

# **ADDRESSING THE TRAFFICKING OF CHILDREN & YOUTH FOR SEXUAL EXPLOITATION IN BC**

A Toolkit for Service Providers

## **APPENDICES**

 **CHILDREN** OF THE  
**STREET SOCIETY**

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## APPENDIX 1: HUMAN TRAFFICKING CASE SUMMARIES

### Criminal Code s.279.01-.04 Reported Decisions Case Summaries (Trial, Sentencing, Appeals)

#### Reference Table

Cases that have lengthier summaries provided below (on facts and/or law) are noted with an asterisk\*.

CASE NAME	DECISION TYPE	NOTES
<i>R v AA</i> , [2012] OJ No 6256.	Sentencing	Trial by jury; guilty of human trafficking (two counts) and other charges.  Sentence: <ul style="list-style-type: none"> <li>» Twenty-nine months (net)</li> <li>» DNA order</li> <li>» Lifetime weapons prohibition (per s110)</li> <li>» Forfeiture order for items seized on arrest</li> </ul>
<i>R v AA</i> , 2013 ONCA 466.	Appeal	Dismissed.
<i>R v AA</i> , 2015 ONCA 558.*	Appeal	Granted. New trial ordered.  Accused acquitted on human trafficking-related charges at trial.  No trial decision available.  Unrelated to <i>R v AA</i> 2012 and 2013.
<i>R v Beckford</i> , [2013] OJ No 371.*	Charter application	Accused charged with human trafficking.  Charter application unsuccessful.
<i>R v Byron</i> , 2013 ONCS 6427.*	Trial	Guilty on all counts.

CASE NAME	DECISION TYPE	NOTES
<i>R v Byron</i> , 2014 ONSC 990.	Sentencing	Six years (prior to pre-trial custody credit).  Other conditions: -Ten year weapons prohibition -DNA order -No contact order -Twenty years compliance with Sex Offender Information Registration Act
<i>R v Dagg</i> , 2015 ONCS 2463.	Trial	Acquittal.
<i>R v Domotor</i> , 2011 ONCS 626.	Bail review hearing	Case involved labour trafficking of foreign nationals.  Four accused concerned; all orders for continued detention upheld; one order for release reversed and continued detention ordered.
<i>R v Domotor</i> , [2012] OJ No 3630	Sentencing	Case involved labour trafficking of foreign nationals.  Several aggravating factors presented.  Sentences for multiple individuals included: -Seven years imprisonment -Ten year firearms prohibition -DNA order -Restitution order
<i>R v Estrella</i> , [2011] OJ No 6616.	Sentencing	Trial by jury; guilty of human trafficking and other charges.  Sentenced to thirty months (prior to pre-trial credit of two months).
<i>R v Hosseini</i> , 2014 QCCA 1187.	Appeal	Dismissed.  Accused guilty at trial. No trial decision available.  French version only.

CASE NAME	DECISION TYPE	NOTES
<i>R v Johnson</i> , 2011 ONCS 195.	Trial	Acquittal.  Credibility an issue.
<i>R v McFarlane</i> , [2012] OJ No 6566.	Sentencing	Guilty plea for human trafficking and related charges.  Sentence:  -Eight years imprisonment (before pre-trial custody credit)  -Ten year firearm prohibition  -lifetime prohibited firearm ban  -DNA order  -Sex Offender Registry order (for life)
<i>R v Moazami</i> , 2013 BCSC 2398.	Ruling on admissibility of Facebook records	Messages sent by accused admissible; messages sent by complainant admissible only for context (not truth).
<i>R v Moazami</i> , 2013 BCSC 2399.	Ruling on admissibility of statements of HW	Application by Crown to enter videotaped statements to police made by HW that contradict court testimony (HW named an adverse witness at trial).  Statements admitted but cautioned that they may not be weighed as reliable.
<i>R v Moazami</i> , 2014 BCSC 261.	Application to quash relevant counts on indictment	Re living on the avails charges; application made post-Bedford.  Application dismissed.
<i>R v Moazami</i> , 2014 BCSC 1727.*	Trial	Convicted on numerous human trafficking and related charges.
<i>R v Nakpangi</i> , [2008] OJ No 6022.	Sentencing	Guilty plea for human trafficking (1 count) and living on the avails (one count) involving separate victims.  Sentence:  -Five years imprisonment (two years for 212, three years for 279.01; before credits)

CASE NAME	DECISION TYPE	NOTES
<i>R v Salmon</i> , 2014 ONCJ 542.	Trial	Not guilty on charges of human trafficking.  Credibility of victim/witness at issue in judgment.
<i>R v St Vil</i> , [2008] OJ No 6023.	Guilty plea and Sentencing	Guilty plea for human trafficking charges.  Sentence:  -Time served in pre-trial custody plus one day (37 month 'credit' at old 2-for-1 system)  -Three years probation  -DNA order  -Prohibition from attending adult entertainment establishments for eighteen months
<i>R v Urizar</i> , 13 August 2010, File No 505-01-084654-090, Longueuil QC [unreported]*	Trial	Convicted on human trafficking and related charges (thirteen of fourteen charges overall).
<i>R v Urizar</i> , 2013 QCCA 46.	Appeal	Charges on human trafficking upheld.  In French.
<i>R v Williams</i> , 2014 ONCJ 425.	Sentencing	Guilty plea.  Sentence:  -Five years imprisonment (before credit)  -s.109 order for life  -DNA order  -Sex Offender Information Registry Act order for twenty years

### **Detailed Case Summaries**

The following cases have been summarized in greater detail because they either involve trial decisions where a conviction for human trafficking was obtained, or decisions that provide important insight into the interpretation of the human trafficking offences under ss.279.01-.04 of the *Criminal Code*.

### ***R v Urizar, August 2010***

File No 505-01-084654-090, Longueuil QC [unreported].

*Urizar* was the first available trial decision where a judge had to consider the elements of the crime of human trafficking and receiving a material benefit under ss.279.01-.04 of the *Criminal Code*, and to weigh the facts and evidence presented in support of those (and other) charges in order to determine the culpability of the accused. The accused in this case was found guilty of human trafficking, along with eleven of twelve other criminal charges. Those charges included robbery, assault with a weapon, assault causing bodily harm, uttering death threats, sexual assault, trafficking in narcotics, forcible detention, possession of a weapon with intent to commit an offence, assault endangering life, extortion, criminal harassment, and sexual assault causing bodily harm.

#### ***Facts***

The trial judgment reproduces the complainant's testimony at length. The facts giving rise to the charges in this case took place between January and August 2009. The complainant is an eighteen-year-old woman who met the accused in a bar. They exchanged phone numbers and began seeing each other. The **accused "was very charming" and "treated her like a princess"**. The accused appeared to have a lot of money. The complainant asked about this, and the accused **convinced the complainant to work as a stripper**. On her first night, the accused suggested she **take some cocaine to "help get rid of her inhibitions"**; she agreed. After the accused picked her up from the club, the accused **took her money** and said it would be safe with him. A few days later, the accused told the complainant he lost his job. He complained about money. He also **became very possessive**, telling her she **"belonged to him"**. He began to be **violent** with her at times. The complainant explained, though, that **she thought the accused was "her saviour"** because he was the one who helped her escape her family situation. The complainant's testimony goes on to recount numerous instances of **intimidation, harassment and physical violence** similar to the tactics often described as 'prototypical' in the context of sexually exploitative relationships. The testimony also **revealed the many times the complainant exited**, or attempted to exit, her relationship with the accused, only to return to him, citing both love and fear for her returns.

In addition to the complainant's testimony, the court discusses the existence and content of text message evidence between the accused and complainant, which corroborates pieces of the complainant's testimony, and more broadly points to the level of intimidation or control the prosecution puts forth. For example, the court notes that in the two days surrounding when the complainant was giving a statement at the police station, the accused sent a total of thirty-nine messages. Other evidence, including a medical report and the investigator's testimony, were introduced at trial.

### **Treatment of Issues**

In assessing the credibility of the complainant, the court seemed attuned to the psychological and emotional distress as well as the experience a person in the complainant's position and experience would have:

The court noted, along with the counsel for the defence, that the cross-examination of the complainant revealed that her testimony contained some omissions and lapses of memory, a few exaggerations, contradictions and moments of hesitation, and even some statements that could be considered to be inconsistencies.

However, it would be illusory to think that a young person who had just lived through a nine-month relationship marked by so much physical, verbal, emotional and sexual abuse would be able to recount all of this in detail and in chronological order; indeed, it would be worrisome if they were able to do so.

In the case at the bar, the court is of the view that the complainant is an honest person and that she has no reason to not tell the truth. She personally experienced the incidents she described as well as the full force of these acts. And the verbal abuse she was subjected to explains her memory lapses and omissions with regard to the details of these incidents.

Having accepted the complainant's testimony and version of events, the court also makes specific note of the requisite elements of the human trafficking charges:

The evidence as a whole shows beyond all reasonable doubt that the accused exercised an influence over the movements of the complainant with a view to abetting her to engage in working as a stripper in a context of physical, psychological, sexual and material violence that could reasonably be expected to cause her to believe that her safety was or would be threatened if she were to show any reluctance to engage in this activity.

In addition, the evidence as a whole also shows beyond all reasonable doubt that the accused received a material benefit, knowing that it resulted from the exercise of influence he was engaged in over the movements of the complainant with the intent of exploiting her.

The court also draws on case law interpretations of similar language presented in prostitution-related offences (as they then existed), confirming and transposing those interpretations into the *Criminal Code* offence of trafficking in persons.

### **Conclusion**

The judge finds the accused guilty on thirteen of fourteen charges, including for human trafficking and obtaining a material benefit. A key factor of this verdict was the judge's assessment of the complainant's credibility in her testimony and version of events.

### ***R v Beckford, 2013 ONSC 653***

This case is important because it required the court to consider the constitutionality of the human trafficking offence under the *Criminal Code*. The court upheld the wording of the offence as constitutional.

#### ***Facts***

The accused raised a constitutional challenge that the wording, 'for the purpose of exploiting them or facilitating their exploitation' violated section 7 of the *Charter* because it was overbroad, vague and did not have a sufficient *mens rea* element.

As this was a constitutional challenge, the facts giving rise to a charge of human trafficking against Beckford were not set out.

#### ***Analysis***

The Court confirms that a purpose to exploit, or to facilitate exploitation, must be made out along with the proscribed conduct under s.279.01. With respect to facilitating exploitation, further, the court confirms that both *knowledge* of the perpetrator's intention to commit the crime and an *intention* to assist the perpetrator in committing the crime are necessary. These dual components of *knowledge* and *intent* set a sufficient standard of *mens rea* for the offence.

In regards to the definition of exploitation, the court relies on the Ontario court of Appeal judgment in *R v Bedford* (2012 ONCA 186) to find that 'exploitation' is not an overly broad term. The court further finds that the content of the definition of exploitation provided for in s.279.04 is not overly broad or vague.

Finally, the court finds that actual exploitation does not need to occur, and that this does not affect the constitutionality of the offence. What is required is an establishment that the accused *intended* to exploit, in line with the definition provided in s.279.04.

#### ***Conclusion***

The court finds that, "a purposive interpretation of the heightened *mens rea* of the offence together with the easily understood and applicable concepts of exploitation and the reasonable person standard sufficiently delineate the area of risk to allow for substantive notice to citizens as to what conduct will attract criminal sanction. I am also satisfied that the provisions do not run the risk of overbreadth in their application" (at para 45).

### ***R v Byron, 2013 ONCS 6427.***

This is a trial decision, by judge, where the accused is found guilty of several charges, including human trafficking.

#### ***Facts***

Trial of the accused, Byron, for nine offences related to prostitution, assault, and breach of recognizance. The complainant, **age 17, was a foster child diagnosed as bipolar. She had a learning disability, and possibly suffered from Fetal Alcohol Spectrum Disorder.** The accused paid the train fare for the complainant and a friend to travel from Windsor to Montreal. The complainant ***believed she would be having a romantic liaison.*** The pair stayed at an apartment with the accused and a number of others. The friend became uncomfortable and left. The complainant testified that the accused informed her she belonged to and would be working for him. **When the complainant resisted, the accused threatened and assaulted her.** He **damaged and destroyed her birth certificate.** The complainant testified that she was prostituted in various cities by the accused and that the accused kept the majority of the proceeds. Police investigated and intervened following a hotel complaint and learning of the complainant's online advertisements. The complainant's evidence was corroborated by hotel records and third party witnesses, including other prostitutes who testified that the accused was the complainant's pimp. The accused testified. He claimed that he had a romantic relationship with the complainant, that he believed her true age was 19, and that he merely assisted her with her desire to become a prostitute.

The accused was charged with procuring and facilitating a person under eighteen years of age to engage in prostitution, living of the avails of prostitution, human trafficking, receiving a material benefit, assault, and breaches of a recognizance.

#### ***Analysis***

The judge found the accused guilty on all counts. While the decision sets out the wording of the relevant offences, the judge does not offer any commentary or interpretation of these offences, but focuses the analysis on the evidence presented at trial.

The judge found the complainant's evidence to be credible and corroborated. The complainant's evidence of the events was detailed and corresponded with documentary and third party evidence. The judge found that the accused procured the complainant for the purpose of exploiting her and forcing her into prostitution, used threats and violence to force her into prostitution, and destroyed her birth certificate in an attempt to hide her true age. The judge found that the accused controlled virtually all aspects of the complainant's activities, held himself out as her pimp, and forced her to turn over the proceeds for his own gain.

Regarding the issue of consent, the judge concludes by noting:

Once Mr. Byron had her under his control, she responded in the only way she was capable of responding and that was by compliance. However, compliance does not correspond to consent or to being the directing mind. I accept IB's version of events; that she felt she had no other options but to do as she was directed by Mr. Byron. He controlled her movements, he kept the money that she earned and he was continually placing advertisements for her services that put her health and safety at risk. She in essence became dependent on him and her responses toward him indicated this.

### **Conclusion**

On the basis of the evidence presented and accepted by Crown and the complainant, the judge found the accused guilty on all counts.

### **R v AA, 2015 ONCA 558.**

This case is the most recent pronouncement on trafficking in persons, and provides an analysis of the offence of human trafficking under ss.279.01-.04 of the *Criminal Code*. This case is important because of the detailed examination it gives to the definition of 'exploitation' under s.279.04 of the *Criminal Code*, and its relationship with s.279.01, the primary offences of human trafficking.

### **Facts**

The facts giving rise to the charges are set out at paragraphs 7-41 of the appellate judgment. In brief, the complainant, GMS, met AA in a park. **She had some trouble in her home and personal life. AA professed his love for GMS and said he would never let anything bad happen to her.** AA convinced GMS to begin working at a strip club so that they could have **"the good life" together.** Over time, GMS becomes **isolated from her family, is encouraged to engage in sexual and risky behaviour to make more money, and experiences physical abuse.** The facts essentially recount the 'prototypical' story described in respect of sexually exploitative relationships.

