



# Human Trafficking and Immigration Status – Options and Challenges for Trafficked Persons

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# Disclaimer:

## Legal Information not Legal Advice



- This presentation contains general legal information only
- The law, programs/policies **can change**
- This presentation is not a substitute for legal advice
- If you have a question or problem, please contact us, your local legal clinic or a lawyer



# METRAC



## METRAC: Action on Violence

- works to end violence against women, youth and children, Two Spirit, Trans and Nonbinary people.
- a not-for-profit, community-based organization

[www.metrac.org](http://www.metrac.org)

## METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

## FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

[www.undroitdefamille.ca](http://www.undroitdefamille.ca)

# Presenter



Silmy Abdullah, is a staff lawyer at the South Asian Legal Clinic of Ontario (SALCO). Her practice focuses on the intersection of immigration, poverty and gender-based violence. She is a passionate advocate who has spoken on important human rights issues on numerous platforms, including community workshops, mainstream media, the Parliament of Canada and conferences in Canada and overseas.

**Silmy Abdullah,  
Immigration Lawyer**





# Introduction

# About SALCO



- **SALCO is a community legal clinic funded by Legal Aid Ontario (LAO).**
- **We are a specialty clinic that serves low-income South Asians (e.g. people originating from India, Pakistan, Bangladesh, Sri Lanka, etc.) in the GTA.**
- **Our office is at 45 Sheppard Ave. East, Suite 106A, Toronto. You can also call us at 416-487-6371 to seek legal advice or to make an appointment.**
- **We can serve you on-site in English, Hindi, Urdu, Punjabi, Bengali, Tamil and Kannada.**



# Agenda

- **Human Trafficking: Introduction**
  - What is Human Trafficking
  - The Reality in Canada
  - Legal Framework
- **Trafficked people and immigration status**
  - Options and challenges under Immigration Law
    - Open work permit for vulnerable workers
    - Temporary resident permit (TRP) for victims of trafficking in persons (VTIP TRP)
    - Refugee claim
    - Humanitarian and Compassionate Application (H&C)
- **Important resources**

# Human Trafficking: Introduction



# What is Human Trafficking?



- Human trafficking is a crime that involves controlling and exploiting people by forcing them to do things for the benefit of someone else.
- Trafficking can involve forcing people to work in inhumane conditions with little or no pay (**labour trafficking**), provide sexual services (**sex trafficking**), marry someone they don't want to marry (**forced marriage**) or selling their organs
- Traffickers use different tactics, such as force, threats, manipulation, blackmailing, etc, to make trafficked people do things against their will
- Trafficked people are often moved from one place to another or kept in a secret place

# What is Human Trafficking?



## Types of Human Trafficking:

### *Domestic Versus International:*

- **Domestic:** When the entire crime occurs inside a country's border, it is called domestic trafficking (can happen to anyone regardless of immigration status)
- **International:** When the trafficked person is transported from one country to another, it is called international trafficking. This type of trafficking requires the crossing of at least one international border (could be brought into the country with valid or false documents)

# The Reality in Canada



- Happens to men, women and children
- Mostly happens to women and girls
- Who is at risk?
  - Indigenous women and girls
  - Immigrants
  - LGBTQ persons
  - Persons with disabilities
  - Children in the child welfare system; at-risk youth
  - Those facing poverty

Difficult to assess the full extent of the crime due to its hidden nature, barriers to reporting and difficulty identifying victims

# The Reality in Canada



- Human trafficking for the purpose of sexual exploitation is more prevalent—or more likely to be detected or reported—than human trafficking for other purposes (Department of Justice Canada 2015).
- A large number of human trafficking cases are related to domestic sex trafficking
- On the whole, there were just under 1,400 victims of human trafficking reported by police in Canada between 2009 and 2018.
- Of these victims, women and girls comprised the vast majority (97%).
- Although anyone can be a victim of labour trafficking, in Canada, trafficking for the purpose of labour has mostly affected migrant workers who come to work temporarily from other countries

