



Conseil canadien pour les réfugiés  
Canadian Council for Refugees

# Trafficked Persons: Avoiding Collateral Harm

A Needs Consultation on Access to Justice for  
Trafficked Persons and Those at Risk

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# I. Executive Summary

Over the last year, the CCR has been working to build the capacity of refugee and immigration lawyers across Canada to identify and respond to the needs of trafficked persons and vulnerable migrants. This is part of a project to improve access to legal services and to justice for trafficked or potentially trafficked non-citizens.

Towards these objectives, the CCR conducted a legal needs consultation that included administering a questionnaire and conducting a focus group discussion with immigration and refugee lawyers. Respondents completed the questionnaire directly or through guided phone interviews. The focus group discussion took place through a virtual meeting platform.

During the consultation process, respondents named working with people in three types of trafficking situations: sex trafficking, labour trafficking, and forced marriage. The consultation was valuable in generating knowledge about legal challenges, gaps in services and legislation, and promising practices in representing trafficked and potentially trafficked persons in Canada. It was also instrumental in guiding the development of a legal education methodology as well as [resource materials](#).

Below is a summary of the main themes and needs emerging from the consultation.

## Trafficking Assessment

- There is no cookie cutter approach, assess based on the narrative provided by persons with lived experience.
- Human trafficking needs to be understood and conceptualized in a broader framework of exploitation, coercion and power imbalance. The conceptual framework should also reflect the role of the state in creating the conditions for trafficking (eg. the Temporary Foreign Worker Program –TFWP)
- Tools and resources are helpful for creating a baseline of understanding and developing a more systematic approach to service provision.
- There is a service gap in accessing legal advice and assistance. In particular,
  - There is a lack of resources devoted to labour trafficking compared to sex trafficking, this is especially so for those without status or with precarious status.
  - The service gap is a trust gap – there is a lack of trust by communities most likely to be trafficked (eg. migrant workers, sex workers, undocumented workers, etc.); all service providers should operate under the principle of access without fear.
  - The legal aid system across all provinces needs proper funding for recourse to support trafficked and potentially trafficked persons (eg. Temporary Residence Permits -TRPs) – currently there is uneven funding between provinces.

## Legal Remedies and Responses

- The criminalization and rescue framework of trafficking legislation creates barriers to protection, it is not rights-based.
- Immigration laws and punitive criminal laws can create collateral damage, place people at risk.
- It is difficult to access legal remedies (whether TRPs, Humanitarian and Compassionate grounds, employment or human rights remedies), especially for those most vulnerable, including migrant workers with precarious or undocumented status, indigenous women, and migrant sex workers.
- A discretionary approach to federal recourses (pursuing TRPs or permanent immigration pathways, pursuing trafficking offences) as well as provincial labour and human rights recourses is inadequate and can create harm – need to be more rights based.
- There is a disconnect between the issues and the response by authorities – need to bring institutions up to speed about exploitation and trafficking, make processes more transparent and timely.
- Need to go beyond thinking about criminal law and pay more attention to strengthening those that focus on reparations for the survivor, from a rights-based perspective (eg. Human Rights and employment standards legislation).
- Law reform is needed in order to remove barriers to justice. This includes reform in the following areas:
  - Reform measures in the TFWP that create vulnerabilities and risks;
  - Remove the criminalization of sex work, which puts people at risk in many ways;
  - Reconsider the fear for safety requirement in trafficking legislation, which makes the evidentiary burden too high;
  - Ultimately need to have access to permanent status (eg. permanent residence upon arrival, Humanitarian and Compassionate branch for trafficking); open work permits such as those introduced in B.C. may be a good intermediary measure – this should also be introduced in other provinces.

## Best Practices

- Connect and collaborate with community organizations, use a team approach.
- Be creative and strategic about gathering evidence/seeking remedies (sometimes seek one remedy as a means towards gathering evidence for another remedy).
- Use trauma-informed practice to ensure the respect of survivors, provide realistic and informed options (disclose risks).
- Engage with institutions in order to educate them on trafficking and advocate for clarity, transparency and timely processes (especially in regards to criteria for assessment, access to officials, human rights considerations)

## 2. Methodology

Relying on the CCR's established relationship with associations of lawyers and other organizations, we invited various groups to collaborate in the needs consultation – by suggesting vehicles for outreach to immigration and refugee lawyers to consult, by suggesting specific lawyers, or by taking part in the consultation directly.

