(c) – employing a foreign national without authorization
- s. 126 and 127 – counselling misrepresentation, and misrepresentation
- s. 129 – offences related to officers
- s. 131 – counselling/aiding and abetting another to breach the Act

Prosecutions in Canada

In order for charges to be laid under the trafficking sections of the Criminal Code, the person must fear for their safety or their lives. Yet the “fear for safety” requirement in determining exploitation has been criticized for being too narrow. Traffickers do not always directly threaten the safety of a person or their families. Rather, they often threaten deportation of victims and their families, use debt bondage or other forms of direct and indirect coercion to force people to work.⁶ Also, according to the Ontario Women’s Justice Network, trafficking survivors are often “not afraid for their safety because they are not fully aware of their situation at first, or they may become attached to their traffickers because of psychological manipulation.” These factors create barriers to laying trafficking charges in the Criminal Code.

According to the RCMP Human Trafficking National Coordination Centre (HTNC)⁷, as of January 2017, there have been 115 cases that resulted in human trafficking specific and/or related convictions. There has only been one conviction under section 118 of the IRPA (it occurred in June 2013).

Additional resources

For a summary of Canadian legislation on trafficking in persons, see:

- Government of Canada Department of Justice: bit.ly/2uTPE9h
- Department of Public Safety and Emergency Preparedness: bit.ly/2Gylpux

2. Legal Remedies

Based on the facts of the case, prescriptions in the law, and the wishes of the survivor, legal practitioners will need to consider whether to seek protection, restitution or both.

Temporary Protection and Permanent Immigration Pathways for Trafficked Persons

Often, people who have been labour trafficked face immigration challenges. They may be undocumented, or they may have breached different provisions of IRPA – such as misrepresentation or unauthorized work. For example, they may have entered Canada legally under the Temporary Foreign Worker Program (TFWP) but later lost status due to being forced to perform work in violation of their work permit.

If a person who is trafficked or potentially trafficked seeks protection from immigration enforcement, what recourses are currently available under Canadian law as temporary or permanent measures of protection?

⁶ The Intersection of Exploitation and Coercion in Cases of Canadian Labour Trafficking, Beatson, Hanley et al; The Law and Human Trafficking in Canada, Ontario Women’s Justice Network

⁷ RCMP Human Trafficking Coordination Centre

Temporary Pathways

Open Work Permit for Vulnerable Workers

This remedy is available to migrant workers who hold an employer-specific work permit, and to those who don't need a work permit under IRPA. A new open work permit may be granted if the employer has not complied with federal or provincial laws thereby putting the worker at risk of abuse, or already resulting in abuse to the migrant worker (physical, psychological, sexual, financial). This permit is not focused on trafficking but rather on exploitation or abuse.

Victims of Trafficking in Persons – Temporary Residence Permit (VTIP TRP)

The TRP is the only available federal tool for protection of internationally trafficked persons in Canada. A person without legal immigration status in Canada may apply to Immigration, Refugees and Citizenship Canada (IRCC) for a TRP. Ministerial guidelines have been issued that direct that TRPs be issued to persons who may be victims of trafficking.

Permanent Pathways

TRP – Permit Holder Class

If a person is successful with a TRP application and holds that TRP for 5 years as a continuous resident in Canada, they can apply for permanent residence under the Permit Holder Class.

Applications on Humanitarian and Compassionate (H&C) grounds

Applications for permanent residence on H&C grounds (IRPA section 25) don't specifically address trafficking. However, officers have broad discretion and must consider unique or exceptional circumstances which trafficking might fall under.

Refugee claims

The key to a refugee claim is the need to establish fear of persecution or need for protection in relation to the country of origin.

Each remedy needs to be considered in relation to its specific factors and challenges. The following table provides a brief overview of these remedies, factors for consideration and possible challenges.