<https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00006-eng.htm>

# Legal Framework



## International law:

- **Global definition under international Law:**
- "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children." This is known as the Palermo Protocol. It is part of the United Nations Convention against Transnational Organized Crime (UNTOC), also known as the Palermo convention.
- " Trafficking in persons" shall mean the **recruitment, transportation, transfer, harbouring or receipt** of persons, by means of **the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person**, for the purpose of **exploitation**. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

# Legal Framework



## International Law:

- Under the Palermo Protocol, there are three elements or parts to this definition of human trafficking:
- **The Actions**, carried out by specific **means** for a specific **purpose**
  - **Actions**: Recruitment, Transportation, Transfer, harbouring, receipt
  - **Means**: Threat, use of force, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another person
  - **Exploitation**: Exploitation of the prostitution of others [*in other words, forced prostitution*], other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, removal of organs."

# Legal Framework



## Criminal Law:

- crime under Canada's Criminal Law.
- defined in the *Criminal Code of Canada*, the Federal law that defines most criminal offences in Canada.
- Since criminal laws in Canada are made by the federal government, the definition of human trafficking in the *Criminal Code* applies across Canada.



# Legal Framework



## Criminal Law:

Which sections of the Criminal Code talk about human trafficking?

- 279.01 : **Trafficking in persons** (This is the main offence of human trafficking)
- 279.011: **Trafficking of a person under the age of eighteen years** (makes it a crime to traffic someone under eighteen)
- 279.02 : **Material benefit — trafficking** (makes it a crime to knowingly get money or other benefits from trafficking someone, including trafficking someone under 18)
- 279.03 **Withholding or destroying documents** (makes it a crime to take, keep or destroy travel or personal identification documents of someone being trafficked, including a trafficked person under the age of 18)

# Legal Framework

## Criminal Law:

### **Other offences related to human trafficking:**

- Prostitution-related offences (ss. 210-213)(286.1-286.5)
- Uttering threats (s. 264.1)
- Assault (s. 265)
- Assault with a weapon/causing bodily harm (s. 267)
- Aggravated assault (s. 268)
- Sexual assault (s. 271)
- Sexual assault with a weapon (s. 272)
- Aggravated sexual assault (s. 273)
- Kidnapping (s. 279(1))
- Forcible confinement (s. 279(2))
- Extortion (s. 346)
- Intimidation (s. 423)

# Legal Framework

## Criminal Law:

- (s.279.01(2) and s.279.011(2)) states that a person cannot legally consent to being exploited in a human trafficking situation under the Criminal Code of Canada.
- Like the Palermo Protocol definition, there are three elements, or parts to the offence of human trafficking under the Criminal Code:
  - The Act
  - The Means
  - The Purpose
- To determine whether someone is guilty of human trafficking, the following questions need to be asked:
  - which acts were committed?
  - what were the means through which the acts were committed and
  - what was the purpose of the acts?

# Legal Framework

## Immigration Law:

- A person can also be charged for human trafficking under the *Immigration and Refugee Protection Act (IRPA)*.
- The IRPA is federal legislation and applies across Canada
- Human trafficking is defined in s. 118 of the IRPA. Like the *Criminal Code*, the offence is called "Trafficking in Persons."

# Legal Framework

## Immigration Law:

The IRPA definition says it is an offence to organize the entry of someone into Canada through

- Fraud
- Deception
- use of force or coercion or
- threat of force or coercion

The term "organize" in the IRPA includes:

- Recruitment
- Transportation
- receiving or harbouring someone after their entry of Canada

# Legal Framework



## What are the penalties for human trafficking under the IRPA?

If someone is found guilty of human trafficking, they can face:

- a maximum fine of \$1 million OR
- life imprisonment OR
- both

*Note: If someone is charged with human trafficking under the IRPA, these charges are prosecuted by the Federal Government.*

# Legal Framework



## Reporting Human Trafficking:

- A trafficked person can come into contact with the Criminal Justice system if they report to the police themselves, or they are identified through a police investigation.
- Anyone can report a trafficking situation to the police, such as a member of the public, or service providers or the trafficked person
- If you are aware of/suspicious of a trafficking situation or are helping a trafficked person with services, it is very important to make sure that you have their permission to contact the police.