An advisory group also provided input on outreach and questionnaire design. A short-list of 30 immigration and refugee lawyers were invited to respond to the questionnaire directly or during a guided phone interview. The questionnaire was designed to gain insight on trafficking assessment, legal remedies and responses, best practices, and opportunities for engagement. The criteria for the selection of lawyers: past experience with trafficking or labour exploitation, interest in trafficking, regional representation, connection to one of the outreach associations or advisory group members.

Seventeen lawyers responded to the request to participate in the consultation between March and November 2017. The sample of respondents was relatively small but targeted in order to solicit robust responses from legal practitioners most likely to have experience with trafficked or potentially trafficked persons. This was an effective strategy.

### Selected Respondents

- Natalie Drolet, West Coast Domestic Workers Association, Vancouver, BC
- Devyn Cousineau, BC Human Rights Tribunal (formerly of Community Legal Assistance Society), Vancouver, BC
- Anna Kuranicheva, Edmonton Community Legal Centre (ECLC), Edmonton, Alberta
- Dory Jade, Canadian Association of Professional Immigration Consultants (CAPIC), Toronto, Ontario
- Shalini Konanur, South Asian Legal Clinic of Ontario, Toronto, Ontario
- Deepa Mattoo, Barbara Schillifer Clinic, Toronto, Ontario
- Jennifer Stone, Neighbourhood Legal Services, Toronto, Ontario
- Fay Faraday, Toronto, Ontario
- Vincent Wan Shun Wong, Chinese and Southeast Asian Legal Clinic, Toronto, Ontario
- Canadian Association of Refugee Lawyers (CARL)
- Walter Chi Yan Tom, Montreal, Quebec
- Marie-Andrée Fogg, Montreal, Quebec

\*There were 17 respondents in total. Four respondents did not want to be listed as participants, one did not complete the consultation process.

## Analysis of respondents

Seventeen people or 57% of those solicited responded to the needs consultation: 6 interviews were conducted by phone, 10 responded to the questionnaire, 1 response remains incomplete.

Fourteen or 87.5% of respondents have directly provided legal counsel to trafficked or potentially trafficked persons. One respondent was excluded from the analysis since they described smuggling situations rather than trafficking.

Table 1: Respondents by City

Respondents by City	
Toronto	7
Montreal	4
Edmonton	2
Vancouver	3
Ottawa	1
Total	17

Table 2: Respondents by Province

Respondents by Province	
Ontario	8
Quebec	4
Alberta	2
B.C.	3
Total	17

Table 3: Respondents by type of law

Breakdown by type of law	
Legal clinic	9
Private practice	6
Immigration consultant	1
Human Rights Tribunal	1

## 3. Results

The questionnaire and focus group discussion were designed to gain knowledge on trafficking assessment, legal responses and remedies, barriers to protection and access to justice, best practices and challenges in representing trafficked and potentially trafficking persons. The legal needs consultation also sought input on legal training needs and opportunities for engagement. Below are the results in each of these areas.

### 3.1. Trafficking Assessment

What assessment procedures or protocols are followed?

- Tune-in to red flags

Respondents said people don't generally self-identify as trafficked. Rather, one needs to listen to person for evidence or mention of the following, considered to be red flags:

- Movements controlled or monitored; harbouring/confinement/isolation/lack of choice (where they can work, who they can talk to, access to outside world)
- Poor conditions (work long hours for little or no money, no overtime, employer provides housing/owns housing)
- Signs of neglect or abuse (identity documents taken from them, misadvised about Canadian immigration laws, threats of harm of deportation, paid recruitment fees to get into Canada, debt bondage, signs of poor physical/mental health, lack of familial/social ties)
- Is part of vulnerable group: has precarious immigration status – temporary or no status; sex workers, caregivers with closed work permits, indigenous women

- Use appropriate tools, resources

- Respondents had varying levels of knowledge and experience with trafficking. One respondent (with first trafficking case) referred to national task force on sex trafficking, media coverage on sex trafficking, UN Report on Human Trafficking, the UN Palermo Protocol on Trafficking, and information from non-profit organization to understand and assess trafficking.
- Respondents with more experience assess based on the narrative provided by client
- Other resources, tools mentioned: CCR trafficking assessment tool, CCR webinar, RCMP resources
- Respondents in Alberta indicated their protocol is to refer people to Action Coalition on Human Trafficking Alberta (ACT Alberta) for assessment

- Make distinction between exploitation and trafficking

Respondents rely on their previous experience to understand and conceptualize experiential narratives. This includes learning to distinguish what sounds like trafficking versus other forms of exploitation.