TABLE 2: TEMPORARY PROTECTION & PERMANENT IMMIGRATION PATHWAYS FOR TRAFFICKED PERSONS

REMEDIES FOR PROTECTION	FACTORS	CHALLENGES
Open Work Permits for Vulnerable Workers	<ul style="list-style-type: none"> Open work permit (up to 12 months) Need evidence of abuse or risk of abuse to determine reasonable grounds 	<ul style="list-style-type: none"> Limited to those who hold a valid work permit Short duration Not available to family members Workers not able to leave the country
Victims of Trafficking in Persons - Temporary Resident Permits (VTIP TRPs)	<ul style="list-style-type: none"> Short-term TRP (up to 180 days) Holder can access: <ul style="list-style-type: none"> Interim Federal Health Open work permit Social assistance Longer-term or subsequent TRP 	<ul style="list-style-type: none"> Highly discretionary Evidentiary burden Officers reluctant to issue Short duration Not available to family members
TRP - Permit Holder Class	TRP holders can apply for permanent residence after 5 years of continuous residence in Canada as a TRP holder.	<ul style="list-style-type: none"> Relies upon issuance of subsequent TRPs for 5 years No break in continuity permitted No concurrent processing for family members
Permanent Residence on Humanitarian and Compassionate Grounds	<p>Discretionary pathway to permanent residence. Factors considered may include:</p> <ul style="list-style-type: none"> Establishment and ties to Canada The best interests of any children affected Adverse conditions in country of origin Family violence considerations Health considerations Consequences of separation of relatives Any unique or exceptional circumstances, etc.⁸ 	<ul style="list-style-type: none"> While awaiting a decision, the applicant has no status and may not have access to work permit, health care, or social assistance Lengthy processing time Highly discretionary No specific reference to trafficking as a factor to consider No concurrent processing for family members outside Canada
Refugee Claims	<p>Need to establish fear of persecution or need for protection in relation to the country of origin. Claimant can access:</p> <ul style="list-style-type: none"> Interim Federal Health Work permit Social assistance If claim is successful, can apply for permanent residence, with concurrent processing of family members 	<ul style="list-style-type: none"> Experience of rights abuses in Canada is not directly relevant: claim must be against country of origin If claim is eligible, need to go for hearing at Immigration Refugee Board (IRB), which can be a stressful process for people living with trauma

8 See IRCC guidelines for humanitarian and compassionate consideration

Temporary protection is difficult to access

As noted earlier, the only national tool available for the temporary protection of internationally trafficked persons in Canada (the Temporary Resident Permit) is highly discretionary and requires a high evidentiary burden. Very few TRPs are issued annually. According to the information provided by IRCC’s Operations Performance Branch, in the period 2011–2015, between 5 and 22 new TRPs were issued per year. These numbers seem particularly low considering that Canada has been identified as a destination country for trafficking, and some 80,000 Temporary Foreign Workers enter Canada every year.⁹

TABLE 3: TRPs ISSUED TO HUMAN TRAFFICKING SURVIVORS

TRPs ISSUED TO VICTIMS OF HUMAN TRAFFICKING				
Year	TRPs Issued	New TRPs	Subsequent TRPs	Victims
2011	57	5	52	55
2012	28	15	13	27
2013	36	22	14	29
2014	34	10	24	31
2015	44	19	25	32

Source: *Evaluation of Temporary Residence Permits*, IRCC, November 2016

For more information, see: [CCR, Limits to Protection for Trafficked Persons](#)

Spectrum of Exploitation and Legal Remedies to Access Justice for Trafficked Persons

Different legal remedies are available depending on the gradations of exploitation a person has experienced. Legal practitioners need to determine whether there is a case for human trafficking under the Criminal Code, or IRPA or whether to seek remedies under labour law, human rights law, or even a combination of approaches.

THERE ARE VARIOUS FACTORS TO CONSIDER WHEN DECIDING ON A LEGAL STRATEGY FOR REPARATIONS:

- **Prescription period:** what are the timelines to file recourses? For example, in British Columbia, there is a six-month window to file under the Employment Standards Act; there is a two-year window in small claims court.
- **Evidentiary burden:** how high is the threshold of evidence needed to pursue a particular remedy? In general, the burden is less onerous for non-criminal remedies.
- **Time required:** how long will it take to complete the legal process? In general, criminal and court processes take longer than administrative processes.

