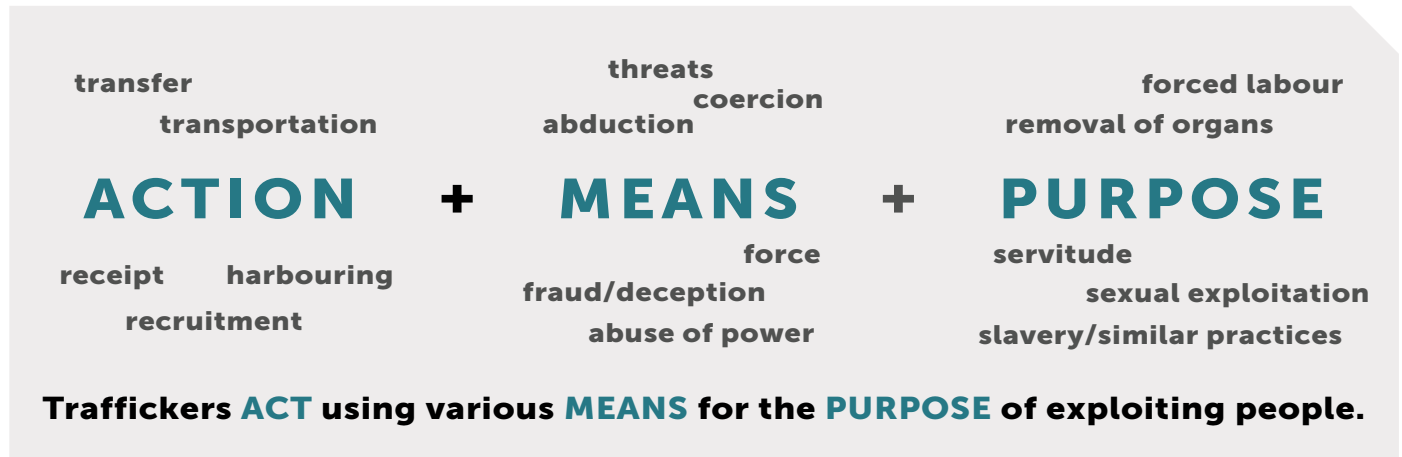


Key Elements of Trafficking



Seeking protection

Many people in trafficking situations, such as forced labour, face immigration challenges. They may be undocumented, or they may have breached provisions of the Immigration and Refugee Protection Act (IRPA) – through misrepresentation or unauthorized work.

If a person who is trafficked, or potentially trafficked, seeks temporary or permanent protection from immigration enforcement, what recourses are available under Canadian law? What challenges come with these pathways?

“In a domestic worker trafficking case, I used the credibility of the RCMP to enhance a Canada Border Services Agency and Immigration, Refugees and Citizenship Canada application for a Temporary Resident Permit (TRP). Later, I went for a Humanitarian and Compassionate (H&C) grounds application. The TRP was approved but the H&C was dismissed three months later.”

– Walter Chi Yan Tom, Supervising Lawyer of PINAY Legal Information Clinic

(See over)

FOR MORE INFORMATION, read the complete version of *Human Trafficking & the Law: How to Protect Trafficked Persons – A guide for legal practitioners*: <http://ccrweb.ca/en/human-trafficking-and-the-law>

The intention of the Guide is to 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.

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