At trial, AA was convicted of assault with a weapon, assault and failure to comply with an undertaking. AA was acquitted on charges of human trafficking of a person under eighteen years of age, receiving a material benefit and living on the avails of prostitution. Both the Crown and AA appeal the trial decision; the Crown's appeals are allowed, while AA's appeals are dismissed.

### **Analysis**

While the trial judge had found that AA exercised 'control, direction or influence' over the movements of GMS, the trial judge did not find that element of 'exploitation' defined under s.279.04 had been made out. On appeal, the court provides an interpretation of s.279.04 that confirms its more expansive potential.

In interpreting s.279.04, the court also confirms that 'safety' is not limited to physical harm, but extends

to psychological harm, as it has been interpreted in the context of other *Criminal Code* offences, notably criminal harassment (see para 71). The judge further notes that deception and other forms of psychological pressure are not excluded from the range of behaviour that might satisfy the applicable portion of the definition of exploitation in s.279.04 (see para 72).

The court also comments on the issue of ‘belief’ and ‘reasonableness’ found in s.279.04. The judge notes that “[o]n a straight-up reading of this definition of exploitation, three conclusions emerge: (i) the expectation of the specific belief engendered by the accused’s conduct must be reasonable, thus introducing an objective element; (ii) the determination of the expectations is to be made on the basis of all the circumstances; and, (iii) the person’s safety need not actually be threatened” (at para 70). This is important because, as the judge goes on to discuss, **the definition requires not only an examination of the complainant’s subjective state of mind, but incorporates an objective element in understanding what would, or could, be reasonable in the circumstances.** In other words, “[w]hile the subjective belief of a complainant is not to be entirely cast aside, it is also not to be considered to the exclusion of an objective assessment based on all the circumstances” (paras 75-76). This could be of value in future cases where, for example, as in this case, a complainant may not connect physical abuse or assault she experienced to her choice to dance (see para 76).

The judge also reiterates that while an accused must have a purpose or intent to exploit, whether he actually achieves this purpose is not a requisite component of the offence (paras 84-85). “In other words, no exploitation need actually occur or be facilitated by the accused’s conduct” (para 85). Relatedly, the judge confirms that “exploitation and safety relate to an accused’s purpose and not to the *actual consequences* of the accused’s behaviour for the victim (para 86, emphasis added). This is especially important for future cases, as the language of the offences under s.279.01-.04 of the *Criminal Code* have raised concerns about an undue emphasis or focus on the complainant’s state of mind, impact and perceptions, rather than on the conduct and intent of the accused.

### **Conclusion**

The court allows the Crown’s appeals in respect of human trafficking, receiving a material benefit, and living on the avails of prostitution, and orders a new trial on those charges.

### ***R v Moazami, 2014 BCSC 1727***

This case was the first successful conviction of human trafficking under the *Criminal Code* in British Columbia. Given the length of judgment and the number of complainants in *R v Moazami*, this is only a brief summary of the case. It provides highlights of the case, rather than details related to each specific complainant. The complete judgment is available [online](#).

**Who?** Reza Moazami was born in Iran and immigrated to Canada with his family in 1996. At the time of the offences, he was between the ages of twenty-five and twenty-seven. Prior to and during the offences, Moazami was heavily involved in drug trafficking activities. He claimed he was also working as a personal trainer during this time.

Moazami was charged with thirty-six counts, including living on the avails of prostitution of persons under the age of eighteen and by the use of coercion; sexual interference of a person under sixteen; sexual exploitation of a young person; sexual assault; procurement; and, human trafficking of a person over eighteen.

The case involved eleven complainants between the ages of fourteen and nineteen at the time of the alleged offences; nine of the eleven were under the age of eighteen at the time of the alleged offences.

*Vulnerabilities:* Each of the complainants came from very different backgrounds; however, most had factors in their life that are consistent with what has been found to make youth *more vulnerable* to *trafficking*, including: a troubled childhood, estrangement/isolation from family, in foster care, history of mental health issues, early introduction to drugs and alcohol, and coming from an immigrant family.

**When and Where?** The numerous offences took place between February 2009 and October 2011, occurring in Vancouver, Richmond, and North Vancouver. The complainants also travelled with Moazami to Nanaimo, Victoria, Calgary, Edmonton, and Montreal. Most of the sexual exchanges took place in private residences or in hotels.

**Meeting, Recruitment, and Grooming Process:** Many of the complainants first met Moazami as a drug dealer. In one instance, Moazami admitted in a text message that he gave a girl free oxycodone when she was younger because he knew she would end up spending all her money on it. Eventually, she couldn't afford her habit and at this point spoke to Moazami about prostitution. As he did with some of the others, Moazami *glamorized the profession* as a wonderful lifestyle and great way to pay for drugs, nice things, and travel. In a few of the instances, the girls were already being sexually exploited through prostitution before they met Moazami. In one instance, he 'taxed' the complainant \$50,000 because she had tried to help one of her friends escape his control. Moazami used this debt to coerce the victim into working for him. In another case, the complainant was in a deteriorating situation with a different pimp. Moazami *expressed concern* for her welfare and offered to be her pimp. They eventually developed a *romantic relationship*.

**'Pimping' Activities:** Moazami managed the girls by taking pictures of them and advertising their services, arranging dates, and providing multiple private residences for the sexual activity to take place. He also employed others to perform these duties. Moazami prepared the girls by buying them provocative clothing, requiring that they visit tanning and beauty salons daily, and in one case restricted their diet. In some cases, Moazami shared the earnings 50/50. He also had a 'tax system' that he charged them when they lied or didn't do what he wanted.

**Methods of control:** Moazami controlled the complainants through drug use, false promises, sexual abuse, physical abuse, threat of violence, destroying their possessions, and manipulation.

Moazami bought dogs for the girls, which he used as a tool for control. He would threaten to harm them, and on a few occasions hit them, in order to secure their cooperation and compliance. One complainant testified that Moazami referred to one of the dogs as a “pawn in his chessboard and that he would use [the dog] to...manipulate or control the situation.”

In many instances, Moazami supplied the girls with alcohol, GHB, and ecstasy. Moazami told them that the drugs would relax them and make them less nervous when with clients. Many of the girls testified that they were continuously high and increased their drug use to make sleeping with clients bearable. On numerous occasions, Moazami forced himself on the girls when they were highly intoxicated, even to the point of passing out.

Moazami closely monitored the activity and whereabouts of the girls. For some, they were not allowed to leave the residence or hotel unless it was to go to the beauty salon. He would become very angry if they ever failed to answer his calls or text messages. He also controlled what they ate and when they slept.

Between the abuses, Moazami tried to create a family atmosphere. Some of the complainants referred to him as a ‘father figure’ in their life. He was also often very apologetic whenever he did threaten or harm the girls, promising it would never happen again.

One of the complainants developed a romantic relationship with Moazami. The complainant testified to many instances of abuse, including: knocking her to the ground, striking her in the face, choking her to the point of unconsciousness, kicking her, and putting a knife to her throat and cutting her in the struggle. Moazami anally raped the complainant and then told her she would be able to earn more money by offering anal sex to customers. After one argument, the complainant attempted to leave by climbing the balcony railing. Moazami grabbed her arm and held her over the balcony for a period of time. At one point, he promised her that she would soon be able to quit prostitution, he would pay for her to go to beauty school, and they would work towards achieving a normal relationship.

**Identification:** Moazami and the complainants were identified by police through a string of police reports and a missing person investigations. The missing persons investigation was generated by a concerned youth worker who correctly identified some of the warning signs of trafficking: the youth was absent from her program at school, was unaware of her current whereabouts when speaking with the youth worker, had incurred a debt, and was unable to leave her current circumstance. Through initial interviews with some of the affected youth and further investigation by police, more victims were eventually identified.

**Response:** In order to respond to the unique needs of each of the eleven victims, a collaborative approach was required. The *Vancouver Police Department Counter Exploitation Unit* identified the victims and worked in tandem with various social service agencies (including victim services, housing and exiting programs, medical and addictions services) to meet their needs and provide comprehensive support through the criminal justice process.

**Judgment and Sentence:** Moazami was convicted of thirty counts of prostitution-related offences, sexual exploitation, sexual assault, sexual interference, and trafficking in persons. Moazami was sentenced to a total of twenty-three years imprisonment. He was also required to submit a DNA sample, be registered on the Sex Offender Registry for life, was given a lifetime weapons prohibition, has a no contact order with all complainants and witnesses, and a forfeiture order was granted for all items seized by police at time of arrest.

For more information regarding Moazami's sentence, see **Appendix 15: R v Moazami Sentencing Summary**.

***Analysis (human trafficking charges)***

Moazami was charged with one count of human trafficking, and one count of trafficking of a person under eighteen.

In respect of the charge of human trafficking, the court finds that evidence establishes that Moazami controlled, directed or influenced the movements of JC (paras 506-507). In considering whether Moazami's conduct was intended to exploit JC, the court describes several pieces of evidence that establish this intent. Earlier in the decision, the court confirms that, in interpreting the definition of exploitation under s.279.04, 'safety' can include emotional and psychological harm as well as physical harm (para 376). Regarding the specific analysis of the evidence in relation to the definition of s.279.04, the court states:

[510] If J.C. did not obey Mr. Moazami or asked to be excused from a date, he would become extremely angry and often broke her cellular telephones to demonstrate his anger. Mr. Moazami also intimidated J.C. by threats of violence and actual violence towards Gucci as a form of coercion. Other times, Mr. Moazami created a family atmosphere that fed into J.C.'s desire for a father figure in her life and a stable home that she had been denied growing up. These acts of kindness gave her an incentive to obey Mr. Moazami and remain working for him. Mr. Moazami also provided J.C. with free illicit drugs that kept her tethered to him and his lifestyle. In all of the circumstances, the only reasonable inference to be drawn from the proven facts is that Mr. Moazami provided J.C. with drugs to keep her addicted and dependent upon him so that she would continue earning money for him as a prostitute.

[511] As an older man who supplied J.C. with drugs, food and lodging, clothing and cosmetics, Mr. Moazami was in a position of power over J.C. and abused that power by manipulating her into continuing to work as a prostitute when she wanted to leave this lifestyle. He manipulated her by oscillating between being the "nice guy" and the abusive, aggressive and angry guy. He isolated her from a means of escape by counselling her to distrust the police. She had seen him angry and had heard stories from other girls that he had assaulted them. Mr. Moazami perpetuated J.C.'s state of fear by his aggressive behaviour and verbal abuse. She had seen him angry and did not wish to do anything that would make

him angry with her. In these circumstances, it was reasonable for J.C. to believe that if she failed to satisfy Mr. Moazami that he would physically harm her and thus create a danger to her safety.

This analysis establishes that the court considered evidence of a non-physical nature in determining whether the definition of exploitation, and its 'fear for safety' element, was met. This analysis also demonstrates the various kinds of control tactics an individual may use, including not only threats, but also manipulation through creating a "family atmosphere" and being a "nice guy".

Regarding the other count of human trafficking, in relation to HW, the court found the evidence unreliable and acquitted Moazami on that charge. In particular, along with broader issues regarding HW's credibility at trial, the court found that there was no corroborating evidence regarding HW's statements that Moazami threatened to harm her or her family, or in respect of her statements regarding acts of violence Moazami committed against her (para 515). While the court found that there was some evidence of abuse of a position of power, and of manipulation, it determined that the offences of human trafficking "requires the evidence to go further and establish that the behaviour could reasonably cause the complainant to fear that her safety or the safety of another person was threatened (para 516). It is possible that the charge involving HW was unsuccessful due, in a not-insignificant way, to the broader and serious credibility issues raised during the trial.

## APPENDIX 2: LEGISLATION

### HUMAN TRAFFICKING OFFENCES

#### IRPA Legislation

The offence of human trafficking is set out under s.118 of the *Immigration and Refugee Protection Act* [IRPA]:

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.

This offence of human trafficking under the *IRPA* only applies to cross-border trafficking into Canada. Because of the purpose and area of law that the *IRPA* is concerned with (immigration and border security), it is not concerned with establishing exploitation once in Canada, only with the movement of persons into Canada through the use of abduction, fraud, deception, threats or use of force, or coercion. There have been no successful convictions under *IRPA* to date.<sup>1</sup>

#### Criminal Code Legislation

The offence of trafficking in persons and its related offences are located under ss.279.01-279.04 of the *Criminal Code*. The offences were originally created in 2005, and have been subject to several amendments since that time to account for the specific situation of trafficking of a minor under s.279.011, to reflect changes in sentencing in line with broader criminal law reform, and to elaborate on the meaning of the definition of exploitation, located under s.279.04.

This section will set out and discuss each of the trafficking in persons offences: the primary offence under s.279.01, and primary offence of trafficking a minor under s.279.011; the definition of exploitation under s.279.04; and, the related offences of obtaining a material benefit under s.279.02 and withholding or destroying documents under s.279.03.c

#### Section 279.01: The offence of trafficking in persons

Section 279.01 sets out the primary offence of trafficking in persons:

**279.01** (1) 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

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<sup>1</sup>3 cases have been tried, all in BC: *R v Ng*, *R v Orr*, and *R v Lhada*. *R v Orr* did result in a conviction at trial, but was reversed on appeal.

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of five 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 14 years and to a minimum punishment of imprisonment for a term of four years in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Section 279.01 sets out the primary elements of the offence of human trafficking: the criminal conduct, and the required intent of an accused.

### **Criminal Conduct**

The criminal conduct includes the recruitment, transportation, transfer, receipt, holding, concealment, harbouring, or exercise of control, direction or influence over the movements of a person. These are largely taken directly from the international *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. As set out in the Department of Justice handbook on trafficking in persons, “[t]hese acts reflect the various stages of trafficking in persons [...]. The offence captures the entire trafficking continuum; engagement in just one of these trafficking “stages” is sufficient.”<sup>2</sup>

Whether physical movement of a person is a required element of trafficking in persons is a debated issue. While some of types of listed conduct imply physical movement of a trafficked person, such as transportation, transfer and receipt, many others do not, including recruitment, holding, concealment, and exercising control, direction or influence.

The inclusion of exercising control, direction or influence over the movements of a person is taken from the *Criminal Code* offence of procuring (previously s.212(1)(h); now under s.286.3), and can apply, particularly, in circumstances of trafficking for sexual exploitation. This phrase has been interpreted, in the context of procuring for the purposes of prostitution, to include determining the remuneration of a prostitute, recruiting clientele, making rules, and managing an agency.<sup>3</sup>

In cases of trafficking in persons for sexual exploitation, the case law reveals that similar conduct has been used by an accused, and this reflects the particular relationship of domination that might often accompany a situation of trafficking for sexual exploitation. For example, in *R v Urizar*, the complainant’s testimony included that she handed over the money she earned to the accused, and

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<sup>2</sup> Department of Justice, *A Handbook for Criminal Justice Practitioners on Trafficking in Persons* (Ottawa: Department of Justice Canada, 2015) at 20 [DOJ Handbook].