⁹ Temporary Residents: Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) Work Permit Holders – Monthly IRCC Updates

- **Impact on survivor:** what is the psychosocial burden? Are there any concerns for physical safety? In particular, it is important to evaluate the risk of a criminal law approach. People with precarious status may be at risk of arrest, being detained and deported if they come forward to file a police report. A legal practitioner should also consider whether a trafficked person needs to testify in court, and how this may impact the survivor.
- **Outcome:** what is the expected outcome of the remedy? Will the remedy lead to sanctions, redress, damages, prosecution? Is it also a means to support an immigration claim?

TYPES OF REMEDIES:

- Labour violations may include breaches of occupational health and safety laws, employment standards, or employment contracts. **Labour complaints** may be filed with the respective law enforcement authority. Generally, labour laws are under the jurisdiction of the provinces with some exceptions. For example, some categories of employees are regulated by federal labour laws, such as long-haul truck drivers. If complaints are filed, it can often be effective to attach the complaint to an immigration application as evidence of exploitation.
- A **human rights complaint** may be appropriate in cases where there has been discrimination against an employee on one of the enumerated grounds.
- There may be **criminal code violations**. In trafficking cases, it is common to see employers hold the trafficked person's passport, threaten the employee or use fraudulent recruitment.
- In identified cases of human trafficking, the **human trafficking offences** may be appropriate, as well as some related criminal offences.

The table on the following page provides an overview of different remedies for violations along the spectrum of exploitation, and the possible outcomes of these remedies.

“If we do find that there is a situation of coercion in addition to exploitation, we focus on attempting to empower that client with information and choices.”

– Vincent Wong, Chinese and Southeast Asian Legal Clinic

TABLE 4: LEGAL REMEDIES ALONG THE SPECTRUM OF EXPLOITATION

	VIOLATION	LEGAL REMEDIES AND POSSIBLE OUTCOMES
Labour violations	<p>Worker safety violations: Unsafe working conditions (e.g. dangerous work conditions, exposure to violence, sexual harassment or exploitation)</p> <p>Employment violations: Unjust working conditions (e.g. excessive hours, pay below minimum wage, lack of vacation, lack of privacy, discrimination)</p>	<ul style="list-style-type: none"> File labour standards complaint Direct action such as pressuring employer can sometimes be very effective May call for labour justice response Remedy will depend on provincial legislation <p>Outcome</p> <ul style="list-style-type: none"> May lead to civil or administrative sanctions and redress May support immigration claims Follow-up on direct action to prevent further abuses (is other direct action required?)
	<ul style="list-style-type: none"> Discrimination or harassment based on the codes' grounds (e.g. firing for pregnancy, bathrooms/housing based on race or country of origin) Unequal treatment (e.g. racism, sexual harassment) 	<ul style="list-style-type: none"> File human rights complaint, usually at Human Rights Commission (not all provinces have Commissions) May lead to Human Rights Tribunal response <p>Outcome</p> <ul style="list-style-type: none"> May lead to civil or administrative sanctions and redress May lead to ensuring equal treatment May support immigration claims
Criminal code violations	<ul style="list-style-type: none"> Taking of passport/identification – s. 279.03(1) Fraud - s. 380(1) Extortion – s. 346(1) Workplace violence/harassment – s. 217.1 (duty of persons directing work) Threats – s. 425.1(1) 	<ul style="list-style-type: none"> Usually calls for a criminal justice response <p>Outcome</p> <ul style="list-style-type: none"> Damages Prosecution May support immigration claims
	<p>Indicators of exploitation and coercion:</p> <ul style="list-style-type: none"> Punishment - s. 279.04(2)(a) Threats (of deportation, risk to families) – s. 425.1(1) Degrading working conditions No remuneration (and other forms of financial control) Restricted movement (physical control) Forced prostitution – s. 286.1 Withholding documents (administrative control) - s. 279.03 Psychological control (creating emotional dependence) - s. 279.04(2)(c) All sex workers under 18 are considered trafficked – s. 286.1(2) <p>Coercion can be direct (as indicated above) and indirect (systemic coercion as a result of policy or law).</p>	<ul style="list-style-type: none"> Calls for a criminal justice response Calls for IRPA response <p>Outcome</p> <ul style="list-style-type: none"> Damages Prosecution May support immigration claims
Human trafficking		

3. Canadian Human Trafficking Cases

“With labour trafficking we have to think outside of the box, start challenging perceptions and find ways within the existing legislation and investigative techniques to tackle the problem.”