Examples:

- *“We do not have any specific procedure or protocol to determine if someone has (or is being) trafficked, but we frame the issue in terms of exploitation, coercion, and power imbalance - which situates human trafficking within a broader and more useful framework for understanding oppression.”* —Vincent Wong
  - *“We gather the facts of the person’s situation, map it onto the continuum of exploitation, and use experience to understand and conceptualize things.”* —Walter Tom
  - *“In terms of the caregivers who come to the office, these are suspected cases of exploitation, but never flagged with a trafficking narrative. In several cases, the client endured awful years, was not allowed to prepare food in family home or eat in family home, worked all hours, but had no choice because had to put in two years – after which could apply for permanent residence under the live in care giver class. All cases were women.”* —Anonymous
- Gaps in services is an ongoing challenge for some respondents, especially providing services for vulnerable groups.
 

Examples:

  - *“I recognize the serious immigration service gap in Edmonton, when it comes to non-profit organizations and settlement agencies accessing legal advice/assistance with applications for people of low income.”* —Anonymous
  - A migrant workers needs assessment is being implemented in Alberta, including the need to understand immigration law and pathways to citizenship, permanent residence.
  - The need for a protocol for dealing with individuals’ immigration issues was identified and is being developed in Alberta.
- Respondents named working with people in three types of trafficking situations: sex trafficking, labour trafficking, and forced marriage.



## How is a response plan determined?

### o Interview Process

Need to be sensitive to trauma, use a holistic approach (not too much in one sitting), take the time to build trust, disclose the risks associated with legal responses, provide choices and ensure there is informed consent.

### o Prioritize Needs

Response is based on needs and what the person wants. These are prioritized and distinguished to determine legal and other service provision needs. The starting point is determining the person's status and exploitative conditions experienced:

- *“It is important to delineate between exploitative conditions and the element of psychological or physical coercion that is necessary to classify an issue as that of trafficking. Exploitative conditions occur in many different areas – particularly where there are intersecting areas of marginalization (e.g. migrant workers, women, LGBTQ communities, racialized individuals, etc.). Many of these conditions are those that we seek to alleviate, but are not situations of trafficking and service providers (including lawyers) should be wary of improperly treating them as such. If we do find that there is a situation of coercion in addition to exploitation, we focus on attempting to empower that client with information and choices.*

*In the case of sex trafficking, because the current Criminal Code framework and Immigration laws are so broad and punitive as to criminalize everything surrounding sex work, it is absolutely imperative that clients understand the risks of potential arrest, detainment, and deportation and that service providers ensure that clients are fully informed before revealing themselves to law enforcement.” —Vincent Wong*

### o Refer to legal and other services

Legal services (criminal, immigration, employment) are provided directly or as part of a team approach. Most mentioned also referring a person for additional supports such as income, counselling, support in making an exit plan, housing and getting to safety (eg. safe house, shelter). Two specific provincial networks were mentioned as referrals for assessment and/or multiple supports: ACT Alberta and the Coalition québécoise contre la traite des personnes (CQCTP).

Example:

- *“The litigation response is intertwined with community organizing, and a collective response. Sometimes it means not proceeding legally. Legal remedies resolve a small piece of the puzzle but don't get to the root of the problem.” —Anonymous*
- *“One of the biggest challenges is coordinating different levels of services needed. Lawyers have to keep ongoing relationships with service providers and clients – this is time consuming.” —Anonymous*

## Is legislation consulted in guiding assessment or response?

- Lawyers variably rely on legislation, an organic interview process or an established assessment protocol. It depends on the lawyer and their previous experience; there is no standard response.
- When legislation was mentioned as guiding assessment or legal responses, lawyers refer to federal legislation related to trafficking (IRPA and the Criminal Code), and/or provincial employment standards legislation, human rights legislation, civil remedies to different degrees.
- One staff immigration lawyer mentioned relying on IRCC guidelines on issuing TRPs for victims of trafficking, and sometimes consulted the UN Trafficking Protocol.
- Some may have knowledge in many of these areas or refer to others with more expertise in specific areas.