<sup>3</sup> See, i.e., *R v Perrault* (1996), 113 CCC (3d) 573; 1996 CarswellQue 1069. See also, *Rodney* (1999), 241 A.R. 318, [1999] A.J. No. 197 (P.C. (C.D.)); *R. v. Ng*, [2007] B.C.J. No. 1338, 2007 BCSC 880. See also DOJ Handbook, *ibid* at 21.

that he used intimidation and physical violence to get her to work as a stripper. Similarly, in *R v Byron*, the judge found that the accused controlled virtually all aspects of the complainant's activities, held himself out as her pimp, and forced her to turn over the proceeds for his own gain. In *R v AA* and *R v Moazami*, the courts also describe the accused's' conduct as exercising control, direction or movement over the complainants.

### **Intent**

In addition to the associated acts, the primary offence of trafficking in persons under s.279.01 also sets out the requisite intent as having a "purpose of exploiting them or facilitating their exploitation". Exploitation is defined under s.279.04, and will be explored below in sub-section *iii*.

The phrase "for the purpose of exploiting them or facilitating their exploitation" allows multiple actors in a trafficking situation to be included within the offence, including those who might aid or abet the exploitation of a person. As noted in the Department of Justice handbook on trafficking in persons, "[a]s a general matter, it should be noted that 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".<sup>4</sup>

The phrase "for the purpose of" means that the accused must intend for the exploitation to come about, but not that it has to, in fact, come about. So, along with capturing multiple individuals, the offence of trafficking in persons also captured intended or 'attempted' exploitation, as well as actual exploitation.<sup>5</sup>

However, even though this offence has a wide scope, the required intent under the offence has been stated as limited to situations where an accused has a subjective, actual intent.<sup>6</sup> Because of this, "knowledge of the perpetrator's intention to commit the crime and the intention of assisting the perpetrator in its commission are necessary".<sup>7</sup> So, this offence will only capture only those individuals with an actual, or subjective, intent to commit or assist in the commission of the exploitation of a person.

### **Consent of a Complainant**

Finally, subsection (2) of s.279.01 states that no consent to the activity that forms the subject matter of a charge under subsection (1) is valid. This means that any apparent consent on the part of the trafficked person cannot be used by the accused as a defence to their actions where the other elements of the crime are established. This reflects the fact that it is generally held that an individual who is coerced, forced or deceived into doing something cannot be said to be giving free and informed consent.

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<sup>4</sup> DOJ Handbook, *supra* note 1 at 19.

<sup>5</sup> DOJ Handbook, *supra* note 1 at 21, citing also *R v Beckford*, 2013 ONSC 653, and *R v Khawaja*, 2012 SCC 69; see also *R v AA*, 2015 ONCA 558 at paras 84-86.

<sup>6</sup> *R v Beckford*, *ibid* at para 38.

<sup>7</sup> *Ibid*.

### Section 279.011: Trafficking of a minor

Similarly to s.279.01, section 279.011 sets out a primary offence of trafficking in persons where a minor is trafficked.

**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

(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.

Section 279.011 is very similar in the structure and language used to describe the offence as that under s.279.01. Section 279.011 applies specifically where a trafficked person involved is under the age of eighteen. The penalties set out under subsection (1) are also marginally higher than those under s.279.01. However, the key wording, and interpretation, of the criminal conduct, intent, and caveat regarding consent, are the same and should be interpreted the same as suggested above under subsection i regarding s.279.01.

### Section 279.04: The definition of exploitation

The primary offence of trafficking in persons, under s.279.01, requires an accused to engage in certain conduct for the “purpose of *exploiting*” another person. The definition of exploitation has direct bearing on both the type of criminal conduct, and required intent, under the primary offence.

The definition of exploitation located under s.279.04 states:

**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

- (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 definition of exploitation set out above contains three primary elements:

- (1) the provision of labour or services;
- (2) as the result of certain conduct by the accused;
- (3) which would reasonably expect to cause the individual to fear for their safety or for the safety of another person.

This definition has been difficult to apply in practice to date, mostly due to debates around what kind of conduct leads to a 'fear for safety' by the complainant (3).

### **Labour or Services**

The definition of exploitation requires that the individual provide some labour or services. The broadness of this language suggests that a wide array of 'labour or services' can be captured by the offence. As discussed in the Department of Justice handbook on trafficking in persons, "[l]abour 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 towards criminal ends, such as participation in grow operations or transporting drugs, is also included. In short, trafficking may occur within any industry, whether regulated by the state or not."<sup>8</sup>

### **The Accused's Conduct**

The requirement that an accused engage in conduct which causes the victim to 'fear for their safety' is adopted from the offence of criminal harassment. Within the criminal harassment context, a 'fear for safety' has not been limited to situations where there is a threat of or actual physical harm or violence, but has also encompassed the concepts of psychological, mental and emotional safety.<sup>9</sup> Under the trafficking in persons offence framework, the inclusion of a broader category of potential 'harms' that can give rise to a fear for safety beyond physical safety is now also specifically delineated under

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<sup>8</sup> DOJ Handbook, *supra* note 1 at 23.

<sup>9</sup> See *R v Sillip*, 1998 2 WWR 653, 1997 ABCA 346, *aff'd* in *R v Ryback*, 1996 BCJ No 285 and *R v Goodwin*, 1997 BCCA 269. See also, *R. v. Hau*, [1996] B.C.J. No. 1047, (1996), 31 W.C.B. (2d) 50 (S.C.); *R. v. Skoczylas*, (1997), 99 B.C.A.C. 1, [1997] B.C.J. No. 2706; *R. v. Lafreniere*, [1994] O.J. No. 437, (1994), 22 W.C.B. (2d) 519 (Prov. Ct.); *R. v. Hertz*, (1995), 170 A.R. 139, [1995] A.J. 496 (Prov. Ct.); and, *R. v. Gowing*, [1994] O.J. No. 1696 (Prov. Div.). See also, DOJ Handbook, *supra* note 1 at 24-25. In the trafficking in persons context, see also *R v AA*, *supra* note 4 at para 71-72.

s.279.04 by virtue of the inclusion of subsection (2), which sets out specific non-physical factors a court may consider in determining whether exploitation is established. These include: coercion; deception; and, abuse of a position of authority, power or trust.

As discussed in the Department of Justice handbook on trafficking in persons, the kinds of ‘prohibited conduct’ contemplated under this definition include those that exhibit an “exertion of control over the victim’s movements and activities”, as well as, “[s]eemingly discreet instances that appear innocuous in isolation, such as a warning that a foreign national victim might be deported if she/he fails to comply with the demands of his/her trafficker.”<sup>10</sup> In addition, “any history of abuse between the accused and the victim ought to be factored into the assessment of the effect of the accused’s conduct on the complainant.”<sup>11</sup>

### **A ‘Fear for Safety’**

This ‘fear for safety’ standard was adopted from the *Criminal Code* offence of criminal harassment under section 264. Under that offence, the ‘fear for safety’ language has been interpreted as requiring a contextual analysis of the events and conduct in question, examining whether a ‘reasonable person’ would fear for their safety as a result of those events or conduct.<sup>12</sup> This ‘ordinary reasonable person’s view’ should also account for the complainant’s individual circumstances and background, such as age, gender, disability, family life, and other factors.<sup>13</sup>

It is important to note that because this ‘fear for safety’ standard relies on an objective analysis (the ‘reasonable person’), it does not require proof that the complainant in a particular case did, in fact, fear for her safety. As an objective standard, the offence requires evidence that would lead an ‘ordinary, reasonable person’, with a similar background and in similar circumstances as the complainant, to fear for their safety. This could be of value in cases where, as in *R v AA*, a complainant does not connect physical abuse or assault to her choice to engage in certain labour or services, such as exotic dancing.

As set out in the Department of Justice handbook on trafficking in persons, “[u]ltimately, the focus is on the effect of the conduct in a given case on the hypothetical “reasonable” victim. Accordingly, it is both the nature of the conduct and the context in which the accused engages in that conduct that is integral to the determination of its expected effect on the complainant.”<sup>14</sup>

However, while it is not required that there be evidence that this individual felt fearful in response to the accused’s conduct, it has appeared to be a problematic feature of trafficking in persons cases where an individual complainant did not demonstrate such fear.<sup>15</sup> In the majority of prosecuted cases (see the case summary table), the complainants did demonstrate fear and fearful behaviour in their evidence, such as trying to leave a physically or psychologically abusive situation.<sup>16</sup>

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<sup>10</sup> DOJ Handbook, *ibid* at 24.

<sup>11</sup> *Ibid*, citing *R v Di Pucchio*, 2007 ONCJ 643.

<sup>12</sup> *R v Harroon*, 2011 CarswellAlta 2555 (Alta Prov Ct) at para 66.

<sup>13</sup> See *R v Sillip*, *supra* note 8 at paras 25-27. See also, *R v AA*, *supra* note 4 at para 70-76.

<sup>14</sup> DOJ Handbook, *supra* note 1 at 24.

<sup>15</sup> See, i.e., *R v Nakpangi*, 2008 CarswellOnt 9334 (WL Can) (Ont Ct J).

Recent case law is suggesting that courts are paying more attention to the intent of the accused in assessing whether the conduct could give rise to a ‘fear for safety’ rather than its impact on the victim. In other words, in examining whether the accused’s conduct could give rise to a ‘fear for safety’, all that needs to be proven is that they were intended by the accused to have that effect” whether or not the conduct did, in fact, have that effect.<sup>17</sup> As the court in *R v AA* stated, “exploitation and safety relate to an accused’s purpose and not to the actual consequences of the accused’s behaviour for the victim.”<sup>18</sup>

This focus on the intent of the accused, and not the actual consequence or impact on the complainant, is a welcomed shift because it places the assessment and emphasis on the accused’s conduct and intent, rather than on how it is perceived by the complainant, which has proven difficult to establish in criminal trials.

### **Section 279.02: Material benefit**

Alongside the primary offence of trafficking in persons, sections 279.02 and 279.03 set out related offences.

Section 279.02 creates an offence of receiving a material benefit from trafficking in persons:

**279.02** (1) 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 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

(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.

As set out in the Department of Justice handbook on trafficking in persons, there are three primary elements of this offence:

- (1) the accused receives a financial or other material benefit;
- (2) that benefit was derived from the commission of a trafficking in persons offence and the accused knew that fact; and,
- (3) the prohibited conduct under sections 279.01 or 279.011 occurred.<sup>19</sup>

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<sup>17</sup> *R. v. O'Brien*, 2013 SCC 2, para 13, cited in *Beckford*, *supra* note 4 at para 42; *R v AA*, *supra* note 4 at paras 84-85.

<sup>18</sup> *R v AA*, *ibid* at para 86, emphasis added.

<sup>19</sup> DOJ Handbook, *supra* note 1 at 27.

The Department of Justice handbook notes that a “financial or material benefit” is language derived from the offence of criminal organization under s.467.1 of the *Criminal Code*, and has, in that context, been interpreted broadly. However, what constitutes a material benefit will necessarily depend on the facts of a particular case.<sup>20</sup>

### Section 279.03: Withholding or destroying documents

Section 279.03 sets out a second ancillary offence of withholding or destroying document:

**279.03** (1) Everyone 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 an indictable offence and liable to imprisonment for a term of not more than five years.

(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.

This offence encompasses two primary elements:

- (1) the accused concealed, removed, withheld or destroyed any travel or identity document; and,
- (2) did so with the intention of committing or facilitating the commission of a trafficking in persons offence under s.279.01 or s.279.011.<sup>21</sup>

Similar to the offence of receiving a material benefit, it is not necessary to prove that an offence under s.279.01 or s.279.011 was actually committed in order to charge and convict under s.279.03.<sup>22</sup>

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<sup>20</sup> *Ibid*

<sup>21</sup> DOJ Handbook, *supra* note 1 at 27.

<sup>22</sup> *Ibid* at 28.

## COMPLEMENTARY AND ALTERNATIVE OFFENCES

### Sections 151-152: Sexual Interference & Invitation to Sexual Touching

#### Section 151: Sexual Interference:

Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years

[...]

#### Section 152: Invitation to Sexual Touching:

Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years,

[...]

Together, sections 151 and 152 criminalize sexual conduct between an accused and a complainant who is under the age of sixteen years of age.

**Consent** (see [Appendix 3: Legal Age of Consent](#) for a table summary of this information)

There are exceptions to sections 151 and 152, relating to consent, based on the age difference between the parties.

Section 150.1(1) sets out a general rule that consent is not a defence to a charge under section 151 or 152 [...] where a complainant is under the age of sixteen years.

Section 150.1(2) provides an exception to 150.1. An accused may rely on a defence of consent [in relation to charges under sections 151 or 152] where a complainant is between **twelve-fourteen** years old, **and** the accused is less than **two** years older than the complainant, **and** the accused is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

150.1(3) provides a similar exception as 150.1(2). An accused may rely on a defence of consent [in relation to charges under sections 151 or 152] where a complainant is **fourteen-sixteen** years old, **and** the accused is less than **five** years older than the complainant, **and** the accused is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

Finally, section 150.1(4),(5),(6) all relate to the fact that an accused may not rely on a mistaken belief as to the complainant's age as a defence, "unless the accused took all reasonable steps to ascertain the age of the complainant".

*Example:* In *R v Moazami*, the accused is convicted of sexual interference based on admitted sexual intercourse with one of the complainants. However, the accused testified that he believed her to be older and relied on a mistaken belief of her age. The court, however, found that the accused had seen the complainant's student card, which would place her age around thirteen or fourteen years old, and that this should have led the accused to make further inquiries about the complainant's age [under s.150.1(4)(5)(6), the accused must take 'all reasonable steps to ascertain the age of the complainant'].

### **Section 153: Sexual Exploitation**

(1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

(1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including

(a) the age of the young person;

(b) the age difference between the person and the young person;

(c) the evolution of the relationship; and

(d) the degree of control or influence by the person over the young person.

(2) In this section, "young person" means a person sixteen years of age or more but under the age of eighteen years.

The offence of sexual exploitation may appear similar to that of human trafficking; however, there are important distinctions between the two offences.