— Michelle Ferguson, Edmonton Crown Prosecutor

According to the Human Trafficking National Coordination Centre (HTNCC), there have been 115 human-trafficking convictions under the Criminal Code of Canada, and one conviction of human trafficking under the Immigration and Refugee Protection Act. Most prosecutions in Canada under the Criminal Code are for domestic sex trafficking.

What can we learn about human trafficking from looking at cases tried under the Criminal Code, IRPA, or other Canadian laws? On the following page are four notable cases that resulted in convictions, either under the Criminal Code, IRPA or from provincial human rights tribunals. Each case is significant in terms of developing jurisprudence, and in providing insight into why the legal strategies pursued in each case were successful.

TABLE 5: FOUR KEY HUMAN TRAFFICKING CASES

CC OR IRPA CASES	OUTCOMES ANALYSIS
<p>R. V. DOMOTOR – ONTARIO</p> <p>Father, mother, and son team pleaded guilty to human trafficking in 2012 under s. 279.01(1) of the Criminal Code (also guilty of welfare fraud offence and counseling misrepresentation under IRPA (article 126, 172 under IRPA)).</p> <p>Individuals were recruited in Hungary to come to Canada and work for Domotor’s construction company (promised monthly salary and various benefits). Victims and their families were threatened in Hungary.</p> <p>Once in Canada, they were forced to work and were not paid, and they lived in basements of the co-conspirators. They were coached to mislead immigration officials (make false refugee claims in Canada, indicate that they would be working) and to open Canadian bank accounts. Bank documentation was taken by the co-conspirators. Social services benefits were deposited into these bank accounts, and the co-conspirators would then have access to the funds. In total, 19 victims were brought to Canada by this organization. Domotor was physically violent with some of the victims.</p>	<p>Successful conviction under the Criminal Code, section 279.01, therefore useful to see how section 279.01 is interpreted.</p> <p>Only successful labour trafficking conviction in Canada to date.</p> <p>Lengthy jail sentences imposed as a means to denounce and deter abuse of Canada’s immigration laws (there was no visa requirement for Hungarian nationals at the time).</p> <p>No talk of assisting the victims of these crimes. No restitution ordered to any of the 19 victims – except to the City of Hamilton.</p>
<p>R. V. MORRIS (2016, ABQB)</p> <p>Morris was charged with trafficking under IRPA (section 118) but entered a guilty plea to s.127b under IRPA, which was knowingly inducing immigration to Canada by false or misleading information.</p> <p>Facts: Three workers came into Canada under the Temporary Foreign Worker Program (TFWP). They were promised jobs as light duty cleaners, promised a certain wage and certain hours per week with time off. They came to Canada legally.</p> <p>Reality: Once here they were paid \$2 less per hour, paid even less (\$4/hr) for over time, worked excessive hours and had to pay back the plane fare and a “recruitment fee” to the employer of \$3000.</p> <p>In addition to these workers, Morris was charged in a separate count with employment of foreign nationals without authorization under IRPA. 68 workers – mostly on visitor status in Canada – had been promised legitimate working status if they would just ... work long hours, work for less, pay a fee, etc.</p> <p>Outcome: 2.5 years jail on the three workers and 18 months on the other workers. Crown Prosecutor had wanted 3-4 years (5 year maximum on that count). Restitution of \$22,000.</p>	<p>Crown wanted to go ahead with section 118 but went with s. 127b in order to get a conviction (lower evidentiary burden for this charge). It is difficult to meet conditions of s. 118, especially the exploitation criteria.</p> <p>Judge stated that whether someone is brought in by deception under the human trafficking charge or brought in by false or misleading information, the resulting exploitation was the same.</p> <p>Survivors received restitution.</p>

HUMAN RIGHTS CASES

O.P.T.V. PRESTEVE FOODS LTD., 2015 HRTO 675

The **Ontario Human Rights Tribunal** found that two migrant workers from Mexico had been discriminated against in their employment due to sex, sexual harassment, sexual solicitations and advances, and reprisal, which together created a sexually poisoned work environment. The workers were awarded \$150,000 and \$100,000 for injury to dignity, feelings and self-respect, as well as a declaration of the violation of their rights, and a public interest order requiring Presteve to provide all employees under the TFWP with human rights information and training in their native language.

