



MSHT, Canadian Laws and the Criminal Justice System

**The Salvation Army's Webinar
June 21, 2022**

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Four Key Take-Aways

- Human Trafficking is not synonymous with sex work. In Canadian criminal law, the offence is committed where anyone performs certain prohibited acts for the purpose of exploiting another person (the victim or survivor), or facilitating their exploitation.
- “Exploitation” in the Human Trafficking offence has a specific meaning that is different than the ordinary dictionary definition “to take advantage of”.
- The Human Trafficking offence applies to any labour or service, including but not limited to sexual services.
- To overcome the challenges inherent in Human Trafficking investigations and prosecutions, a victim-centred, trauma-informed multi-sector collaborative response is required.



Human Trafficking in the Criminal Code

CC s. 279.01(1) Every person who:

- a. recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person**
- b. for the purpose of exploiting them or facilitating their exploitation**

is guilty of an indictable offence...



Exploitation in the Criminal Code

279.04 (1) For the purposes of sections 279.01 to 279.03, a person exploits another person if:

- a. they cause them to provide, or offer to provide, labour or a service**
- b. 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.**

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**
- c. abused a position of trust, power or authority.**



Law re: Exploitation

“Safety” is not limited to the state of being protected from physical harm – it also extends to psychological harm.

The threat to safety must be more than a trivial interference with physical or psychological well-being, but need not be a fear of serious bodily harm.

Question to be answered: Could the accused’s conduct be reasonably expected to cause the complainant to believe that her safety was threatened.



Law re: Exploitation

The victim's safety need not actually be threatened AND the victim need not actually fear for her/his safety.

No exploitation need actually occur or be facilitated by the accused's conduct for an accused to be convicted of human trafficking.

Where human trafficking is a charged offence, the Crown needs to prove – along with conduct and the prohibited group – that the accused acted with the purpose of exploiting the complainant or facilitating his or her exploitation.

The Crown does not need to show that exploitation actually occurred.

Both “exploitation” and “facilitation of exploitation” relate to an accused's state of mind, his or her purpose in engaging in prohibited conduct, not to the actual consequences of the accused's behaviour



Factors Relevant to Exploitative

Purpose

- 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 of 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.

R. v. Sinclair, 2020 ONCA 61 at para. 15



Abuse of a position of trust, power or authority

Family member

“Boyfriend”

Spouse/Intimate Partner

Drug dealer/drug addict



Receive Material Benefit from Human Trafficking

The offence is committed where anyone:
receives a financial or other material benefit
knowing that it is obtained by, or derived
directly or indirectly from
the commission of human trafficking



Withholding/Destroying Identity Documents

The offence is committed where anyone:

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 authentic





Labour Trafficking

What is labour trafficking?

- 1) Labour trafficking is human trafficking.**
- 2) The means of exploitation in labour trafficking is often very different from sex trafficking.**



Labour Trafficking Factors – Threats to deport as exploitation

When the trafficking offences were developed and enacted in 2005 and this test of exploitation was developed, it was meant to capture all of the conduct you've discussed, not just the physical violence but also the psychological violence – the threats of deportation, the threats of arrest. ... All of that conduct was meant to be included in the existing test for exploitation. It was a test *designed to look at the totality of the behaviour* and the effect the behaviour would have on a victim.

House of Commons, Standing Committee on Justice and Human Rights, No. 027 (March 15, 2012) at 1250 (comments of counsel in the Criminal Law Policy section of the Department of Justice, Matthew Taylor discussing the creation and intent of s. 279.04).



Labour Trafficking Factors – Victim Vulnerability

Trafficking victims who do not have permission to work or stay in the country of exploitation face an extra layer of vulnerability. The fear of being exposed as an irregular migrant can be a powerful tool for traffickers, who typically threaten to file reports with the authorities and can more easily keep victims under exploitative conditions.

United Nations Office on Drugs and Crime,
Global Report on Trafficking in Persons 2020
(United Nations, New York: 2020) at p. 11.