The offence of sexual exploitation involves sexual activity between the complainant and the accused, where there is a position of trust or authority established. The purpose of this offence is described as

“afford[ing] greater protection to young persons.” Where a young person has a relationship with an adult, “[t]he implication from the wording of section 153 is that notwithstanding the consent, desire or wishes of the young person it is the adult in a position of trust who has the responsibility to decline having any sexual contact whatsoever with that young person.”<sup>23</sup>

A position of trust is “founded on notions of safety and confidence and reliability that the special nature of the relationship will not be breached.”<sup>24</sup> It has been defined as:

Where the nature of the relationship between an adult and a young person is such that it creates an opportunity for all of the persuasive and influencing factors which adults hold over children and young persons to come into play, and the child or young person is particularly vulnerable to the sway of these factors, the adult is in a position where those concepts of reliability and truth and strength are put to the test. Taken together, all of these factors combine to create a “position of trust” towards the young person.<sup>25</sup>

A position of authority has been defined as “invok[ing] notions of power and the ability to hold in one’s hands the future or destiny of the person who is the object of the exercise of authority.”<sup>26</sup>

In defining whether a position of trust or authority exists, the trial judge must examine all the factual circumstances relevant to the characterization of the relationship between the young person and an accused.<sup>27</sup> Section 153(1.2) sets out that a judge may infer that an accused is in a relationship with a young person that is exploitative, by considering the listed factors under that section.

The offence of sexual exploitation also applies to complainants who are between sixteen and eighteen years old, and in that way, specifically complements ss.151 and 152.

While a possible situation of sexual exploitation could present facts on which charges under both section 153 and human trafficking charges could be laid, under the human trafficking offence, as seen above, there is typically some exploitation of the complainant in providing her labour and services, rather than an exploitation of the trust or authority of the accused of her (though this can be a present factor as well). This is why the offence of sexual exploitation, like other offences discussed in this section, can be complementary to a charge of human trafficking. A situation of human trafficking, particularly where the accused and the complainant are in a romantic relationship, may also, depending on the facts, allow for charges under s.153.

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<sup>23</sup> See *R v Mason*, [2001] OJ No 6097 (Ont. Sup. Ct. Justice) at para 15, citing also *R v Audet*, [1996] 2 SCR 171.

<sup>24</sup> *R. v. P.S.*, [1993] O.J. No. 704 at para 36.

<sup>25</sup> *R. v. P.S.*, [1993] O.J. No. 704 at para 36.

<sup>26</sup> *Ibid*, citing *R v Kyle* (1991), 68 CCC (3d) 286 (Ont. C.A.).

<sup>27</sup> See *R v Audet*, [1996] 2 SCR 171; *R v DE*, [2009] OJ No 1909 at para 43.

For example, in *R v Moazami*, there were several charges of sexual exploitation based on the accused's own sexual conduct with the complainants. As the judge explains with one of these counts:

In my view, it is beyond a reasonable doubt that Mr. Moazami's relationship with M.N. was exploitative. Mr. Moazami was M.N.'s pimp during the offence dates and this was an exploitative relationship in which she was in a position of dependence and he exercised a significant amount of control over her through coercion, intimidation and threats of violence for his own profit. Indeed, he treated sexual intercourse with M.N. as if it was part of his right as her pimp. Unlike clients, Mr. Moazami did not pay for her sexual services. Further, he created an atmosphere of fear in which M.N. felt compelled to continue working for Mr. Moazami as a prostitute, notwithstanding he retained most of her earnings. During this relationship of dependence, Mr. Moazami had sexual intercourse while M.N. was severely intoxicated by drugs.

Applying the factors in s. 153(2.1), M.N. was only sixteen or barely seventeen when the sexual intercourse occurred (a); Mr. Moazami was ten years older than her (b). The evolution of the relationship was exploitative in nature as set out above (c). While Mr. Moazami attempted to downplay the amount of control that he had over M.N., he did not dispute the underlying circumstances of their relationship as pimp and prostitute (d).

### **Section 163.1: Child pornography**

The making, sale or distribution, possession or accessing of child pornography constitutes a criminal offence under s.163.1.

Child pornography is defined as:

(1) (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years;

(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act;

(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act; or

(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.

Subsection (2) criminalizes every person “who makes, prints, publishes or possesses for the purposes of publication any child pornography.”

Subsection (3) criminalizes the distribution – “transmits, makes available, distributes, sells, advertises, imports, exports or possesses for the purposes of transmission, making available, distribution, sale, advertising or exportation” – of child pornography.

Subsection (4) criminalizes simple possession of child pornography.

Subsection (4.1) criminalizes ‘accessing’ child pornography, which is defined under subsection (4.2) as “knowingly causing child pornography to be viewed by, or transmitted to, himself or herself.”

### **Section 172.1: Luring a child**

Section 172.1 sets out the offence of luring a child, which is defined under subsection (1) as communicating, by means of telecommunication, with:

(a) a person who is, or who the accused believes is, under the age of 18, for the purpose of facilitating the commission of certain offences, including sexual exploitation (153(1)), child pornography (163.1), human trafficking of a minor (279.011), obtaining a material benefit (279.02), withholding or destroying documents (279.03), obtaining sexual services for consideration from person under 18 years (286.1(2)), obtaining a material benefit from sexual services provided by person under 18 years (286.2(2)), and procuring a person under 18 years (286.3(2)).

(b) A person who is, or who the accused believes is, under the age of 16 years, for the purposes of facilitating the commission of certain offences, including sexual interference (151), invitation to sexual touching (152), sexual assault (271), sexual assault with a weapon (272), aggravated sexual assault (273), and abduction of a person under 16 (280); or,

(c) A person who is, or who the accused believed is, under the age of 17 years, for the purposes of facilitating the commission of an offence of abduction of a person under 14 (281).

Luring thus criminalizes the communication of an accused with the above identified persons where that communication is engaged for the purposes of facilitating one of the above identified offences.

Where there is evidence that the person referred to under subsections (1)(a),(b), or (c) was represented to the accused as being under the age of eighteen, sixteen or fourteen years, as the case may be, is

proof that the accused believed that person was under that age, absent evidence to the contrary (172.1(3)).

Like other offences discussed so far, it is not a defence to charges under this offence that the accused believed that the person referred to was at least eighteen, sixteen or fourteen years of age, unless the accused took reasonable steps to ascertain the age of the person (172.1(4)).

### **Section 213: Offences related to prostitution**

The *Criminal Code* offences addressing prostitution-related activities underwent a constitutional challenge, which culminated in a Supreme Court of Canada decision in *Canada v Bedford*<sup>28</sup> in 2013. The Supreme Court of Canada found that the existing prostitution laws violated individual rights to life, liberty and security of the person under section 7 of the *Charter*. As a result of *Bedford*, existing offences under the *Criminal Code* were struck down, and the federal government had one year to introduce new legislation.

New legislation was introduced under the *Protection of Communities and Exploited Persons Act*, SC 2014, c25. While there has been some confusion surrounding the new *Criminal Code* offences, and their application, it is important to note that this Act does not legalize prostitution. Prostitution remains criminalized in Canada. While most of the amended and new offences focus on the users or ‘clients’ of prostitutes, and on third parties who profit from and procure individuals for prostitution, some offences may also apply to sex workers themselves (s210; s213).

This section reflects the current *Criminal Code* offences, post-*Bedford*.

### **Section 213: Communicating in public for the purposes of offering, providing or obtaining sexual services for consideration.**

213. (1) Everyone is guilty of an offence punishable on summary conviction who, in a public place or in any place open to public view, for the purpose of offering, providing or obtaining sexual services for consideration,

(a) stops or attempts to stop any motor vehicle; or

(b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place.

(1.1) Everyone is guilty of an offence punishable on summary conviction who communicates with any person — for the purpose of offering or providing sexual services for consideration — in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre.

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<sup>28</sup> 2013 SCC 72.

(2) In this section, “public place” includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

Some amendments to this offence were added under the 2014 Act. The scope of the offence under s.213 is more limited as a result of these amendments, being restricted to communication impeding traffic, or at or near a school, playground or daycare.

**Sections 286.1-268.5: Commodification of sexual activity offences (obtaining services, procuring, material benefit, advertising)**

Following the *Bedford* decision, the introduction of the 2014 Act created new *Criminal Code* offences to criminalize procurement, living on the avails (now termed ‘material benefit’), and obtaining sexual services.

These new offences are listed under the heading, “Commodification of sexual activity offences”.

**Section 286.1: Obtaining Services** specifically criminalizes the users or ‘clients’ of sexual services: “everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person [...]”. Under subsection (2), stricter penalties are imposed where a person obtains, or communicates for the purposes of obtaining, sexual services from a person under 18.

**Section 286.2:** criminalizes obtaining a **material benefit** from sexual services – this replaced the previous ‘living on the avails’ offence.

286.2 (1) 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 286.1(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

Subsection (2) creates a specific offence where the person is under eighteen, attracting higher penalties:

(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 286.1(2), 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.

In *R v AA*, the Court of Appeal found that the offence of living on the avails (prosecuted under previous s.212) could apply even where there was only one occurrence of prostitution activity. In that case, the complainant, who was sixteen-years old, had sexual intercourse with a patron of the Silver Dollar, and received \$100 in payment for that act, which she turned over to the accused in accordance with their arrangement.<sup>29</sup>

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<sup>29</sup> Note, though, that the Court of Appeal remitted the matter for a new trial on these charges and did not, itself, find the accused guilty of this charge.

In *R v Moazami* (prosecuted under previous s.212), the accused admitted to taking a percentage of profits earned by the complainants and performing services for them that related directly to the prostitution business. Evidence of the use of threats and physical violence against some of the complainants assist in making out the requisite element of 'coercion' under s.212(2.1) in his case.

Subsections (3)-(5) respond to specific challenges raised in Bedford regarding criminalizing a legitimate spouse or intimate partner of a sex worker, or others in her employ for legitimate purposes, such as security guard.

Subsection (3) creates a presumption of 'material benefit', meaning that absent proof (such as could be established by the kind of relationship listed under subsection (4), a person can be presumed to be obtaining a material benefit where he or she lives or is habitually in the company of a person who provides sexual services for consideration.

(3) For the purposes of subsections (1) and (2), evidence that a person lives with or is habitually in the company of a person who offers or provides sexual services for consideration is, in the absence of evidence to the contrary, proof that the person received a financial or other material benefit from those services.

Subsection (4) specifically excludes the classes of persons raised in the Bedford challenge from liability under this offence.

(4) Subject to subsection (5), subsections (1) and (2) do not apply to a person who receives the benefit

(a) in the context of a legitimate living arrangement with the person from whose sexual services the benefit is derived;

(b) as a result of a legal or moral obligation of the person from whose sexual services the benefit is derived;

(c) in consideration for a service or good that they offer, on the same terms and conditions, to the general public; or

(d) in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services the benefit is derived, if they did not counsel or encourage that person to provide sexual services and the benefit is proportionate to the value of the service or good.

Subsection (5) sets out factors which, if present, will erase the immunity of a person who would otherwise come within the scope of subsection (4).

(5) Subsection (4) does not apply to a person who commits an offence under subsection (1) or (2) if that person

(a) used, threatened to use or attempted to use violence, intimidation or coercion in relation to the person from whose sexual services the benefit is derived;

(b) abused a position of trust, power or authority in relation to the person from whose sexual services the benefit is derived;

(c) provided a drug, alcohol or any other intoxicating substance to the person from whose sexual services the benefit is derived for the purpose of aiding or abetting that person to offer or provide sexual services for consideration;

(d) engaged in conduct, in relation to any person, that would constitute an offence under section 286.3; or

(e) received the benefit in the context of a commercial enterprise that offers sexual services for consideration.

Relatedly, **section 286.5** states that the offence of obtaining a material benefit under section 286.2 will not apply to persons who derive the benefit from the provision of their own sexual services. Essentially, the new offence and its included exceptions permits an adult who is not being exploited to conduct sex work without committing an offence. For example, if a legitimate driver charges the worker a standard rate to take them to an outcall, it wouldn't constitute an offence. However, if a driver charged her fifty percent of her earnings for that date then he is really her pimp and not a driver. It is important to note that this only applies to independent workers as 5(e) states that a commercial enterprise does not qualify for an exemption.

**Section 286.3** sets out a new **procuring** offence (the previous procuring offence, under s.212, was struck down in *Bedford*).

286.3 (1) Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

(2) Everyone who procures a person under the age of 18 years to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(2), recruits, holds, conceals or harbours a person under the age of 18 who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, 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 five years.

Where an accused procures a person for the purposes of providing sexual services for consideration, that person is guilty of an offence under s.286.3.

For example, in *R v Byron* (based on charges under the previous s.212 of the *Criminal Code*), the judge accepted the complainant's evidence that she was lured from Windsor to Montreal under the pretense of engaging a romantic relationship with Byron, and then coerced into prostitution against her will. The complainant testified that when she attempted to resist Byron's demands to engage in prostitution, he threatened and physically assaulted her. Byron used threats, intimidation, and physical violence to force the complainant to have sex with other men in exchange for money and to submit to his demands. The complainant testified that if she resisted, Byron used force to obtain her compliance. He controlled virtually all aspects of her prostitution activities and held himself out to be her pimp to others. He moved the complainant through a 'circuit' of cities including Montreal, Toronto, Barrie and Ottawa.

In *R v Moazami*, the accused's 'glamorization' of the business, as well as promises of money and drugs, were found to constitute an inducement or influence in the complainants' decisions to engage in prostitution, and thus were found to fall within the scope of the procuring offence (under s.212 at that time). Also in that case, the accused was found guilty of procurement in relation to one complainant by 'falsely characterizing the nature of the services that would be required' and the income-earning potential of the work.

In addition, where an accused procures a person for the purpose of facilitating the offence of obtaining sexual services for consideration, and recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an offence. It is important to note that if an accused recruits a victim and they agree to provide sexual services, the accused has committed an offence even if the victim never actually provides the sexual service.

This offence, in particular, contains very similar language to the listed acts under the trafficking in persons offence under s.279.01. However, unlike the trafficking offence—which requires a purpose of *exploitation*, this offence of procuring, under s.286.3, does not require an exploitative element.

Where a person who is procured is under the age of eighteen, subsection (2) sets out a stricter minimum penalty of five years imprisonment.

**Section 286.4** specifically criminalizes **advertising an offer to provide sexual services**. Section 286.5 makes clear that this offence will not apply to a person who offers their own sexual services.

### **Section 264: Criminal harassment**

264. (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

(2) The conduct mentioned in subsection (1) consists of

(a) repeatedly following from place to place the other person or anyone known to them;

(b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or

(d) engaging in threatening conduct directed at the other person or any member of their family.

As discussed in Section 9 of this manual, this offence contains some similar language to the trafficking in persons offence, under its definition of exploitation in s.279.04. Both offences employ this 'fear for safety' language. In the context of criminal harassment, that language has been interpreted to include not only physical safety, but also psychological and emotional security.

Criminal harassment may be applicable as a complementary offence in some cases where facts establish stalking or other harassing behaviour, as was seen in *R v Urizar*.

### **Sections 265, 267-269: Offences related to assault and Sections 271-273: Offences related to sexual assault**

Where the use or threat of physical violence is present in a case, offences related to assault may also present complementary charges.

Assault is defined in the *Criminal Code* as: the intentional application of force to another person without their consent (265(1)(a)); a threat or attempt, by act or gesture, to apply force to another person where he has, or causes the other person to believe on that he has, the present ability to carry out the threat or attempt (265(1)(b)); or, accosting or impeding another person while openly wearing or carrying a weapon or imitation thereof (265(1)(c)).