# Legal Framework



## Reporting Human Trafficking:

- **call 911 or your local police service:** If there is immediate danger,
- **The Canadian Human Trafficking Hotline:** a confidential, multilingual service, operating 24/7 to connect victims and survivors with social services, law enforcement, and emergency services, as well as receive tips from the public.

# **Trafficked people and immigration status: options and challenges under immigration law**

# Options and challenges under immigration law



- Immigration status is a concern mostly in international labour trafficking cases (which can also include sex trafficking)
- Though labour trafficking can happen domestically, migrant workers are more vulnerable
- Migrant workers are those who come to Canada from a different country to work on a temporary basis
  - Can arrive on a valid work permit and then exploited once in Canada
  - Can arrive through false/fraudulent documents
  - Can arrive under another valid program, such as a visitor visa, but forced to perform unauthorized work (ie. without a work permit)
- Migrant workers who come to Canada under the **Temporary Foreign Worker Program** are especially vulnerable to human trafficking

# Options and challenges under immigration law

- Vulnerabilities to exploitation:
  - Poverty
  - Lack of knowledge of legal rights
  - Language barriers
  - Fear of deportation

# Options and challenges under immigration law



## Temporary Foreign Worker Program

- The temporary foreign worker program is one way that migrant workers can be exposed to exploitation.
- Allows Canadian employers to hire foreign nationals to fill temporary labour and skill shortage when Canadian citizens or permanent residents are not available.
  - Includes farm workers, and at-home caregivers

# Options and challenges under immigration law



## Temporary Foreign Worker Program

- Employer must apply for and receive a Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada (ESDC).
- show that they have made reasonable efforts but have been unable to either hire or train Canadian citizens or permanent residents;
- after a positive or neutral LMIA is granted, the migrant worker must apply to Immigration, Refugees and Citizenship Canada (IRCC) for a work permit;
- After IRCC approves work permit, worker receives the permit from CBSA at the port of entry.
- employer and the worker must submit a signed employment contract.

# Options and challenges under immigration law

## Temporary Foreign Worker Program

How does Exploitation happen?

- Dishonest recruiters
- Charge high recruitment fees to workers who want to work in Canada
- Workers go on debt to arrange for money and come to Canada with debt burden
- Promised certain jobs and working conditions, but placed in a different job or with a different employer when arrive in Canada
- Repaying the fees (often with interest) keeps workers in exploitative conditions
- Travel documents are often confiscated
- Deportation threats



# Options and challenges under immigration law



## Temporary Foreign Worker Program

- Recruitment or placement fees are illegal
- Employment Protection for Foreign Nationals Act, 2009
  - prohibits recruiters from charging ANY fees to migrant workers for ANY service, directly or indirectly. This can include fees for:
    - finding or attempting to find work for the person looking to work in Canada
    - Helping them with resume writing, interview preparation or any other activity related to job placement
    - Helping them with immigration matters
  - Recruiters can charge fees to employers, but cannot ask employers to collect them from the migrant worker (e.g. through payroll deductions)

# Options and challenges under immigration law



## Temporary Foreign Worker Program

How does Exploitation happen?

- Most of the time, work permit tied to one employer (closed work permit)
- workers are authorized to work for the specific employer named on the work permit and do the particular job that is authorized on the work permit.
- Working with a different employer than the one on the work permit is a violation of the permit
- Traps people in abusive situations
- Speaking out may mean loss of job and status in Canada
- Leaving job doesn't guarantee finding a new job and leads to loss of income
- To work for a different employer, need to apply for a new work permit from inside Canada

# Options and challenges under immigration law



## Non-Status People

How does exploitation happen?