Labour Trafficking Factors – Other Factors

- Isolation of victims
- Control of finances
- Control or attempts to control travel documents
- Illegal labour practices



IRPA Human

Trafficking (*Immigration and Refugee Protection Act, s. 118*)

No person shall knowingly organize the coming into Canada of one or more persons by means of:

- (i) abduction,
- (ii) fraud,
- (iii) deception or
- (iv) use or threat of force or coercion.



Lesser Offences

At the Border

Immigration and Refugee Protection Act

Example Offences

IRPA Human Smuggling (s. 117)

IRPA Employ foreign national in
an unauthorized manner (s. 124(1)(c))



Lesser Offences

At the Border

IRPA Human Smuggling (s. 117)

117 (1) No person shall:

- (i) organize
- (ii) induce
- (iii) aid
- (iv) or abet

the coming into Canada of one or more persons

knowing that, or being reckless as to whether, their coming into Canada is or would be in contravention of this Act



Lesser Offences

At the Border

IRPA Employ foreign national in
an unauthorized manner (s. 124(1)(c))

124 (1) Every person commits an offence who

...

(c) employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed.



Lesser Offences

At the Border

IRPA Employ foreign national in
an unauthorized manner (s. 124(1)(c))

Elements of the offence:

In order to prove wrongful employment against the accused, the Crown must prove:

- 1) that the accused employed a foreign national in some capacity;
- 2) that the foreign national was not authorized to be employed in that capacity; and
- 3) that the accused knew that the foreign national was not authorized to be employed in that capacity.



Employ = activity for which a person receives or might reasonably be expected to receive wages or other valuable consideration

CHALLENGES

In Human Trafficking Investigations:

Victims don't tend to call the police

Multi-jurisdictional offence makes evidence collection difficult

Victims do not trust police or the legal system and often don't see themselves as victims

Victims are often survivors of complex trauma and have developed destructive coping strategies such as addiction, engaging in other criminal behaviour

Many victims are reluctant to participate in trial, recant, refuse to attend court or prep, etc.

Where she's willing, significant prep is required



OVERCOMING THESE CHALLENGES

- Meeting the victim's needs at all times
- Victim- Centred Approach
- Experienced, skilled, trauma-informed investigators and prosecutors
- Collaboration among police, prosecutors, V/WAP, and community service providers to support victims throughout the court process, from beginning to end
- Reduce the victim's fears and anxiety about testifying as much as possible



REDUCING THE VICTIM'S FEARS AND ANXIETY

- Meeting the victim early and often if s/he is willing to meet
- Limiting the amount of times a victim has to testify in court
- Explaining the court process, including protections in place (publication bans, s 276 and s. 278)
- CCTV even for adult complainants
- Support person applications
- Support dogs (at meetings and in court)
- Videolink from other jurisdictions



OUR APPROACH

- Continually assess the victim's needs and meet them in whatever way is required
- Victim's safety is a priority even at court appearances
- Ensure transportation to and from court so the victim is safe and feels supported
- Expect victims to be reluctant and hostile. Be ready for anything.
- Vigorous prosecutions
- Two objectives: (1) Holding Offenders accountable and (2) Supporting Survivors
- Prepare victims thoroughly to testify
- Consistent approach across the province so that victims everywhere get the same level of service



BUILDING STRONG CASES:

- Police collect as much corroborating evidence as possible
- Digital evidence from phones and computers is critical since these devices are integral to commission of the human trafficking offence
- Expect the victim will not attend court and build the case with this in mind



PROVINCIAL HT RESTRAINING ORDERS

Available to survivors and potential victims of human trafficking of all ages in Ontario as well as the parent or guardian of a child victim or child at risk of being trafficked

- Restraining orders limit what the trafficker can do, where they can go and who they can contact through the imposition of conditions.
- Duration of order: 3 years or longer and can be renewed if necessary
- The order is only enforceable while the trafficker is in Ontario
- Free legal assistance provided through the Canadian Human Trafficking Hotline: **1-833-900-1010**



THANK YOU

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