Examples:

- » In *R v Byron*, the judge accepted evidence that the accused used threats and physical force to compel the complainant to comply with his demands on several occasions. The accused was convicted, in part, on an assault charge.
- » Similarly, in *R v AA*, there was evidence of several incidences of physical assault against the complainant, such as when she ‘talked back’ to the accused.
- » In *R v Moazami*, the accused admitted to sexual intercourse with several complainants, but raised defences concerning an honest but mistaken belief in their ages in response to charges of sexual interference. As the accused was found guilty on those offences, the judge was not accepting the accused’s defence of mistaken belief, the same findings were used to convict on charges of sexual assault.

This basic definition and offence of assault applies to all forms of assault, including sexual assault, aggravated sexual assault, sexual assault with a weapon, and threats to a third party (265(2)).

**Assault with a weapon is a specific offence under s.267**, and aggravated assault, which is defined as assault where the accused “wounds, maims, disfigures or endangers the life of the complainant”, is a specific offence under s.268.

**Sexual assault is a specific offence under section 271**. Aggravated sexual assault has the same definition of aggravated assault, but is a specific offence under section 273. Additionally, under section 272, where a person, in committing a sexual assault, (a) carries, uses or threatens to use a weapon or an imitation thereof; (b) threatens to cause bodily harm to a person other than the complainant; (c) causes bodily harm to the complainant; or (d) is a party to the offence with any other person, is guilty of an indictable offence and may receive stricter penalties if found guilty.

### Sections 279: Kidnapping

The offence of kidnapping is set out under section 279:

279. (1) Every person commits an offence who kidnaps a person with intent

(a) to cause the person to be confined or imprisoned against the person’s will;

(b) to cause the person to be unlawfully sent or transported out of Canada against the person’s will; or

(c) to hold the person for ransom or to service against the person’s will.

Kidnapping can be a complementary offence to charges of trafficking in persons, particularly where there is evidence of confining or imprisoning a person against their will (subsection (a)), which can relate to facts where a person is ‘held or harboured’ under the trafficking in persons offence under s.279.01.

### Sections 280-281: Abduction of minors

The abduction of minors offences are divided by age, with section 280 applying to persons under sixteen years, and section 281 applying to persons under fourteen years.

There are two small differences between section 280 and 281. First, section 280 applies to persons who 'without lawful authority' take a minor, while section 281 applies to persons who 'not being the parent, guardian or person having the lawful care or charge' of the minor. This might suggest that there is a wider scope of persons potentially captured by section 281.

Second, the maximum penalty for abduction of a minor under fourteen, under section 281, is double that available under section 280. Section 281 provides a maximum term of imprisonment of ten years, while section 280 provides a maximum term of imprisonment of five years.

280. (1) Every one who, without lawful authority, takes or causes to be taken an unmarried person under the age of sixteen years out of the possession of and against the will of the parent or guardian of that person or of any other person who has the lawful care or charge of that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) In this section and sections 281 to 283, "guardian" includes any person who has in law or in fact the custody or control of another person.

281. Every one who, not being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, unlawfully takes, entices away, conceals, detains, receives or harbours that person with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

### Section 346: Extortion

Extortion is defined as:

346. (1) Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

Extortion thus applies to situations where an accused causes a person to do something through the use of violence, threats or 'menaces', or accusations. The accused must also intend to obtain something through his conduct inducing the other person to do something.

Extortion may apply to some cases of trafficking in persons or sexual exploitation where there is violence present in the relationship, and where the complainant, for example, is induced to provide sexual services so that the accused can obtain a material benefit.

However, there is no evidence to establish that charges of extortion have been laid as complementary charges in a trafficking for sexual exploitation case to date.

### **Section 423: Intimidation**

Intimidation is related to extortion in that it delineates specific criminalized conduct undertaken with an intent to induce or compel a person to do, or not do, something.

423. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;

(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;

(c) persistently follows that person;

(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;

(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;

(f) besets or watches the place where that person resides, works, carries on business or happens to be; or

(g) blocks or obstructs a highway.

As with extortion, there is no evidence to establish that charges of intimidation have been laid as complementary charges in a trafficking for sexual exploitation case to date.

## APPENDIX 3: LEGAL AGE OF CONSENT

		Age of Consent for Sexual Activity								
		IS THIS LEGAL?								
		Older Person's Age								
Younger Person's Age		12	13	14	15	16	17	18	19	20
	12	yes	yes	yes*	no	no	no	no	no	no
	13		yes	yes	yes*	no	no	no	no	no
	14			yes	yes	yes	yes	yes	yes*	no
	15				yes	yes	yes	yes	yes	yes*
	16					yes	yes	yes	yes	yes
	17						yes	yes	yes	yes
	18							yes	yes	yes
	19								yes	yes
	20									yes

\*It is important to note that the law clearly states LESS THAN 2 years or 5 years older depending on the close-in-age exception.

The *Criminal Code of Canada* prohibits:

- Any sexual activity between an adult and a person under the age of 16 with the following exceptions:

As long as the older person is not in a position of trust or authority over the younger, and:

- 1) one person is 12 or 13 years old and the other is less than 2 years older or
- 2) one person is 14 or 15 years old and the other is less than 5 years older

- Any sexual activity between an adult in a position of trust to authority towards a person between the ages of 16 and 18 years

- Any sexual activity without the consent of a person at any age

- The use of people under the age of 18 for exploitative sexual activity (i.e. prostitution, pornography, or where there is a relationship of trust, authority, dependency, or any other situation that is otherwise exploitative of a young person)

Legislative Summaries - Library Parliament

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## APPENDIX 4: IMPACTS OF TRAUMA

Trauma is used to describe experiences or situations that overwhelm an individual's capacity to cope. Trauma may be the result of a single event or a series of ordeals. The majority of trafficking situations are the culmination of many traumatic experiences.

Trauma affects how individuals see themselves ("I am worthless"), the world around them ("No one can protect me"), and relationships ("I don't trust anyone"). These beliefs will affect how affected youth respond to services and the criminal justice system.

Trauma may impact<sup>30</sup>:

- » Memory
  - The brain's ability to form accurate memories and store them appropriately is impaired during a traumatic event, when the body is flooded with hormones. The memories therefore are often strictly sensory, incomplete, and may not be sequential.
- » Regulation
  - When reliving the traumatic event, a person's body may physically respond as if they were in the situation again. This may affect:
    - Ability to focus and attentiveness
    - Management of emotional responses
    - Control of bodily functions (e.g., heart rate or temperature)
    - A person's ability to cope may diminish over time if there is repeated, complex trauma
- » Behaviours
  - Angry or hostile tendencies
  - Increased risk taking
  - Fearful reactions, social phobias
  - Shying away from other people or situations
  - Misses appointments or commitments
- » Relationships
  - The way in which victims were coerced and manipulated by their trafficker may impact their ability to relate to others in the future.
    - Not trusting or overly trusting of strangers
    - Overly dependent on others
    - Vulnerable to future victimizing relationships
    - Complicated attachments with traffickers or peers from the trafficking situation
- » Self-Identity
  - May internalize blame and unworthiness
  - Feelings of guilt and shame
  - Loss of power and ability to make independent decisions

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<sup>30</sup> National Human Trafficking Resource Center (NHTRC), The Impact of Trauma, <https://traffickingresourcecenter.org/re-sources/trauma-informed-human-trafficking-screenings>

## APPENDIX 5: VICTIM IMPACT STATEMENT

This excerpt is taken from OCTIP's online training, *Human Trafficking: Canada is Not Immune*.

Eve was 18 when Imani Nakpangi was arrested. The Victim Impact Statement she provided to the judge during sentencing describes the emotional effects, physical injuries and financial consequences of being trafficked for the purpose of sexual exploitation.

The following are direct quotes taken from Eve's Victim Impact Statement<sup>31</sup>. This is Eve's story in her own words, though her name has been changed to protect her identity:

"The emotional impact: Constantly looking over my shoulder afraid either Imani or his friends are going to come after me for putting him in jail. I don't feel safe at home. He knows where I live and what my family looks like and where they live. Hard for me to have relationships with other men because I'm always suspicious they are trying to take advantage of me like Imani did. I have nightmares about him. I have low self-esteem. Feel like I'm only good for one thing, sex. I don't see why someone, a man, would be interested in me and try to get to know me because I feel unworthy, dirty, tainted, nothing; basically lost two and a half to three years of my life being with Imani. I should have completed my high school diploma, instead I'm 32 credits short, I'm basically in grade nine because Imani wouldn't let me go to school, now I'm facing a maximum of two years to try and finish school. Relationship with my family — because they don't understand what I went through, I feel alone in that aspect and if I am not a good person in their eyes then to put them through tragedy. I feel like the black sheep in the family and they look down on me and are ashamed of me.

"Physical injuries: I have panic anxiety attacks. I'm always afraid I have AIDS because of the fact that I slept with so many men I didn't know. I feel my heart is weak from all the drugs, and [I'm] afraid my cocaine use will negatively affect me in the future. All this has turned me into a hypochondriac. I wake up every day feeling sick to my stomach. Been so stressed this week I've been vomiting. I'm scared I'm going to go crazy. I frequently go to the doctors to get tested for everything. Because of him I was put in situations [where] I was beat up, robbed, assaulted by him and clients, and some of the girls he brought around.

"Financial impact: When I left Imani I left with absolutely nothing, no clothes, no personal items. I gave him thousands of dollars and I have nothing to show for it. I had asked him to buy me braces with the money I earned and never got them. All the while he drove around in a BMW I bought him, buying himself jewellery, expensive furniture, nice clothes, pieces of art, a large home in Niagara Falls for the mother of his child, jewellery; a car for which she crashed a week in for drunk driving. Paid vacation for her, the mother of his child, and other girls, all of which I paid for. Now I have to struggle to pay for school, rent and to survive. He's promised me a car and a home."

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<sup>31</sup> Sentencing decision in *R v Nakpangi*, heard before the Hon. Justice H.K. Atwood, Ontario Court of Justice, June 24, 2008, Brampton, Ontario.

## APPENDIX 6: QUESTIONS TO IDENTIFY A TRAFFICKED YOUTH

\*Remember: it is generally best not to interview for facts (dates, times, places, names), unless you are a police officer or other designated interviewer. If the situation proceeds through to the criminal justice process, leading or intrusive questions may be seen as influencing testimony. Most service providers do not need to know every fact or detail; you just need to know enough to determine what the person's immediate needs are and what services you can recommend.<sup>32</sup>

We also recommend that you let the person tell their story in their own way—do not overwhelm them with direct questions. That said, you may need to ask a few questions like the following to help someone tell their story, and that way possibly reveal signs of human trafficking.

### General:

- » Where do you come from?
- » How did you get here- to this city/town?
- » Did anyone help you get here, by driving you or paying your fare?
- » Where do you live?
- » Where is your family? Are you in contact with them?
- » Do you have a doctor or dentist?
- » What is your daily schedule like?
- » Are you free to do things independently—go to the store, visit a doctor?
- » Have you or your family ever been threatened?
- » Do you have access to your birth certificate or student card/identification?

### Living Conditions:

- » Do you pay rent?
- » Where do you sleep and eat?
- » Is it a private room?
- » Are you free to leave when you please?
- » Do you have to ask permission to eat, sleep or go to the bathroom?
- » Are there locks on the doors or windows that you cannot open?
- » Do you feel safe where you live?

### Debts:

- » Do you owe anyone money?
- » What do you owe this money for?

### Relationship:

- » How did you meet your boyfriend/girlfriend?
- » Does your boyfriend/girlfriend respect your boundaries?
- » Has your relationship changed over time?
- » Have you ever felt like you had to do something even though you didn't want to?
- » Are there any rules you have to follow?
- » Have you ever traded a sexual act for something in return?

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<sup>32</sup> Adapted from OCTIP Canada Is Not Immune: Information Sheet

## APPENDIX 7: RESOURCES AND SERVICES

### Resource Directory

Children of the Street Society has created an online searchable database with resource services available across BC for sexually exploited youth and their families.

Please visit [www.childrenofthestreet.com/resources](http://www.childrenofthestreet.com/resources).

### Victim Services Programs

Victim Services programs are available in most BC Communities.

For a list of all programs in BC: [Victim Service Directory](#).

For help and information anytime, anywhere in BC- Call *VictimLink BC*: 1-800-563-0808

### Child and Youth Advocacy Centres

#### ***Sophie's Place Child Advocacy Centre – Surrey***

Phone: 604-588-0727

Website: <http://the-centre.org/child-abuse/>

#### ***Alisa's Wish – Maple Ridge***

Phone: 604-466-3922

Website: <http://www.alisaswish.com/>

#### ***Safe Kids & Youth (SKY) Coordinated Response – Kootenays***

Phone: 250-352-6786

Website: <http://thekoop.ca/about/projects/sky-coord-response/>

#### ***Vancouver CYAC – Vancouver***

Phone: 236-317-2005

Website: [www.thetreehousevancouver.ca](http://www.thetreehousevancouver.ca)

#### ***Oak Centre Child and Youth Advocacy Centre – Vernon***

Phone: 778-475-2920

Website: <http://vwts.ca/programs-services/childrens-programs/1558-2/>

#### ***Victoria Child Advocacy Centre – Victoria and Capital Region***

Phone: 250-385-6111

Website: <http://www.vcapcc.com/child-and-youth-advocacy-centre.html>

### **British Columbia Community Action Teams (CATs)**

Community Action Teams (CATs) are comprised of groups of service providers and community partners who are working to develop local strategies to address the sexual exploitation of youth.