- People lose status in a variety of ways
  - work permit expired
  - Overstayed visitor visa
  - Refugee claim failed and under a removal order
  - Sponsored to Canada by a spouse/partner and sponsorship broke down

Fear of deportation can keep them trapped in exploitative situations

# Open Work Permit for Vulnerable Workers



- For Migrant workers in Canada on valid employer-specific work permits who are experiencing abuse, or who are at risk of abuse in relation to their work
- Helps them to leave their current employer
- Gives authorization to work for other employers
- Migrant workers who have applied for an open work permit for vulnerable workers are not required to obtain an LMIA or offer of employment.
- No application fee

# Open Work Permit for Vulnerable Workers



## Examples of abuse:

- Illegal fees charged based on false promises/misleading information about job
- Harassment and threats
- Forcing/pressurizing to work against work permit conditions
- At risk of abuse due to co-workers being in an abusive situation

## Abuse in the context of Covid-19:

- Wages not paid during quarantine or isolation period
- Forced to do work that violates quarantine
- Forced to work when showing Covid symptoms
- Restricting a worker's movement
- Prevented from getting medical help
- Retaliation for taking sick leave or refusing to work in unsafe conditions
- Forced to work with workers who should be in quarantine

[https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html#examples\\_of\\_abuse\\_risk](https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html#examples_of_abuse_risk)

## Open Work Permit for Vulnerable Workers



- Apply online
- Include a letter of explanation detailing the abuse or risk of abuse and any other supporting evidence of the abuse
- Workers who have left an abusive employment situation before applying for this work permit are still eligible, as long as their employer-specific work permit is still valid or they have already applied for a renewal (i.e. they have maintained their status)
- Both migrant workers who are experiencing abuse and workers who are at risk of experiencing abuse in the context of their employment are eligible

# Open Work Permit for Vulnerable Workers



## Proof of abuse

- Not required, but can include:
  - a letter, statement or report from an abuse support organization, medical doctor, health-care professional or other such entity
  - a sworn statement (affidavit) by the applicant
  - a copy of an official complaint form filed with an enforcement agency
  - for example, a police or CBSA report related to an investigation or a copy of an official complaint completed by the migrant worker and submitted to a provincial enforcement agency, such as an employment standards branch
  - supporting or additional material, such as victim impact statements, hard copies of email messages, photos showing injuries or working conditions, witness testimonies



# Open Work Permit for Vulnerable Workers



- Takes about 5 days for IRCC officer to contact the applicant
- Temporary
- Has an expiry date and cannot be renewed
- Meant to give people time to find a new job and apply for a new work permit
- Need to apply for new work permit before the open work permit expires

## Open Work Permit for Vulnerable Workers



### Problems:

- Not available for people who are out of status (e.g. someone whose work permit expired and couldn't be renewed)
- Language and technology barriers will often prevent people from applying online
- Lack of knowledge of legal rights may not allow a worker to be able to apply before expiry of the closed work permit
- May not have proof of abuse
- Workers have to find a new employer with LMIA (returning to the closed work permit situation) before expiry of open work permit
- May not have means to access lawyer or legal services

# Temporary Resident Permit for Victims of Trafficking in Persons



## What is a TRP?

A Temporary Resident Permit (TRP) allows a person who is inadmissible to Canada, to become a temporary resident (that is, to enter or remain in Canada) if it is justified in the circumstances.

# Temporary Resident Permit for Victims of Trafficking in Persons



## What is inadmissibility?

Some people aren't allowed to come to Canada. They are "inadmissible" under Canada's immigration law.

- Security reasons
- human or international rights violations
- Committing a crime
- Organized crime
- Medical reasons
- Financial reasons
- Non compliance with the IRPA
- Inadmissible family member

# Temporary Resident Permit for Victims of Trafficking in Persons



- For people who are out of status
- The Federal government adopted the Temporary Resident Permit program to provide protection to:
  - people who have been trafficked internationally
  - who would otherwise be Inadmissible to Canada
- The program was established to assist victims/survivors of trafficking by securing their immigration status with a special fee-exempt permit.
- The TRP allows trafficked persons to remain legally within Canada for 180 days with possibility of extension left with the discretion of the immigration officer.

# Temporary Resident Permit for Victims of Human Trafficking



## Purpose

- to help escape the influence of the traffickers
- to provide a period of reflection to consider their options for returning home
- to allow time for the suspected victim of trafficking in persons to decide if they wish to assist in the investigation of the trafficker or in criminal proceedings against the trafficker
- to allow the suspected victim to recover from physical and/or mental trauma (for example, counselling and/or medical treatment may be necessary)
- to facilitate the participation of the suspected victim in the investigation or prosecution of an alleged trafficking in persons offence in Canada, or to allow them to otherwise assist authorities
- any other purpose that is relevant to facilitate the protection of vulnerable foreign nationals who are victims of human trafficking

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/permits/considerations-specific-victims-human-trafficking.html>

# Temporary Resident Permit for Victims of Human Trafficking



## The applicants

- are not required to testify against their trafficker;
- they are entitled to Interim Federal Health (IFH) coverage which includes medical treatment and counseling services;
- they are entitled to an open work permit.