PN V. FR AND ANOTHER (NO. 2), 2015 BCHRT 60 (CANLII)

The **British Columbia Human Rights Tribunal** awarded to PN, an ex-nanny who was isolated, underfed, and forced to perform sex acts, more than \$50,000 in damages as compensation for injury to dignity, feelings, and self-respect, contrary to **s. 13 BC Human Rights Code**, as well as \$5,867 for lost wages, ruling that the adverse impact of the sexual harassment and discriminatory conduct was so severe that an award at a “high level” was warranted.

Was brought to Canada by her employers in Hong Kong (unknowingly) under a visitor’s visa. The controlling ill-treatment and sexual assault continued and her mental state worsened to the point that she decided to escape. The RCMP did not force her to return to the family and she eventually ended at up at a shelter supporting victims of trafficking.

OUTCOMES ANALYSIS

The Tribunal Member stated that the seriousness of the Respondent’s conduct was unprecedented in terms of the Tribunal’s previous decisions, and that a substantial award was justified on the basis of the complainant’s particular vulnerabilities as migrant workers.

Demonstrates that indicators of human trafficking can lend themselves to other remedies such as human rights recourses.

Demonstrates the usefulness of thinking out of the box when it comes to remedies. Evidence under the Criminal Code must demonstrate proof beyond a reasonable doubt. Under human rights legislation, evidence is weighed against a balance of probabilities. In other words, there is a lower evidentiary threshold required under human rights law; therefore it is somewhat easier to get a conviction.

Objective of judgement is reparations: calculation of award \$50,000 and lost wages is significant (past sexual assault cases total ~15-30k with historic high of 70k).

This case clearly meets the criteria for human rights legislation: 1) it touches on characteristics protected from discrimination 2) demonstrates the adverse impact of discrimination 3) demonstrates a linkage between the two criteria

It is significant to note that Human Rights Tribunal made a positive judgment despite the following:

- the RCMP deemed that this was not a human trafficking case
- the CBSA held the same opinion
- the person had no outstanding claims for lost wages filed at the local labour commission
- the survivor didn’t reveal right away that she was a victim of sexual assault

Despite all of these circumstances, the Human Rights Tribunal took the time to look at the bona fides of the claim. As a result of this outcome, it was easier to pursue remedies for protection (TRP and later a Humanitarian and Compassionate application).

SECTION 3 | Professional best practices and collaborations

Working with people who have experienced varying degrees of exploitation is challenging. This means that lawyers working on suspected trafficking cases must acquire other skills and tools in addition to developing a good understanding of trafficking provisions in Canadian law, pathways to permanent protection and legal remedies for restitution.

Immigration and refugee lawyers across Canada consulted by the CCR identified the following top two needs and best practices:

1. Establishing trauma-informed client-lawyer relationships, including interviewing best practices
2. Using a collaborative approach with community stakeholders to facilitate case building

1. Trauma-informed relationships with survivors of trafficking, and those potentially trafficked

What is trauma?

A traumatic event involves a single experience, or enduring repeated or multiple experiences, that completely overwhelm the individual's ability to cope or integrate the ideas and emotions involved in that experience.

Recent research has revealed that psychological and emotional trauma can result from such common occurrences as an auto accident, sudden job loss, relationship loss, a humiliating or deeply disappointing circumstance, the discovery of a life-threatening illness or disabling condition, or other similar situations.

Traumatizing events can take a serious emotional toll on those involved, even if the event did not cause physical damage. This can have a profound impact on the individual's identity, resulting in negative effects in mind, body, soul and spirit.

Source: Trauma-informed, The Trauma Toolkit, Second Edition 2013, Klinik Community Health Centre

What does a trauma-informed practice look like?

The following page lists a summary of the principles of trauma-informed practices, and best practices around intake and assessment processes. These are complemented by additional best practices documented in the CCR needs assessment with immigration and refugee lawyers.