\*This list is maintained by Victim Services and Crime Prevention Division  
(updated annually in March) -

<http://www2.gov.bc.ca/gov/content/safety/crime-prevention/community-crime-prevention/exploitation>

#### **Burnaby-New Westminster Task Force on Sexually Exploited At-Risk Youth**

Contact: Rebekah Mahaffey

Phone: 604-294-7299

Email: [Rebekah.mahaffey@burnaby.ca](mailto:Rebekah.mahaffey@burnaby.ca)

#### **Campbell River Sexual Exploitation Action Team**

Contact: Valery Puetz

Phone: 250-287-7384

Email: [valery.puetz@annelmorhouse.ca](mailto:valery.puetz@annelmorhouse.ca)

#### **Chilliwack Community Action Team**

Contact: Brenda Listoen

Phone: 604-798-3246

Email: [listoenb@comserv.bc.ca](mailto:listoenb@comserv.bc.ca)

#### **Clearwater Community Action Team**

Contact: Melanie Williams

Email: [md\\_williams@live.ca](mailto:md_williams@live.ca)

#### **Coquitlam/Port Coquitlam/Port Moody Community Action Team**

Contact: Diane Sowden

Phone: 604-777-7510

Email: [dsowden@childrenofthestreet.com](mailto:dsowden@childrenofthestreet.com)

#### **Comox Valley (CASEY) Community Action Team**

Contact: Alexis Forbes

Email: [caseycomoxvalley@gmail.com](mailto:caseycomoxvalley@gmail.com)

#### **Fraser Valley Community Action Team**

Contact: Sheila Lum

Phone: 604-556-4619

Email: [Sheila.Lum@abbotsfordcommunityservices.com](mailto:Sheila.Lum@abbotsfordcommunityservices.com)

**Langley- End Exploitation**

Contact: Danny Ferguson

Phone: 604-968-1812

Email: [danny@youthunlimited.com](mailto:danny@youthunlimited.com)

**Nanaimo Community Action Team**

Contact: Nicole or Rhonda

Phone: 1-855-406-8034

Email: [communityactionteam@outlook.com](mailto:communityactionteam@outlook.com)

**Prince George CASEY (Community Against Sexual Exploitation of Youth)**

Laurel Collins, Justice Education Society

Phone: 250-614-2686

Email: [laurel.collins@justiceeducation.ca](mailto:laurel.collins@justiceeducation.ca)

**Richmond Community Action Team**

Contact: Kate Rudelier

Email: [krudelier@richmond.ca](mailto:krudelier@richmond.ca)

**Ridge Meadows Community Action Team**

Contact: Wilf Leung

Phone: 604-476-2820

Email: [wleung@plea.bc.ca](mailto:wleung@plea.bc.ca)

Contact: Charlotte Rechkemmer

Email: [crechkemmer@pcrs.ca](mailto:crechkemmer@pcrs.ca)

**Squamish SAFFE Community Action Team**

Contact: Andrea Sentesy

Phone: 604-892-5748

Email: [saffeproject@hswc.ca](mailto:saffeproject@hswc.ca)

**Vancouver Community Action Team**

Contact: Camila Jimenez

Phone: 604-708-2647

Email: [cjimenez@plea.bc.ca](mailto:cjimenez@plea.bc.ca)

**Victoria Capital Region Action Team**

Contact: Bill McElroy

Phone: 778-265-2420

Email: [bill@mcelroys.ca](mailto:bill@mcelroys.ca)

Contact: Ellie James- Boys and Girls Club Services of Greater Victoria

Phone: 250-686-9117

Email: [ejames@bgcvc.org](mailto:ejames@bgcvc.org)

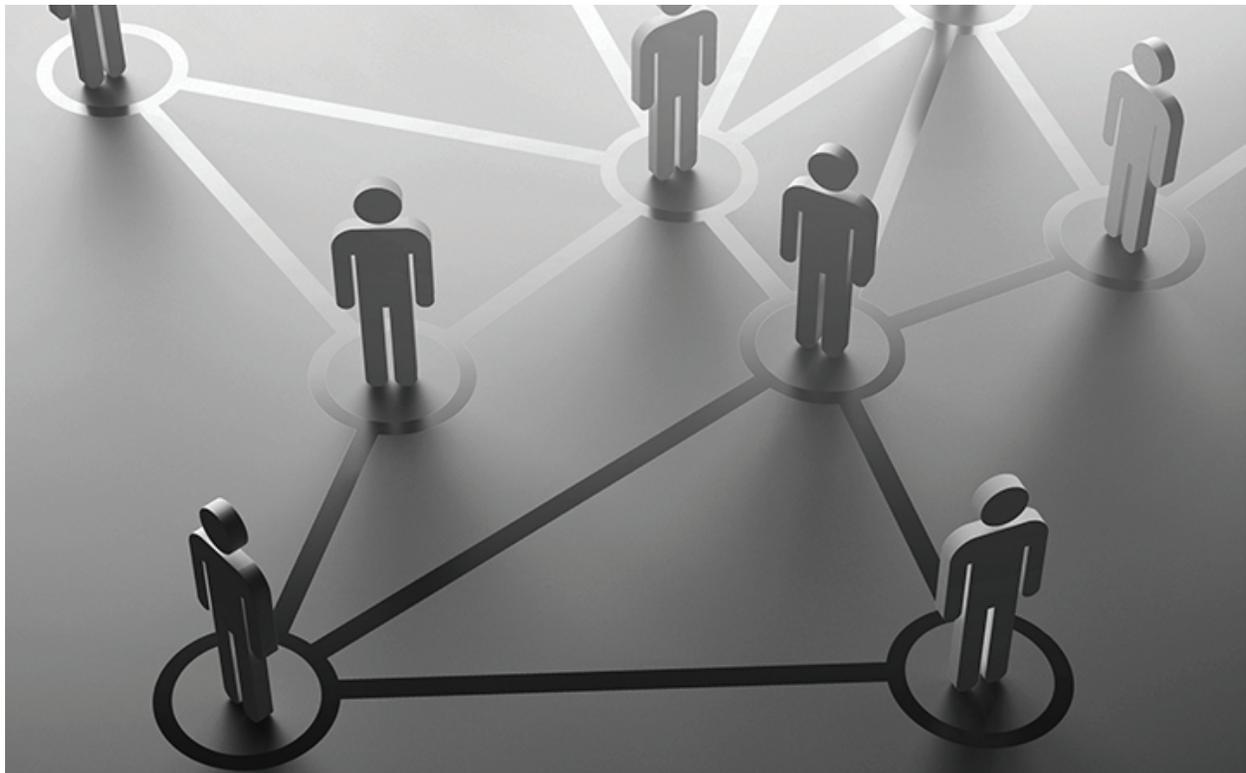
## APPENDIX 8: BUILDING YOUR NETWORK- SERVICES FOR TRAFFICKED YOUTH

Use this form, or adapt it, to record information on organizations in your community that can provide support to trafficked youth.

Remember: Start building your network as soon as possible so you are prepared in case you need to assist a trafficked youth.

Services may include:

- » Child Protection Services (MCFD)
- » Shelter and Housing
- » Health Services (Medical, Dental, Mental Health, Addictions Services)
- » Emotional Support and Counselling
- » Youth Services
- » Victim Services
- » Legal Services
- » Multicultural Services
- » Law Enforcement
- » Parent Support Services
- » Long Term Services (Education, Employment, Life Skills Training)



**Building Your Network- Services for Trafficked Youth**

<b>AGENCY</b>	<b>CONTACT PERSON/ INFORMATION</b>	<b>SERVICES (GENERAL SERVICES; ADAPTED SERVICES FOR TRAFFICKED YOUTH)</b>	<b>ELIGIBILITY CRITERIA/ INTAKE PROCESS</b>	<b>CULTURALLY COMPETENT SERVICES (INCLUDING LANGUAGES)</b>	<b>OTHER INFORMATION</b>

## APPENDIX 9: QUESTIONS FOR COLLABORATION

Responding to the trafficking of youth requires a multi-sectoral, collaborative approach. No one agency will be able to meet all of the service needs of an affected youth. Oftentimes, this means bringing together groups of people that operate very differently, with very different goals. The following questions may help you to build your network of supports and begin the road to effective collaboration:

### General Questions

- » What is your agency's mandate?
- » What are your strengths as an organization?
- » How does your agency operate and what are your limitations?
- » What are some common misconceptions about the work you do/do not do?
- » What services can you provide for trafficked youth?
- » What are some of the service gaps in our area, and how can we work to fill these?
- » What is your referral process?
- » What is your eligibility criteria and intake process?
- » How might you be able to adapt your services for trafficked youth?
- » Do you have the capacity to respond immediately or is there a waiting period for your services?
- » Do you have the ability to provide services throughout the length of the criminal justice process?

### Working Together

- » This is how we partner with other agencies, what does this look like for you?
- » What is your policy around information sharing?
- » What are some concerns you may have about partnering together?
- » What information needs to be shared? What is considered 'need to know' and what may just be 'want to know'?
- » Who will take the lead to call meetings?
- » Are there any conflicts of interest in us working together? (i.e., working with parent, child, sibling, or offender)

## APPENDIX 10: CHILD PROTECTION PROVISIONS - *CHILD, FAMILY, AND COMMUNITY SERVICES ACT*

### Section 28 and Section 98 Orders

The *Child, Family and Community Services Act (CFCS Act)* provides opportunity for certain protective and intervention orders for a child who is being sexually exploited. The *CFCS Act* defines sexual exploitation as the act of encouraging, helping, coercing, or enticing a child to engage in prostitution.

These orders are applicable for all youth under the age of 19.

### Section 28/98 Procedure and Considerations

The social worker or in some cases, police, need to be the driving force behind pursuing these orders. The social worker is able to coordinate and locate the necessary information to proceed with the order under Section 96 (see below). They also have access to knowledgeable legal counsel. Police may also be the driving force behind these orders. They can be used as a tool in separating a youth from their exploiter when all other mechanisms have failed. They can write the affidavit, apply for the order, liaise with the guardian (family or MCFD), enter the information on CPIC, and serve the order to the offender.

The presence of both the social worker and police officer in court has demonstrated a true partnership with the interests of the community in keeping kids safe.

#### 1. Consideration for a Section 28/98 Order

- » A social worker (SW), in consultation with the family and community, determines that an order needs to be considered. Ultimately, these orders are an issue of child protection, thus:
  - The youth does not need to agree with applying for the order
  - The parents of the young person do not need to be cooperative, particularly if they are the ones exploiting their child.

#### 2. Affidavit

- » The SW gathers information to write an affidavit. While the burden of proof is lower in family court than in criminal court, concrete facts are still necessary. For the affidavit, these elements should be considered:
  - Youth victim's social history, vulnerabilities, developmental level (apart and aside from the offender)
  - The offender's social history, pattern of community behaviour, past MCFD history, and criminal history (apart and aside from the youth victim)
    - The critical element for this information is the police-documented criminal history specific to any violence, threats, or sexual assaults.

- This information is made accessible under Section 96 of the *CF&CS Act* – giving a director the right to any information relevant to the case.
- » When requesting information from law enforcement, it is important to be specific and provide them with a focal point (certain types of offences that you are looking for that relate to elements of exploitation).
  - Past MCFD history that may provide a pattern of behaviour such as having children with under 19 year old females, domestic violence, past relationships reflecting power imbalances, violence towards family members, and mental health.
  - The youth victim and offender’s history of exploitation and/or violence as it relates to their relationship.
    - Sometimes this information can be challenging to obtain as the community that works with the client is concerned about their relationship with the youth or possible retaliation. It is important to protect the identity of your information sources unless they have given permission to be specifically named. The SW writing the affidavit can use more generic terms, such as youth support or outreach workers. If there are threats towards service providers, discuss with the lawyer and get recommendations as to how to best frame the information for everyone’s safety.
    - Photographic evidence of exploitation and violence has historically been a pivotal piece of evidence in a judge’s decision to grant an Order. Photos, screenshots of text messages, emails, Facebook messages, etc., should all be gathered if available.
- » If the alleged offender poses risk to the victim’s safety, or may move the victim underground (flight risk), this must be articulated in the affidavit with supporting statements. If articulated, the judge may consider granting the order prior to service. Otherwise, the order only becomes effective upon service of notice to both parties.

### 3. Granting the Order

- » Once the affidavit has been reviewed by MCFD legal counsel and the hearing occurs, the Order is either granted or not. If the order is granted, MCFD legal counsel must request that the Court Registry expedite the order and provide a copy to the SW. \*Do not leave the courthouse without the order as this will delay getting the order in effect.
- » Once the order is obtained, police must enter the information on the Canadian Police Information Centre (CPIC) as a SIP entry.
  - In some jurisdictions, the SW can fax the order to the CPIC desk. In other areas, the SW must provide a copy of the order to the police agency of jurisdiction and they will take information to the CPIC clerk.
    - For the information package for CPIC, ensure that:
      - A copy of the order made in court is included
      - A copy of the Affidavit is included

- **The information is connected to both file entities (both the victim and offender).** If it is not connected to both parties, a breach may be missed.
- CPIC then advises the officer responsible for entering the information at the expiry of the order to a) remove it or b) communicate with the SW to see if the order is to be extended

#### 4. Breach of the Order

- » Protective intervention orders are enforceable under s.127 of the *Criminal Code*. Police and Crown can proceed either as an indictable or summary offence. These orders are also registered at the Protection Order Registry by the Court Registry and the police can access information about criminal and civil orders from this database.
- » The court may include an order authorizing a police officer to arrest, without a warrant, the person against whom the protective intervention order is made if the police officer has reasonable grounds to believe that the person has contravened or is contravening the protective intervention order.
- » If the protective intervention order is breached, it then moves from being a child protection order to a criminal offence which give the court the ability to set a longer term of no contact.

## Roles and Responsibilities when Responding to High Risk Youth

The following table is presented to provide a high level description of the roles and responsibilities for social workers, police officers, and health service workers as they work with high risk youth.

Section of Relevant Act	MCFD/DAA Role & Responsibility	Police Role & Responsibility	Health Services Role & Responsibility
<b>Child, Family and Community Services Act</b>	<p style="text-align: center;"><b>Care Agreements with Parents</b> (s.6 and s.8)</p>	Implement a voluntary care agreement (s. 6) to bring youth into care or facilitate placement of youth with 3rd party through Extended Family Program (s. 8).	Provide medical care, as requested and appropriate MSP coverage.
	<p style="text-align: center;"><b>Support Services and Agreements with Youth</b> (s.12.1 and 12.2)</p>	Provide support services for youth, including but not limited to, referral to community outreach workers, safe houses, and other youth services  Enter into a Youth Agreement (s.12.2) with the youth, providing residential, educational and support services, as well as financial assistance to the youth.	Provide access to Public Health Outreach/Street based clinics and provide appropriate MSP coverage
	<p style="text-align: center;"><b>Take Charge – Unattended Child/Lost or Runaway</b> (s.25/s.26)</p>	Take charge of child found without adequate supervision.  Authorize a health care provider to examine a child, and consent to necessary health care for the child.	Provide health care examination and deliver necessary health care, if authorized by Director.
	<p style="text-align: center;"><b>Take Charge – Immediate Danger</b> (s.27)</p>	If police take charge under s. 27 and bring the child/youth to a Director or a place designated by a Director, the Director may take charge for twenty-four hours.  The Director must, as soon as possible: <ul style="list-style-type: none"> <li>• return to parent or;</li> <li>• place with a person at the request of the parent unless the social worker removes under CFCSA s. 30.</li> </ul>	Take charge if there is reason to believe that the youth's health or safety is in immediate danger.  Without court order and by force if necessary, enter any premises / vehicle for purposes of taking charge.  Report circumstances to a Director and take youth to a Director or return to youth's parent with approval of a Director.