## Challenges of legislation

Many challenges emerged related to current legislation when considering assessment or legal response. In particular the systemic barriers to protection for people with precarious status, especially migrant sex workers:

- Federal trafficking legislation is seen as problematic because it has a criminalization rescue framework (puts women at risk):

For example:

*“Characterizing people as victims because systemic oppression constrains options for survival is a damaging framework.”* —Anonymous

- Federal provisions under IRPA and the Criminal Code are considered useful in cases of labour trafficking, but may put those with precarious immigration status at risk, especially migrant sex workers.

For example:

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

- Employment and human rights provisions may also put those with precarious status at risk.

For example:

*“ESA and Code provisions can potentially be helpful generally for migrant workers, but they are dangerous for those out of status because employer can potentially tip off CBSA if there are any physical hearings in which client participation is necessary.”* —Vincent Wong

- For sex workers, federal provisions as well as provincial employment standards and human rights remedies are not considered to provide protection because of the criminalization of sex work.

For example:

*“The criminal provisions of sex work are also often used to charge and arrest sex workers who do not identify as victims of trafficking from providing mutual help to each other. Because of these problematic macro-based issues, these criminal and quasi criminal offenses are generally unsuited for clients who are migrant sex workers.*

*For sex workers, generally ESA and Code provisions provide de facto no protection because of the criminalization of sex work, fear of immigration authorities, and the stigma of sex work not really being treated as well. As a result, systemic and egregious employment standards and health and safety violations cannot be addressed because of the criminalization of sex work.”* —Vincent Wong

### 3.2. Response and Legal Remedies

Respondents indicated that their legal response depends on the situation. Various remedies are used for protection – either to regularize status or get redress for discrimination, exploitation:

- Temporary Residence Permit
- Humanitarian & Compassionate Grounds applications
- Employment standards branch complaints
- Small claims court cases
- Refugee claims
- Spousal sponsorship
- Human rights complaints
- Open work permits
- Criminal injuries compensation board
- Applications for welfare
- Unemployment benefits
- Unpaid wages
- Labour Market Impact Assessment

Legal services are usually successful if they consider the outcome the client is seeking, the options most likely to succeed, and are provided using creative evidence-gathering strategies.

For example:

*“For one client, I had applied for an unemployment claim, and it worked since the client had come in legally so was able to make an unemployment claim. Employment insurance (EI) was used as a strategy in order to prove employment, the client didn’t have any documents, so with the EI, could apply for other ID documents, and also an H&C application.”* —Anonymous

## Challenges – Limits of protection

Respondents indicated numerous shortcomings in current legislation:

- A discretionary approach creates barriers to protection as human rights considerations are not prioritized.

Example:

- *“The biggest challenge is not limited to trafficking scenarios. If someone has fallen out of status, the immigration system sets up a discretionary Humanitarian & Compassionate grounds approach, twinned with the admissibility, criminal model approach where you have to beg for mercy to get around it.”* —Anonymous

- In general, immigration practitioners feel there are limited legal tools available and that existing categories are insufficient.

For example:

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

- There is a lack of protection while waiting for a response to a legal remedy.

Examples:

- One respondent pointed out that there is no stay of removal for non-compliance while waiting for response for a TRP or an H&C. In the meantime, the person remains in a precarious situation, without consideration of human rights issues (such as mental health, lack of safety).
- *“In some cases, we succeeded in finding a safe space but then get into new situation of potential lack of safety. I wonder on a systemic level, if remedies are providing enough prevention from getting back into a trafficked situation. For people who have been exposed to a cycle of psychological abuse, with blurred lines of healthy relationships, this experience can make them targets again.”* —Anonymous
- There is a disconnect between the issues and the response by authorities, especially in cases where people have precarious status. In particular, some respondents point to a heavy-handed approach by the CBSA, lack of understanding around exploitation by officials, a bias towards assuming guilt, and a lack of empathy regarding power imbalances.

Examples:

- *“In one case, a non-status client was arrested, detained and transferred to maximum security prison because admitted was depressed, CBSA considered her a flight risk (may have killed herself) and prison was considered to have better mental health supports than immigration holding centre.*

*I don't assume universal good faith or initial understanding by Canadian immigration officials of exploitative situations. Many enforcement-oriented officers begin with an assumption of culpability on the part of all non-compliant foreign nationals, and many are also surprisingly insensitive to power gradients inherent in many employment or social situations.”* —Vincent Wong

- “Some people in institutions have saviour complex (for eg. police, officials, RCMP). As a result, for clients, the journey is not empowering, they are kept out of the loop, not provided with enough context to explain why institutions are directing them one way or another.” —Anonymous
- There is a lack of clarity around procedures.