TRAUMA-INFORMED PRACTICE AND LEGAL RESOURCES FOR SERVICE PROVIDERS

- Trauma-Informed Law: traumainformedlaw.org/resources/
- Trauma-Informed Practice, a presentation by Shelley Gilbert: bit.ly/2DjCMNR
- Establishing a Trauma-Informed Lawyer-Client Relationship: bit.ly/2B74SKh
- Migrant and Asian Sex Workers Network, Legal Resources for Service Providers: butterflysw.org/legal-information-for-services-prov

A 101 ON TRAUMA-INFORMED SERVICES:

- Embed an understanding of trauma in all aspects of service provision
- Place priority on trauma survivor's safety, choice and control
- Create a client-lawyer relationship based on nonviolence, learning, and collaboration

4 PRINCIPLES OF TRAUMA INFORMED PRACTICE

- Trauma awareness
- Emphasis on safety and trustworthiness
- Opportunities for choice, collaboration and connection
- Strengths based and skill building

TRAUMA-INFORMED PRACTICE CAN BE SEEN IN FLEXIBLE INTAKE AND ASSESSMENT PROCESSES THAT¹⁰:

- Create safety (including cultural safety)
- Engage – establish a therapeutic relationship
- Do not “press for compliance”
- Screen for present concerns
- Normalize client experience(s)
- Set boundaries
- Identify symptoms
- Provide clear, practical information at initial contacts about what to expect, choices for being contacted and rationale for processes
- Provide opportunities for questions
- Respond to people who arrive in distress

ADDITIONAL BEST PRACTICES FOR IMMIGRATION AND REFUGEE LAWYERS

- Ensure option for anonymous and confidential service
- Understand that intake questions with respect to occupation and income often can isolate migrant workers and survivors of trafficking
- Ask open-ended, non-judgmental questions
- Ensure that no actions are taken without the client's informed and explicit consent and that they know the limits of the service you can provide
- Understand their realities and needs as they describe them to you, analyze the situation from a rights-based approach and anti-oppression approach
- Respect and recognize the client's autonomy and value
- Understand potential risks of disclosure of status/work as well as stigma in the case of sex work
- Introduce information and resources that you think are relevant and useful to them
- Understand and identify potential intersecting issues such as language, legal systems, immigration status, finances, health, safety, racism, sexism, and family
- Work to provide practical and helpful options that can be assessed by the client

2. Collaborating with organizations in the community

Legal processes may take a long time to complete but trafficked and potentially trafficked persons have immediate needs. For this reason, providing legal support to trafficked and potentially trafficked persons requires a collaborative effort between community groups, public service organizations and advocates. Legal practitioners would benefit from doing a scan of their community to determine the role of each organization in the trafficking response, and to have a clear understanding of how to access the specific service. Some organizations create community response protocols as a way of responding to trafficking cases systematically.

Organizations to contact include:

- community-based health and social services, including immigrant and refugee serving organizations
- public health and social services
- crisis supports and shelters
- law enforcement and protection services
- fire department
- advocacy groups

Don't know where to start?

CONTACTS BY PROVINCE IF YOU SUSPECT YOUR CLIENT HAS BEEN TRAFFICKED

BRITISH COLUMBIA	ONTARIO
B.C. Office to Combat Trafficking in Persons 1 (888) 712-7974 gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking	Ottawa Coalition to End Human Trafficking Case management services (9am-4pm): (613) 769-6531 After hours consult: endhumantrafficking.ca/important-numbers
ALBERTA	Toronto Human Trafficking Help Line (416) 597-8808
ACT Alberta (780) 474-1104 actalberta.org	London and Middlesex County Area CATI (Coalition Assisting Trafficked Individuals) catilondon.ca
MANITOBA	Windsor Essex County Windsor Essex Anti-Human Trafficking Action Group (WEFIGHT) Business Hours: (519) 256-7831 wefight.ca Victims Services (after hours): (519) 723-2711
Manitoba's Human Trafficking Hotline (24/7 toll-free): 1 (844) 333-2211	
QUEBEC	
Coalition québécoise contre la traite humaine 438-380-6856 cathii.org/node/83	
PRINCE EDWARD ISLAND	NOVA SCOTIA
Consult Prince Edward Island Human Trafficking Response Guide: bit.ly/1igRtGm	YWCA Nova Scotia Trafficking Elimination Partnership ywcahalifax.com/advocacy/

For more information:

trafficking.ca | ccrweb.ca



Canadian Council for Refugees
Conseil canadien pour les réfugiés