Section of Relevant Act	MCFD/DAA Role & Responsibility	Police Role & Responsibility	Health Services Role & Responsibility
Mental Health Act	<p><b>Involuntary Committal due to Mental Health</b> (s. 29)</p> <p>Support parents and other relatives to contact a physician, a mental health centre, and/or the police. If a physician or police will not or cannot assist, families can apply to a judge for using an Application for Warrant.</p> <p>Refer to available MCFD CYMH child and adolescent psychiatrist or other specialist physicians who can complete certificate under s. 22 of the Mental Health Act.</p> <p><i>Note: Youth do not meet criteria for involuntary admission if the issue is substance misuse, sexual exploitation, or behaviour/emotional issues that are not associated with a concurrent underlying mental health disorder.</i></p> <p>Refer to MCFD CYMH practitioners who can play a role in providing support to those who are receiving community-based care as part of voluntary follow-up or as part of extended leave provision.</p>	<p>If the youth is not experiencing an identified mental health disorder, but is nevertheless found in a seriously impaired state in a public place, police may take the youth to detox.</p> <p>Under s. 28 of the MHA, may apprehend and immediately take a person to a physician for examination if satisfied from personal observations, or information received that the person is:</p> <ul style="list-style-type: none"> <li>• Acting in a manner likely to endanger that person's own safety or safety of others, and</li> <li>• Apparently a person with a mental disorder (this may include a Substance use disorder)</li> </ul>	<p>A physician may complete a certificate that would allow involuntary hospitalization for 48 hrs.</p> <p><i>The role of health services in relation to the Mental Health Act is extensive, and full details are provided in the Act itself and in the BC Guide to the Mental Health Act (2005).</i></p>

	Section of Relevant Act	MCFD/DAA Role & Responsibility	Police Role & Responsibility	Health Services Role & Responsibility
<b>Child, Family and Community Services Act</b>	<b>Protective Intervention Order (PIO) / Restraining Order</b> (s. 28 / s.98)	Apply for a PIO (s.28) or Restraining Order (s.98) if there are reasonable grounds to believe that contact between the child and a person would cause the child to need protection.		Provide medical care, as requested and appropriate MSP coverage.
	<b>Authorizing Health Care Order</b> (s. 29)	Following consultation with the ethics committee of the local health authority or hospital and the youth's physician, apply for court-ordered health care (s.29) when: <ul style="list-style-type: none"> <li>• In the opinion of at least two medical practitioners, health care is necessary to protect the youth's life or to prevent or permanent damage to his/her health; and</li> <li>• The youth is capable of consenting to health care and refuses medical treatment; or</li> <li>• The legal guardian of the youth refuses to consent to health care.</li> </ul>		Provide at least two medical practitioner opinions as to whether health care is necessary to protect the youth's life or to prevent serious or permanent health damage.  Provide health care, as authorized and in compliance with the Infants Act.
	<b>Removal</b> (CFCSA s. 30)	Remove a youth where the Director has reasonable grounds to believe that: <ul style="list-style-type: none"> <li>• youth's health or safety is in immediate danger or</li> <li>• no other less disruptive measure that is available is adequate to protect the child / youth from s. 13 concerns.</li> </ul>	If requested by a director, accompany and assist in the removal.  Note: removal does not result in detaining the youth in care – youth have the ability to leave any placement.	

## APPENDIX 11: TESTIMONIAL AIDS IN COURT

### What are testimonial aids?

The *Criminal Code* contains a number of provisions to protect young victims and witnesses under eighteen and make it easier for them to provide their testimony. Testimonial aids make it easier for victims and witnesses to testify in a criminal case.

For example:

- » Young victims and witnesses can testify outside the courtroom by closed-circuit TV or inside the courtroom but behind a screen which would allow them not to see the accused.
- » Young victims and witnesses can have a support person with them while they testify in order to make them more comfortable.
- » Other measures which are available to young victims and witnesses and which can help make it easier for them to provide their testimony include:
  - All or some members of the public may be required to leave the courtroom during all or part of the court proceedings involving young victims and witnesses or they may give their testimony from behind a screen or other device that prevents the witness from being seen by the public.
  - The evidence of young victims and witnesses may be videotaped before the trial and used at trial in order to spare them from repeating their testimony at trial; and
  - A lawyer can be appointed to cross-examine young witnesses when the accused is self-represented.<sup>33</sup>

### A victim's right!

The *Canadian Victims Bill of Rights* came into force on July 23, 2015. This Act gives every victim, including young victims, the right to have their security considered and to reasonable and necessary measures to protect them from intimidation and retaliation. Victims of crime also have the right to request a testimonial aid when they testify as a witness in a criminal court. These rights are part of a victim's right to protection.<sup>34</sup>

How does the court decide whether to order a testimonial aid?

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<sup>33</sup>Department of Justice Canada, "Testimonial Aids for Young Victims and Witnesses" online: <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/factsheets-fiches/testimonial-temoignage.html>.

<sup>34</sup>Department of Justice Canada, "Testimonial Aids for Young Victims and Witnesses" online: <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/factsheets-fiches/testimonial-temoignage.html>.

The court will consider:

- » the age of the witness;
- » the nature of the offence;
- » the kind of testimonial aid or other measure that is requested; and
- » other factors, such as society's interest in encouraging the reporting of crime or the accused person's right to a fair trial.

## APPENDIX 12: THE CANADIAN VICTIMS BILL OF RIGHTS - HIGHLIGHTS AND SUMMARY FOR VICTIM SERVICES



**Ministry of Justice**  
**Victim Services and Crime Prevention**  
**INFORMATION BULLETIN**  
**July 23, 2015**

A new [Canadian Victims Bill of Rights](#) (CVBR) with rights for victims to information, protection, participation, and restitution comes into force on July 23, 2015. Changes to the *Criminal Code* and other federal legislation accompany the Canadian Victims Bill of Rights.

In B.C., the CVBR builds on the rights provided by the existing provincial [Victims of Crime Act](#) (VOCA). VOCA, established in 1996, will continue to apply and provides victims with similar rights to information as the CVBR.

### **How does the CVBR and legislative amendments relate to your work with victims?**

- » **Expanded Definition of Victim** - The CVBR introduces a new expanded definition of victim which includes not only immediate victims, but also others who have suffered “physical or emotional harm, property damage or economic loss” as a result of the offence.
- » **New Victim Impact Statement Form and Guide** - A [new Victim Impact Statement form \(VIS\) and guide](#) will be used and are available in ten languages. Changes to the VIS allow a victim to prepare a “drawing, poem or letter” as part of their statement. In addition, a photograph of the victim taken before the offence may be presented while the VIS is being provided. A victim will also have the right to request a testimonial aid for the purpose of presenting their victim impact statement. The new VIS and guide are available [here](#).
- » **Statement on Restitution Form** - A new [Statement on Restitution form](#) will be used for victims to request restitution. The form is available in ten languages and will be included in the VIS package sent to victims by the Crown Counsel Office. The form is [available here](#).
- » **Testimonial Accommodations** - Testimonial accommodations have been made more accessible for both victims and vulnerable witnesses. These accommodations include having victims/witnesses testify outside of the courtroom using closed circuit TV; using a privacy screen to shield the victim from seeing the accused; and testifying with a support person nearby. If you are aware that a victim or witness you are working with may benefit from a testimonial accommodation, contact the Crown Counsel to discuss the victim/witnesses requirements as early on in the criminal justice process as possible.
- » **Community Impact Statements** – New *Criminal Code* provisions allow for community members to file a Community Impact Statement with the court for all types of criminal offences

- » (previously these statements were limited to fraud offences). BC, along with other provinces, is exploring options to implement the Community Impact Statement.
- » **Victim Complaints Procedures** - Victims have the right to make a complaint if they believe their rights have been infringed or denied. There are existing complaints processes for victims in BC and a [factsheet](#) has been prepared to provide victims with information to help them file a complaint with a BC criminal justice agency or a victim service program.

### Other Highlights

- » If the victim is under eighteen or a victim of sexual assault or criminal harassment, the victim will not be cross-examined by the accused and counsel will be appointed.
- » Mandatory publication bans expanded to protect the identity of victims under the age of eighteen for non-sexual offences.
- » The court must now consider the security of a victim when making an order regarding bail; testimonial accommodations; and disclosure of third party records in sexual assault cases.
- » The courts will now be required to inquire whether the Crown Counsel has taken “reasonable steps to notify” victims of plea agreements for serious personal injury offences/murder as well as other indictable offences where the victim has requested that information.
- » Victims can request a recent photograph of a federal offender and obtain an update on the offender’s correctional plan progress.

There are limitations in exercising these rights. For example, the rights must be exercised in a manner that is not likely to interfere with the proper administration of justice. If victims are inquiring about the CVBR, the [Know Your Rights publication](#) has been updated to include information about the CVBR or you may direct them to the websites below.

More Information on the CVBR can be found at:

- » [B.C. Ministry of Justice Victim Services training page](#)
- » [JusticeBC](#)
- » [Government of Canada](#)

If you have any questions, please contact [victimservices@gov.bc.ca](mailto:victimservices@gov.bc.ca).

## APPENDIX 13: CRIMINAL APPEALS

Both defence counsel and the Crown prosecutor may, in certain circumstances, appeal the determination of guilt/outcome of a trial, and/or the sentence imposed.

In order to appeal a criminal trial decision, **one** of the following must be established:

(1) The trial judge incorrectly applied the law

- » Examples of an appeal that would be based on incorrect application of law (error of law) include: wrongful admission of evidence; wrongful interpretation of a *Charter* right; incorrect instructions to the jury on a crucial question of law.

(2) The trial judge interpreted the evidence unreasonably

- » An unreasonable interpretation of evidence focuses on the weaknesses of the evidence presented, and will necessarily be contextual to a case. This can include, for example, a challenge to the credibility of a witness. Appeals on this ground are very difficult to succeed on.

(3) The trial was otherwise unfair

- » An appeal may be made also on other grounds that the trial was unfair, or in other words, that there was a miscarriage of justice. This can include, for example, a challenge that a jury member was biased in a jury trial. It may also include that defense counsel insufficiently performed their duty to defend their client, which was seen in *R v Moazami*.

(4) The sentence imposed was excessive.

- » An appeal can also be made in relation to the sentence imposed, such as that the sentence was excessive in the context of the accused's background and the circumstances of the offence, or that there was an error in a principle of sentencing which resulted in an unreasonable or excessive sentence.

On appeal, the Appeal Court can either dismiss or allow the appeal. Where it allows the appeal, the court may:

- (1) Acquit the accused or order a stay of proceedings;
- (2) Order a new trial; or,
- (3) Substitute a conviction for a difference offence.

Typically, the court will order a new trial. Where a sentence is appealed, the Appeal Court can vary the sentence if it allows the appeal.

If an appeal is granted and a new trial is ordered, all evidence must be re-presented. If Crown Counsel decide to retry the case, victims and witnesses will have to testify again.

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<sup>35</sup> Legal Services Society of BC, “How to Appeal Your Conviction” online: <http://resources.lss.bc.ca/pdfs/pubs/How-to-Appeal-Your-Conviction-eng.pdf>.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> BC Court of Appeal, “Reasons for appealing your sentence” online: <http://www.courtofappealbc.ca/appeal-your-sentence-guidebook/1.2-reasons-for-appealing-your-sentence>.

<sup>39</sup> Legal Services Society of BC, “How to Appeal Your Conviction” online: <http://resources.lss.bc.ca/pdfs/pubs/How-to-Appeal-Your-Conviction-eng.pdf>.

<sup>40</sup> *Ibid.*

## APPENDIX 14: SENTENCING

### Principles and Factors in Determining a Sentence

Criminal sentencing in Canada is based upon fundamental principles set out in the *Criminal Code*, which include: denunciation of unlawful conduct; specific and general deterrence; isolation; rehabilitation; reparations to victims and communities; promotion of responsibility and accountability in offenders.<sup>41</sup> These principles aim to develop a tradition in criminal sentencing which contributes “to respect for the law and the maintenance of a just, peaceful and safe society”.<sup>42</sup>

In line with these general principles and aims in criminal sentencing, specific considerations are accounted for in determining an appropriate sentence, including:<sup>43</sup>

- » Similarity to sentences imposed on similar offenders for similar offences in similar circumstances;
- » The overall length of the sentence where a consecutive sentence is imposed;
- » Whether less restrictive sanctions (to imprisonment) are available and appropriate in the circumstances; and,
- » All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

In determining a sentence, a judge will also consider specific issues or facts that may warrant an increase (aggravating circumstances), or reduction (mitigating factors), in the sentence, including:<sup>44</sup>

- » Whether the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor.
- » Whether the offender abused his/her spouse or common-law partner in committing the offence.
- » Whether the offender abused a person under eighteen years of age in committing the offence.
- » Whether the offender abused a position of trust or authority in relation to the victim, in committing the offence.
- » Whether the offence was committed for the benefit of or in association with a criminal organization.
- » Whether the offence was a terrorism offence.

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<sup>41</sup> S.718.

<sup>42</sup> S.718.

<sup>43</sup> s.718.2.

<sup>44</sup> s.718.2.

## Sentence Structure

Where an accused is found, or pleads, guilty to a crime, a sentencing hearing will occur to determine the accused's sentence. Both Crown and defence counsel may submit arguments in relation to sentencing, which is ultimately determined by a judge.

A sentence may include a term of imprisonment, as well as other conditions, such as submitting a DNA sample, weapons prohibitions, or registration on the Sex Offender Registry.

Where an accused has been held, or remanded, during the trial, he or she will receive a credit reduction in the term of imprisonment for that equivalent time.

## Applicable sentences for convictions under ss.279.01-.04 of the *Criminal Code*

The introduction of mandatory minimum sentences in Canada means that there are now prescribed ranges for the sentence that can be imposed on an accused found guilty of a crime under the *Criminal Code*.

### **s.279.01 – Human Trafficking**

- » For the offence of human trafficking under s.279.01, the minimum sentence is four years imprisonment, with a maximum of fourteen years.
- » However, if, in the commission of this crime (under s.279.01), the accused is found to have kidnapped, committed an aggravated assault or aggravated sexual assault against, or caused the death of, the victim, the range of sentencing is a minimum term of imprisonment of five years and a maximum of life imprisonment.
- » Where the victim is a minor, the minimum sentences are slightly higher. For the offence of human trafficking under s.279.011, the minimum sentence is five years imprisonment, with a maximum of fourteen years.
- » If, in the commission of this crime (under s.279.011), the accused is found to have kidnapped, committed an aggravated assault or aggravated sexual assault against, or caused the death of, the victim, the range of sentencing is a minimum term of imprisonment of six years and a maximum of life imprisonment.

### **s.279.02 – Obtaining a Material Benefit**

- » - Under s.279.02(1), obtaining a material benefit, an accused found guilty of that offence may be imprisoned for up to ten years. There is no minimum sentence for this offence.
- » - However, where an accused is found guilty of obtaining a material benefit in relation to a minor (s.279.02(2)), there is a minimum sentence of two years imprisonment, and a maximum sentence of fourteen years.

