



# TRAFFICKED PERSONS

## AVOIDING COLLATERAL HARM

### WHAT NEEDS TO CHANGE TO IMPROVE ACCESS TO JUSTICE FOR TRAFFICKED PERSONS AND THOSE AT RISK?

Since 2003, the Canadian Council for Refugees (CCR) has provided national leadership and support for advocates concerned about trafficked non-citizens, including women, girls, and other vulnerable communities in Canada. In the course of its work, the CCR has identified challenges in access to justice for trafficked and potentially trafficked persons.

We invited immigration and refugee lawyers from across Canada to share their insights on legal challenges, gaps in services and legislation, and promising practices for representing survivors in Canada.

Here is what legal practitioners said they need to improve access to legal services and avoid creating collateral harm for trafficked and potentially trafficked persons in Canada.



## Trafficking Assessment:

*Is it exploitation or trafficking? How do you come up with a response plan? Do you consult legislation?*



» Overall, respondents indicated that there is no “one-size fits all” approach to assessing and responding to trafficking situations.



» Generally, assessment tools and other resources are considered useful for creating a baseline understanding, and developing a systemic approach to providing services.



» Though respondents had varying degrees of knowledge and experience with trafficking, those who were more familiar with trafficking were more likely to assess and come up with a plan of action relying on survivor narratives. However, providing legal services is a challenge due to lacking or uneven human and financial resources in the legal aid system across provinces.



» There is also a discrepancy in resources devoted to labour trafficking versus sex trafficking. When services are available, communities most likely to be trafficked (eg. migrant workers, sex workers, undocumented workers) are fearful because their status is precarious, and they often don't trust service providers.



» Ultimately, in order to make assessments, determine the most helpful resources, and establish a response plan, legal practitioners say human trafficking should be considered in a broader framework of exploitation, coercion, and power imbalance.

“We do not have any specific procedure or protocol to determine if someone has (or is being) trafficked, but we frame the issue in terms of exploitation, coercion, and power imbalance – which situates human trafficking within a broader and more useful framework for understanding oppressions.”

“The litigation response is intertwined with community organizing, and a collective response. Sometimes it means not proceeding legally. Legal remedies resolve a small piece of the puzzle but don't get to the root of the problem.”

# Legal Remedies & Responses:

*What are the options? How do you decide which remedy to pursue? What challenges do you face?*



» Overall, the main challenge is in accessing legal remedies, particularly for the most vulnerable persons including those with precarious or undocumented status. Practitioners feel existing legal tools are insufficient.



» The system is not rights-based, but framed in a criminalization and rescue framework that creates barriers to protection.



» Provincial labour and human rights recourses are promising but inadequate. Federal recourses are also inadequate and too discretionary (eg. Temporary Resident Permits, permanent immigration pathways such as humanitarian and compassionate grounds, refugee claims), while federal immigration and criminal laws can place people at risk (Immigration and Refugee Protection Act (IRPA), Criminal Code (CC)).



» Lawyers identified the need to improve rights-based remedies in labour and human rights law. At the same time, they stated a need to reform the Criminal Code and IRPA to ensure trafficked persons are protected.



» They also flagged the need for institutions to have a clearer understanding of exploitation and trafficking as well as clear, consistent and transparent procedures to follow.

“Clients never fit neatly into a category, and there are not a lot of rights-based considerations for people who are out of status and have been discriminated.”

“Within the context of migrant sex work, use of section 118 in IRPA and/or section 279.01 in the Criminal Code can often expose clients to increased risk of arrest, detention, and deportation because of the extremely broad way in which trafficking offenses are framed in the Criminal Code (without an element of coercion necessary). The criminalization of sex work as well as the tie between criminal offenses and immigration status within sections 36 and 64 the IRPA is also a problem...”

“The Employment Standards Act and Labour Code provisions may be generally helpful for migrant workers, but they are dangerous for those out of status because the employer can potentially tip off the Canada Border Services Agency (CBSA) if there are any physical hearings in which client participation is necessary.”

## Best Practices:

*What works well for and with practitioners, survivors, officials?*



» Overall, practitioners identified that doing community outreach and taking a multi-sectoral, team approach is key.



» Legal support needs to be rooted in trauma-informed practice, which allows survivors to develop trust. This includes making sure survivors know their options and the risks involved.



» Being creative and strategic about evidence gathering is best as evidence may serve different remedies.



» Another best practice is engaging with institutions in order to advocate for clarity, transparent and timely processes, and to raise awareness about the realities of front-line work.

“We have to be creative in the ways we provide evidence. It can be difficult to prove that exploitation has taken place because often there are no witnesses. We will almost always file a legal complaint in another venue (employment standards, etc.) and then attach a copy of the complaint as evidence with the immigration application.”

## Opportunities for Engagement:

*What do legal practitioners and advocates need to learn?*

“We need more understanding of, and engagement with, the complex and intersecting realities of the communities in which human trafficking raids and work is being done to avoid unintended harm to the individuals in those communities.”



Respondents had several recommendations on what they would like to see in legal trainings. These include:



» opportunities to build knowledge on trafficking,



» improve understanding of legal recourses and immigration pathways,

» and explore how to work collaboratively and in a trauma-informed way.



# Resources

## *CCR Learning Resources on Trafficking*

- » *Trafficked Persons: Avoiding Collateral Harm (full report) (2018)*
- » *Human Trafficking and the Law: How to Protect Trafficked Persons (2018)*
- » *Tip Sheet: Legal Remedies for Trafficked Persons and Those at Risk (2018)*
- » *Tip Sheet: Pathways to Temporary Protection & Permanent Immigration (2018)*
- » *Webinar: Thinking Outside the Box: Developing Case Law on Trafficking (2017)*
- » *CCR National Human Trafficking Assessment Tool (2015)*

## *Other Relevant Learning Resources on Trafficking*

- » *Handbook for Criminal Justice Practitioners for Trafficking Persons (2015)*
- » *Temporary Residence Permits (TRPs): Considerations specific to victims of human trafficking*
- » *Migrant and Asian Sex Workers Network - Legal Resources for Service Providers*
- » *MCIS Language Solutions Online Human Trafficking Training*
- » *UN Trafficking Protocol*

**The CCR** supports and coordinates anti-trafficking efforts across the country to develop and strengthen the network of NGOs working to protect trafficked persons. The CCR supports their work through creating opportunities for education, sharing best practices, and strategizing at the national level, as well as creating and sharing resources. The CCR also advocates to protect trafficked persons through legislation and policy reform. Find out more about our work at [ccrweb.ca/en/trafficking](http://ccrweb.ca/en/trafficking)