For example:

- One respondent said, “*What I have experienced is that there is a lack of clarity at the IRCC level*”. She sometimes received contradictory information around fees and other things. In one example, she had paid \$600 in fees that were eventually reimbursed as the client turned out to be exempted.
- Criteria used by IRCC is not adequate to assess trafficking survivors.
- The TRP Operational Guide states that whether or not a victim lays charges should not be a criteria for TRPs but in practice, this seems to be the case.
- It is difficult to access remedies, whether TRPs, H&Cs, employment or human rights remedies. All require lengthy process, and even positive judgements may be difficult to enforce.

Examples:

- “*VTIP TRPs are almost impossible to get, and judicial reviews of these negative decisions are also difficult to win. If the TRP is unsuccessful and the client is without status, they have very limited options. H&Cs will only be successful in very limited cases.*” —Natalie Drolet
- “*In one case, our client was refused a TRP, lost a judicial review, and then won the highest standing award at the BC Human Rights Tribunal against her employer. After this, she was successful with a subsequent TRP and H&C. We have to wonder if this was only because CIC did not want to risk embarrassment. Other clients were deported following a negative TRP and or H&C.*” —Natalie Drolet
- One respondent said there are a lot of hoops to jump through to get a TRP: “*In a domestic worker trafficking case, used the credibility of the RCMP to enhance CBSA and CIC application for a TRP. The TRP was approved. Later, applied for an H&C but it was refused three months later. Also went to the labour board and got a judgement of \$35,000 against the employer but there were difficulties enforcing it. The employer disappeared after that. At least there is jurisprudence.*” —Walter Tom
- Another respondent said they would never start with a TRP because “*TRPs are just as much work as doing an H&C*”. The respondent points to an example where a TRP was refused because the person indicated they wanted to stay in Canada permanently. At the same time, H&Cs can take 6 months to 5 years for a response. These are often used in cases where people come forward having been underground for many years. TRPs might be more practical in cases where a client is facing imminent removal.

- Some remedies are considered promising, including:
  - The open work permits for clients who have experienced exploitation under the new BC project for open work permits for temporary foreign workers at risk.
  - Using human rights complaints to make institutions liable, or to file human rights complaints if an individual is not being treated properly by authorities.

### 3.3 Best Practices

The following best practices have been identified:

- Use screening tools and do your homework.
  - Screening tools are useful and necessary to assess different pieces of information, for example: red flags, legal options, and levels of risk to determine appropriate services.
  - Read and become familiar with relevant resources and materials on trafficking (see page 18)
- Be creative about evidence gathering:
  - *“We have to be creative in the ways we provide evidence. It can be difficult to prove that exploitation has taken place because often there are no witnesses. We will almost always file a legal complaint in another venue (employment standards, etc.) and then attach a copy of the complaint as evidence with the immigration application.”* —Anonymous
- Do community outreach, and use a multi-sectoral, team approach:
  - Use a team approach to provide legal support as well as wrap-around collective support such as social, psychological support, as well as other possible needs. This means practicing from a community perspective (vs. traditional legal practice) -- let migrant worker communities and shelters know that your service is available.
  - Outreach to lawyers, and key service providers that have training and knowledge base. If available, refer person to local organizations who many have special mandate and multi-faceted capacity to assist trafficking survivors, ACT Alberta for example.
  - Legal team approach could mean recruiting other lawyers to assist survivors with immigration issues, either pro bono or sliding scale rates. It could also mean getting law students involved to assist lawyers with compiling and completing immigration applications. Seek help – lawyers, law students, friends, family members, support workers from local service providers - - to fill out application forms, facilitate translation of documents, and guide the client in obtaining evidence from overseas.
  - The benefit of using this approach: *“By working with trusted community intermediaries and those going out to do outreach, we are learning more about the realities of industries where conditions are ripe for trafficking and exploitation and by making changes to our policies, intakes, and community outreach and partnership strategies, we are getting more and more clients from extremely marginalized and stigmatized communities whom we can work to help.”* —Vincent Wong

- Trauma-informed practice

Legal support needs to be rooted in trauma informed practice in order to understand clients. Some observations around this include:

- *“They have faced a specific kind of trauma, and in some cases feel connected with the abuser. Need to understand how trauma plays out for women or men who are vulnerable because they have need to make people happy, abusers prey on this vulnerability.”* —Anonymous
- Lawyers need to understand that a survivor’s story does not come out in a chronological way, instead it comes out in pieces. Need to listen carefully and take time when interviewing clients. Take the time to build trust. *“We try to ask open-ended questions in order to provide space for the client to tell their story in a way that they feel comfortable with.”* —Anonymous
- Need to manage expectations, lawyers need to be aware that client has trust issues (due to trauma).
- Understand their realities and needs as they describe them to you, analyze the situation from a rights-based approach and anti-oppression approach.
- Understand and identify potential intersecting issues such as language, legal systems, immigration status, finances, health, safety, racism, sexism, and family.
- Understand that intake questions with respect to occupation and income often can isolate migrant workers and survivors of trafficking.
- Ask open-ended, non-judgmental questions.
- Respect and recognize the client’s autonomy and value.
- Ensure option for anonymous and confidential service.
- Ensure that no actions are taken without the client’s informed and explicit consent and that they know the limits of the service you can provide.
- Introduce information and resources that you think are relevant and useful to them.
- Work to provide practical and helpful options that can be assessed by the client.
- Provide clear information on immigration options, identify level of risk with each option, assessment should include next steps, potential outcomes of different avenues.
- Understand potential risks of disclosure of status/work as well as stigma in the case of sex work.
- One respondent shared that for some, *“despite their restrictions in trafficked situations, they do have some comforts like a big house, access to a car, etc. It is a big change to leave that context, it can lead to depression, mental health issues. This adds to their trauma; lot of clients said if I knew it would take this long, they would not have started”.* —Anonymous
- Once red flags are identified during the screening process, it is considered important to follow up with interviews, and to have good notetaking skills.

### 3.4 Opportunities for Engagement

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

Respondents made many suggestions on what they would like to see in a legal training. These are organized under three learning categories (building, applying and integrating knowledge):

#### Knowledge-building

- What constitutes trafficking?
- What criteria to use to assess, how to assess, what evidence is required

#### Knowledge-application

- An overview of human trafficking provisions in IRPA and the Criminal Code
- Legal information about the various remedies for trafficked persons; why privilege one approach over another (for example, H&C versus TRP)
- The basics on TRPs – how to apply, what you need to know, etc.
- Details on immigration options
- What would be involved for a trafficked person during a criminal proceeding
- From IRCC perspective - what grounds and what kind of evidence are required to approve a TRP application and an application for open work permit from a suspected (or confirmed) victim of trafficking.
- Case examples

#### Knowledge-integration

- Professional ethics – trauma-informed, how to interview, etc.
- How to use a multi-sectoral approach to service response – lawyers, councillors, healthcare, etc.
- Details on working with police
- Consolidated information – need it all in one place



## Engaging with institutions

The interviews and questionnaire also gleaned a series of needs and recommendations for engaging with institutions around trafficking. In particular, the need for:

- Education of stakeholders on the definition of trafficking and the spectrum of exploitation.
- Education of institutions (RCMP, authorities, Human Rights Commissions) on immigration law, Temporary Foreign Worker Program (TFWP).
- Quick and timely access to someone with in-depth knowledge of how determinations on victims of trafficking are done and what criteria are applied in Canada (or more narrowly within IRCC), in order to quickly determine whether a client is likely (or not) to be a trafficking survivor.
- Access to the IRCC/CBSA officers responsible for a particular client case, for the purposes of exchanging information, making TRP applications, requesting open work permits, asking to defer removal or refrain from removal/enforcement steps.
- Substantive criteria to assess and determine who is considered a survivor of trafficking (as applied in Canada by RCMP, local police, and IRCC).
- Input from IRCC about what grounds and what kind of evidence they require to approve a TRP application and an application for open work permit from a suspected (or confirmed) victim of trafficking.
- An extension of time and deferral of removal from the IRCC- CBSA offices that are involved in the case.
- A list of officials at IRCC that are responsible for trafficking so know where to address questions.
- Faster responses from institutions.