**s.279.03 – Withholding or Destroying Documents**

- » Under s.279.03(1), an accused found guilty of that offence may be imprisoned for up to five years. There is no minimum sentence for this offence.
- » However, where an accused is found guilty of withholding or destroying documents in relation to a minor (s.279.03(2)), there is a minimum sentence of one year imprisonment, and a maximum sentence of ten years.

**Sentencing Ranges**

Although the *Criminal Code* now contains minimum sentences, judges will continue to look at existing sentences imposed in prior cases to determine an appropriate range in the instant case (the similarity principle).

Sentences for human trafficking involving sexual exploitation have most often included a term of imprisonment, along with other orders, including: DNA orders; weapons prohibitions; and, Sex Offender Registry orders.

The following table summarizes the sentences imposed in identified and reported cases where a conviction was obtained on human trafficking-specific charges.

CASE NAME	SENTENCE IMPOSED
<i>R v AA</i> , [2012] OJ No 6256.	<ul style="list-style-type: none"> <li>» Twenty-nine months (net) imprisonment</li> <li>» DNA order</li> <li>» Lifetime weapons prohibition</li> <li>» Forfeiture order for items seized on arrest</li> </ul>
<i>R v Byron</i> , 2014 ONSC 990.	<p>Six years (prior to credit) imprisonment.</p> <ul style="list-style-type: none"> <li>» Ten year weapons prohibition</li> <li>» DNA order</li> <li>» no contact order</li> <li>» Twenty years compliance with Sex Offender Information Registration Act</li> </ul>
<i>R v Estrella</i> , [2011] OJ No 6616.	<p>Thirty months (prior to pre-trial credit of two months) imprisonment.</p>
<i>R v McFarlane</i> , [2012] OJ No 6566.	<ul style="list-style-type: none"> <li>» Eight years imprisonment (before pre-trial custody credit)</li> <li>» Ten year firearm prohibition</li> <li>» lifetime prohibited firearm ban</li> <li>» DNA order</li> <li>» Sex Offender Registry order (for life)</li> </ul>
<i>R v Moazami</i> , [2015] BCSC No 2055	<ul style="list-style-type: none"> <li>» Twenty-three years imprisonment (before credits)</li> <li>» DNA order</li> <li>» Sex Offender Registry order (for life)</li> <li>» Lifetime weapons prohibition</li> <li>» No contact order</li> <li>» Forfeiture order for all items seized by police</li> </ul>
<i>R v Nakpangi</i> , [2008] OJ No 6022.	<ul style="list-style-type: none"> <li>» Three years imprisonment (before credits)</li> </ul>
<i>R v St Vil</i> , [2008] OJ No 6023.	<ul style="list-style-type: none"> <li>» Time served in pre-trial custody plus one day (thirty-seven month 'credit' at old two-for-one system)</li> <li>» Three years probation</li> <li>» DNA order</li> <li>» Prohibition from attending adult entertainment establishments for eighteen months</li> </ul>
<i>R v Williams</i> , 2014 ONCJ 425.	<ul style="list-style-type: none"> <li>» Five years imprisonment (before credit)</li> <li>» Weapons prohibition for life</li> <li>» DNA order</li> <li>» Sex Offender Information Registry Act order for twenty years</li> </ul>

## APPENDIX 15: R V MOAZAMI SENTENCING SUMMARY

### Overview

Reza Moazami was sentenced to a total of twenty-three years imprisonment following multiple convictions related to eleven complaints, including a conviction on one charge of trafficking in persons over the age of eighteen years. The sentencing for the specific trafficking in persons offence was for two years. The remaining sentence was allocated for a multiplicity of other offences.<sup>45</sup>

Moazami was found guilty and sentenced on similar offences in relation to multiple complainants. These offences included: sexual exploitation; sexual interference; procuring; living on the avails of prostitution; living on the avails of prostitution of a person under eighteen; and, living on the avails of prostitution of a person under eighteen with coercion.

- » In relation to sexual interference, the court hands down sentences for each offence in the range of eighteen months – two years imprisonment.
- » In relation to sexual exploitation, the court hands down sentences for each offence in the range of two – three years.
- » In relation to procuring, the court hands down sentences for each offence in the range of six months – one year.
- » In relation to living on the avails of prostitution, the court hands down sentences for each offence in the range of forty-five days – six months.
- » In relation to living on the avails of prostitution of a person under eighteen, the court hands down sentences for each offence in the range of two – three years.
- » In relation to living on the avails of prostitution of a person under eighteen with coercion, the court hands down sentences for each offence in the range of five to seven years.
- » In relation to JC, Moazami is also sentenced to two years for trafficking in persons, and two years for sexual assault.

The court finds several common aggravating factors that leaned towards the heavier sentences for some offences, such as Moazami's coercive and abusive treatment of certain complainants, the age of certain complainants, and the duration of time in which the offences occurred. The sentence in relation to each complainant is set out below.

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<sup>45</sup> *R v Moazami*, 2015 BCSC 2055

## Background Principles

The court noted in its sentencing decision the exceptional nature of this case; this is relevant to understanding the correlating significant sentence handed down to Moazami. The court articulated several factors that rendered the case 'extraordinary and unique', including: (1) the large number of complainants; (2) the lengthy offence period; (3) the range of prostitution-related offences that run the full gamut prohibited by the *Code*; (4) the large number of times that Mr. Moazami committed sexual offences against the complainants over the offence period; (5) the young age of the victims and their vulnerable circumstances; (6) the existence of multiple minimum sentences for the offences committed and maximum sentences that range from ten to fourteen years' jail; (7) the failure of Mr. Moazami to take responsibility for his actions after conviction and his lack of remorse; (8) his relatively young age at the time of the offence; and (9) his lack of a related criminal record (para 21).

In addition to the general sentencing principles that guide a court's decision on sentencing (listed in the section on sentencing in the manual), three additional relevant factors were present in this sentencing decision. First, because eight of the eleven complainants were under the age of eighteen at the time of the offences, the court must give primary consideration to the objectives of denunciation and deterrence in sentencing (s.718.01, *Criminal Code*). This means that sentencing for offences involving abuse of minors will often attract more severe sentences (para 6).

Second, the court noted several aggravating factors present in this case, which will also lend weight to a more severe sentence. In particular, the court noted the following aggravating factors: (1) that the offender abused his common-law spouse in committing the offence; (2) that the offender abused a person under the age of eighteen in committing the offence; and (3) that the offender's offence had a significant impact on the victims considering their age and personal circumstances (para 7).

Third, because of the multiple complainants and offences in this case, principles relating to the totality of a sentence and to concurrent versus consecutive sentences for various offences are necessary to understanding the sentence handed down. Where two or more offences are sufficiently interrelated, the court will order a concurrent sentence – meaning the sentence imposed for each offence will be served at the same time. Where two or more offences are separate or distinct from each other, the court will order a consecutive sentence – meaning that the sentence imposed for each offence will be served one after another. In this case, as will be noted below, some convictions resulted in concurrent sentences for Moazami, while others resulted in a consecutive sentence.

In addition, where the total sentence (determined by adding up the sentence for each offence) is extraordinarily high, as it was in this case, the court must use what it called the 'totality principle' to hand down a reasonable sentence in light of the circumstances. Because, in this case, the total sentence on each count would have added up to forty-eight years imprisonment, the court applied the totality principle to reduce the sentence to twenty-three years. This will be discussed at the end of the summary.

### Sentences for Each Offence / Complainant

In the sentencing decision, the court determines the sentence for each offence and breaks this down by complainant, since aggravating factors can influence the sentence in relation to a particular complainant and offence but not others. This summary follows the same order.

**MN:** Moazami was found guilty of living on the avails, sexual interference, and sexual exploitation in relation to MN.

- » In relation to this complainant, the court sentenced Moazami to two years for sexual interference and three years for sexual exploitation, to be served concurrently, and to three years for living on the avails, to be served consecutively.
- » In relation to MN, the court notes aggravating factors concerning Moazami's violent and coercive treatment.
- » **EB:** Moazami was found guilty of living on the avails of prostitution of a person under eighteen with coercion, sexual interference, and sexual exploitation in relation to EB.
- » The court sentenced Moazami to two years for sexual interference and three years for sexual exploitation, to be served concurrently. Living on the avails of prostitution of a person under eighteen with coercion carries a minimum sentence of five years. In this case, the court handed down a sentence of six years, to be served consecutively.

**SW:** Moazami was found guilty of living on the avails of prostitution of a person under eighteen with coercion, and sexual exploitation in relation to SW.

- » The court sentenced Moazami to three years for sexual exploitation, to be served consecutively to the sentence for living on the avails of prostitution of a person under eighteen with coercion. The latter offence carries a minimum sentence of five years; the judge in this case handed down a sentence of seven years.
- » The judge notes many aggravating factors leading to this seven-year sentence, including that Moazami "took advantage of the purportedly romantic relationship with S.W. to coerce her into continuing to be a prostitute; he plied her with drugs and alcohol to ensure she was physically and emotionally dependent upon him. He deprived S.W. of the monies earned as a prostitute and used her for his own selfish motives of financial gain."

**SH:** Moazami was found guilty of living on the avails of prostitution of a person under eighteen, and living on the avails of prostitution.

- » Moazami was sentenced to forty-five days for living on the avails of prostitution, and to the minimum sentence of two years for living on the avails of prostitution of a person under eighteen, to be served concurrently. In relation to the latter sentence, the court notes that the aggravating factors present in relation to other complainants were not present in relation to SH (other than her age), justifying a lower sentence.

**CB:** Moazami was found guilty of procuring and of living on the avails in relation to CB. These were not offences related to a minor/child.

- » Moazami was sentenced to one year for procuring, and ninety days for living on the avails, to be served concurrently.

**IT:** Moazami was found guilty of procuring and of living on the avails in relation to IT. These were not offences related to a minor/child.

- » Moazami was sentenced to one year for procuring, and ninety days for living on the avails, to be served concurrently.

**JC:** Moazami was found guilty of procuring, living on the avails of prostitution, trafficking in persons, and sexual assault in relation to JC. These were not offences related to a minor/child.

- » Moazami is sentenced to one year for procuring, six months for living on the avails of prostitution, and two years for trafficking in persons, to be served concurrently. He is sentenced to two years for sexual assault, to be served consecutively.
- » In relation to the two-year sentence handed down for trafficking in persons, the court notes the short duration of the offence (less than three months), but states that the 'moral culpability' of Moazami is high due to his egregious treatment of JC. Specifically, the court makes the following remarks concerning the factual circumstances leading to the sentence on this offence:
  - [104] Turning to Count 22, human trafficking, Mr. Moazami recruited J.C. into prostitution and transported J.C. to Calgary and Edmonton to work for him as a prostitute. Further, he exercised control over her movements by restricting when she could leave the prostitution locations, and by closely monitoring her whereabouts for the purpose of living on the avails of her prostitution services. While in Calgary, Mr. Moazami forced J.C. to remain in a hotel room for four hours, servicing clients every half hour, to make up for the money she lost while out the night before having fun.
  - [105] Mr. Moazami created an atmosphere of fear among the girls who worked for him as prostitutes. Once J.C. was a part of his prostitution business, he maintained strict control over her movements and her behaviour. He isolated her from friends outside of the prostitution business. He made her fear the police. Mr. Moazami provided J.C. with drugs to keep her addicted and dependent upon him so that she would continue earning money for him as a prostitute. He oscillated between the mean, angry pimp and the nice guy. His behaviour led J.C. to believe that if she refused to work for him as a prostitute, her safety would be jeopardized.
  - [106] The offence took place over a period of less than three months; however, Mr. Moazami's moral culpability is high due to his egregious treatment of J.C. As described above, there are few mitigating circumstances. I find a sentence of two years' jail is warranted in all of the circumstances.

**HW:** Moazami was found guilty of living on the avails of prostitution of a person under eighteen, and of sexual exploitation against HW.

- » The offence of sexual exploitation carries a minimum forty-five day sentence; in this case, Moazami is sentenced to two years. In relation to this offence, the court notes that Moazami exercised great power over HW, their age difference was significant, that Moazami put HW in a situation of abuse, and treated her egregiously (atrociously), like with other complainants.
- » The offence of living on the avails of prostitution of a person under eighteen carries a minimum sentence of two years; Moazami is sentenced to three years, to be served consecutively. In relation to this offence, the court notes that HW was only sixteen, and that Moazami's treatment of HW was 'abusive, callous, and borders of psychopathic'. The court also noted the lengthy period of time over which the offence occurred.

**TH:** Moazami was found guilty of procuring, living on the avails, and living on the avails of a person under eighteen.

- » The court hands down a sentence of 6 months for procuring, two years (the minimum) for living on the avails under eighteen, and forty-five days for living on the avails, all to be served concurrently.
- » The court notes that, despite TH's young age and naivety, the offences did not take place over a lengthy period of time, and she was not abused in the same manner as other complainants. TH was able to return home periodically, and was not abused or sexually assaulted.

**SK:** Moazami was found guilty of living on the avails of prostitution of a person under eighteen. He was sentenced to the two-year minimum sentence. SK was not treated egregiously like other complainants; she sought Moazami out; and, the offences occurred over a short period of time.

**JCH:** Moazami was found guilty of living of the avails of prostitution of a person under eighteen years of age with coercion, and sexual interference.

Moazami is sentenced to eighteen months for the offence of sexual interference, and five years for living on the avails under eighteen with coercion, to be served consecutively.

- » Regarding the sexual interference offence, the court notes that although the offence occurred over a short period of time, several aggravating factors were present, including: JCH's young age, disadvantaged background and home life; the age difference between JCH and Moazami; and, the fact that he forced her to have anal sex against her wishes.
- » With regards to the living on the avails offence, the court finds the five-year minimum sentence appropriate because of the shorter time of the relationship (compared to other complainants) and the fact that JCH did not suffer as serious mistreatment as SW (in relation to whom Moazami received a seven year sentence on the same offence).

### Total Sentence

The entire length of the above sentences, for all offences against all complainants, added up to forty-eight years and six months' imprisonment. Applying the totality principle, the court reduces the overall sentence to twenty-three years.

The court notes that the statutory minimum sentences for each offence for which Moazami has been convicted would amount to twenty-five years and 315 days imprisonment, if served consecutively.

The court finds that this aggregate of minimum sentences reflects a length of sentence necessary to demonstrate the serious nature of the offences, multiple complainants, aggravating factors, and Moazami's moral blameworthiness in light of the few mitigating circumstances.

In particular, the court states:

[...] I find that a reduction of the total sentence to twenty-three years properly reflects Mr. Moazami's overall blameworthiness for his egregious misconduct and the serious harm caused to the complainants. In addition to Mr. Moazami's misconduct during the periods of the offences charged, as outlined in this judgment and in the reasons for conviction, he subjected these young, marginalized young women to the fear, stress, and aggravation of a long trial; he re-victimized the complainants and he lied to the court under oath. He exhibited no remorse and failed to take even the slightest amount of responsibility for his misconduct. He has no insight into the harm caused to his victims.