# Temporary Resident Permit for Victims of Human Trafficking



## Problems:

- The person must establish they have been trafficked
- Ongoing criminal investigation is often needed
- It is issued at the discretion of IRCC officer. The number of TRP's vary across Canada.
- There is no viable pathway to permanent residence

## Refugee Claim

- In Canada, a person can claim refugee status if they are afraid of being persecuted in their home country. If someone gets refugee status, they can work and live in Canada and get healthcare. Eventually, they can apply for permanent residence.
- Five grounds to base a claim for refugee status. The fear of persecution has to be based on one of the five following grounds:
  - Race
  - Religion
  - Nationality
  - member of particular social group
  - political opinion
- submit claim online through the Canadian Refugee Protection Portal

## Refugee Claim

### Problems:

- Human trafficking may not easily fall within the parameters of the refugee determination
- persecution has to be in the country of origin.
- may be difficult to prove persecution in the country of origin. An expert support letter in these situations would work well.
- Many trafficking victims/survivors are pushed to make a refugee claim by their traffickers in order to receive social assistance benefiting the trafficker.
- claims are abandoned or lost because the claimant is still under the influence of the trafficker or not ready to share their experience with the Immigration and Refugee Board
- Rejected refugee claimants also are not eligible to apply for a humanitarian and compassionate (H&C application) for one year.
  - Exception
    - Risk to life due to lack of adequate medical care in home country
    - Adverse affect on best interests of a child

## Humanitarian and Compassionate Application (H&C)



- General rule: people apply for permanent residence from outside of Canada.
- H&C application is an exemption – allows people to apply from inside Canada and ask the government to grant permanent residence based on Humanitarian and Compassionate (H&C) grounds.
- People without status can apply
- Factors in an H&C application
  - Establishment and ties to Canada
  - Best interests of children
  - Family violence
  - Adverse country conditions
  - Inadequate medical treatment in home country for medical conditions
- Applicants have to show whether they will face hardship if they return to their home country

## Humanitarian and Compassionate Application (H&C)



- Get help from a lawyer to write strong submissions
- Provide affidavit detailing experience of exploitation and abuse
- Provide supporting documents
  - Examples:
    - Articles and reports on country conditions
    - Support letters from community members, family, friends and organizations
    - Doctor's letters and reports
    - Police reports
    - Proof of employment, education and volunteer history

## Humanitarian and Compassionate Application (H&C)



- The situation of a trafficking victim/survivor often does not correspond closely with the criteria for H&C
- Often cannot show establishment and community involvement
- important to make the connection between lack of establishment and the human trafficking experience
- applicant will have to pay the \$550 fee
- Long processing times
- An H&C application will not stop deportation, nor entitle the applicant to health care or other benefits
- Can apply for work permit after stage 1 approval

# Resources for Support



Canadian Human Trafficking Hotline:

<https://www.canadianhumantraffickinghotline.ca/>

Shelter safe

Information on Women's Shelters:

<https://sheltersafe.ca/>

Ontario Women's Justice Network

Information on Human Trafficking and the Law

<https://owjn.org/human-trafficking-and-the-law/>

# Resources for Support



Ministry of the Attorney General:

Free legal support for trafficked people or those at risk of being trafficked

[https://www.attorneygeneral.jus.gov.on.ca/english/ovss/human\\_trafficking.php](https://www.attorneygeneral.jus.gov.on.ca/english/ovss/human_trafficking.php)

Local Community Legal Clinics:

Free legal advice and representation for low-income individuals

<https://www.legalaid.on.ca/legal-clinics/>

Legal Aid Ontario:

Free legal advice and representation for low-income individuals

<https://www.legalaid.on.ca/>





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