## 4. Resources

Respondents referred to a number of resources in the course of the consultation:

- [United Nations Human Trafficking Protocol](#)
- [Temporary Resident Permits \(TRPs\): Considerations specific to victims of human trafficking](#)
- [Handbook for Criminal Justice Practitioners for Trafficking in Persons](#)
- [Migrant and Asian Sex Workers Network – Legal Resources for Service Providers](#)
- [MCIS Language Solutions Online Human Trafficking Training](#)
- [trafficking.ca](#) (CCR trafficking website)
- [CCR National Human Trafficking Assessment Tool](#)
- [“Thinking Outside the Box: Developing Case Law on Trafficking,”](#) CCR webinar presented by Crown Prosecutor Michelle Ferguson

## 5. Focus Group Discussion

In addition to the questionnaire administered to individual respondents, a focus group was held to discuss some of key areas identified in the consultation. The objectives were to have an exploratory discussion to validate some of the key themes, identify themes that may not have been captured in the consultation with individual lawyers, and provide an opportunity for lawyers to exchange challenges and promising practices.

### Participants

All of the individual participants in the legal needs consultation were invited to participate. Eight expressed interest, and four were actually available to take part in the discussion:

- Natalie Drolet, West Coast Domestic Workers Association, Vancouver, B.C. (she also co-moderated the discussion)
- Shalini Konanur, South Asian Legal Clinic of Ontario, Toronto, Ont.
- Walter Chi Yan Tom, PINAY, Montreal, QC
- Vincent Wan Shun Wong, Chinese and Southeast Asian Legal Clinic, Toronto, Ont.

All participants have experience with cases of sex trafficking, labour trafficking, forced marriage or a combination of these. Three work for direct service legal clinics. One is a lawyer and advocate with a domestic worker association in Montreal.

The focus group discussion held on January 25, 2018 focused on three areas:

- Challenges around legal services needs
- Challenges in framing the problem (exploitation, trafficking)
- Challenges around recourses and remedies

### Results:

The following is a summary of the key points emerging from the discussion:

- There is a service gap when it comes to addressing the legal needs of trafficked or potentially trafficked persons.
  - The resources legal practitioners are able to provide reflect a stop gap approach (based on who you know are able to connect with) rather than a systematic approach to assessment and response.
  - There is a lack of resources devoted to labour trafficking compared to sex trafficking, this is especially perceived to be the case in Quebec.
  - The service gap is a trust gap – there is a lack of trust by communities most likely to be trafficked; all service providers should operate under the principle of access without fear.
  - It is primordial for lawyers to understand and disclose the risks of pursuing any legal recourse, especially for people with no status or precarious status.
  - Need proper funding to the legal aid system across all provinces for recourses to support trafficked and potentially trafficked persons (eg. TRPs) – currently there

is uneven funding between provinces. In B.C., the WCDWA is the only organization that is filing TRPs in the province, in Quebec there is a lack of funding for cases of labour trafficking.

- The conceptual framework for understanding trafficking should also reflect the role of the state in creating the conditions for trafficking (eg. the TFWP).
- It is telling that there has only been one successful conviction for labour trafficking under the Criminal Code, and no convictions for labour trafficking under IRPA.
- There is a difference between laws that are punitive (eg. Criminal Code) versus those that focus on reparations for the survivor (eg. Human Rights Tribunals, employment standards). Need to go beyond thinking about criminal law - the latter takes a more rights-based approach with a focus on the survivor. It is worth advocating for greater recognition of trafficking within human rights and labour codes.
- Law reform is needed in order to remove barriers to justice. This includes reform in the following areas:
  - Temporary Foreign Worker Program (TFWP) – reform measures that create vulnerabilities and risks
  - Criminal Code – remove the criminalization of sex work, which puts people at risk in many ways
  - Criminal Code – Canadian law stipulates the need to prove a person fears for their safety in order for their exploitation to be identified as trafficking. This definition is narrower than in international law. Although the priority for exploited persons without status is to regularize their status, there is still a place for remedies under the Criminal Code under a revised version of the current legislation.
  - Remedies: ultimately need to advocate for permanent status (eg. permanent residence upon arrival, Humanitarian and Compassionate branch for trafficking), open work permits may be a good intermediary measure – there are signs that the open work permit model in B.C. is being pushed in Ontario, and other provinces.
- There needs to be more clarity and transparency among the institutions responsible for enforcing legislation.

## 6. Conclusion

The consultation was instrumental in guiding the development of a legal education methodology as well as resource materials. The results of the consultation will continue to inform CCR's anti-trafficking work to improve access to legislative protection for trafficked non-citizens and ultimately eliminate policy barriers.

This research contributes to building legal education on trafficking. It also contributes to the body of knowledge on the scope of human trafficking cases, rights issues faced by trafficked and potentially trafficked non-citizens, and recourses available to lawyers to overcome barriers.

