

**Prosecuting Sex Trafficking in Canada: A Comprehensive Analysis of Prosecution  
Strategies and Outcomes through Case Analysis**

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### **Abstract**

Using a case study method, this project addresses how sex trafficking is prosecuted in Canada. The case of *R. v Dagg*, 2015 ONSC 2463 is applied alongside worldwide academic literature, the *Canadian Criminal Code*, and protocol from Public Prosecution Services in order to gain an understanding of how sex trafficking is prosecuted in Canada and what barriers still exist. Additionally, protocol provided by the United Nations, and information from the Royal Canadian Mounted Police, Statistics Canada, and the Canadian Centre to End Human Trafficking are included to explore the prevalence and reality of sex trafficking in Canada. Overall, the study found that the Canadian Criminal Justice System has struggled to prosecute sex trafficking due to undertrained prosecutors, challenges with the *Criminal Code*, and struggles to collect reliable evidence. Recommendations to address these issues that were identified in the literature included specialized training for prosecutors concerning human trafficking and an increase in the quality and quantity of victim support to encourage more reliable evidence to enable more successful prosecutions of sex traffickers.

## **Prosecuting Sex Trafficking in Canada: A Comprehensive Analysis of Prosecution Strategies and Outcomes through Real-Life Cases**

Canada has identified sex trafficking as a prominent health and human rights concern (Hodgins et al., 2023). Despite it being a relevant and real issue around the world and in Canada, public knowledge of human trafficking is currently limited and even more so in regards to how human trafficking is prosecuted. By analysing the prosecution and sentencing of sex trafficking cases within Canada, this project aims to increase public knowledge of criminal procedure related to prosecuting sexually exploitative human trafficking in Canada, while outlining how prosecution cases are determined, and to identify barriers and limitations in current policies and practices from the Canadian Public Prosecution Services. Objectively, this project will help create a better understanding of the legal and procedural paths surrounding how sex trafficking is prosecuted in Canada.

The Government of Canada (2021a), defines human trafficking as the recruitment, conveyance, concealment, and/or exertion of control over a person in an effort to exploit them, typically through the means of sexual exploitation or forced labour or even forced organ transplant. However, this project will solely focus on sex trafficking, that is human trafficking for sexual exploitation that includes any real or attempted abuse of vulnerability, an imbalance of power, or trust in a situation for sexual purposes often including financial, social or political gain through the sexual exploitation of another person (Government of Canada, 2021b). The project will use the human trafficking definition as per section 279.01 of the *Criminal Code*, RSC (1985) c C-46 as its cornerstone.

I addressed why the Canadian legal system has struggled with the prosecution of sex trafficking offences and explore in greater depth the prosecution of this crime. Research

conducted in this project will look to address what legislation exists in Canada surrounding human trafficking. In order to achieve this goal, this project will take on a case study format by closely examining one Canadian human trafficking case dealing with sexual exploitation, *R. v. Dagg*, 2015 ONSC 2463 , a case coming out of the Ontario Superior Court of Justice. Dagg was charged with the human trafficking of a woman (*R. v. Dagg*, 2015). He was a drug dealer who used his position of power and access to drugs in order to exploit and maintain control over a particularly vulnerable woman he had crossed paths with in Ottawa, who is referred to as A.S. throughout court documents (*R. v. Dagg*, 2015). The Crown faced numerous challenges in this case including struggling to collect evidence and apply the *Criminal Code* definition of human trafficking. Consequently, Dagg was acquitted of human trafficking charges (*R. v. Dagg*, 2015). In addition to reviewing this case, this project will take on a document analysis format. Therefore, it will also look at supporting academic literature regarding criminology and law, statistics from Statistics Canada, the *Criminal Code* of Canada, the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, and Public Prosecution Services to foster a more comprehensive understanding of prosecuting human trafficking. In comparison to a traditional literature review, doing a case study will allow for a more intensive exploration of the prosecution of sex trafficking (Priya, 2021). By evaluating academic literature and Canadian law and procedure alongside the two cases, readers will gain a more thorough understanding of the reality of prosecuting sexually exploitative human trafficking within Canada and implicitly connect the seemingly notional concepts of law and literature to real-world context.

Furthermore, the need for more research is further confirmed by the gravity of the crime. Sex trafficking is a crime primarily victimising women and girls, especially those who belong to other marginalized groups or are economically vulnerable such as women who identify as indigenous, migrants and new immigrants, homeless and/or youth because of their disempowered position in society (Hodgins et al., 2023). Therefore, it is not only a threat to human rights, but also to women's rights as women continue to be disproportionately targeted, harmed, and oppressed by the realities of sex trafficking. The threat human trafficking poses to society is made clear in the severe health consequences it has for victims including multiple mental and physical health consequences such as depression, post-traumatic stress disorder, suicidality and substance use, as well as sexually transmitted infections, unwanted pregnancy, and other physical injuries (Hodgins et al., 2023). As well as consequences to the criminal justice system as the Canadian legal system has struggled to prosecute sex trafficking, and therefore bring justice to those affected (Winterdyk, 2017).

As the consequences of this crime are severe, there is an additional need for more research to properly influence and inform policy. The need for further research on this topic can be backed by a scoping review of the existing scholarly literature on sex trafficking in Canada completed by Hodgins et al. (2023) who found that there is very little empirical research but rather that most studies fall within grey literature. They highlighted this concern as a lack of empirical research inhibits the development of data-driven policies and protocols including prosecutions (Hodgins et al., 2023). Hodgins et al. (2023) also identified that a lot of current data on human trafficking is often not separated by the type of trafficking (sex trafficking versus labour trafficking versus organ trafficking). This is problematic as it creates significant gaps in



our knowledge of each trafficking type. By focusing my research on sex trafficking I hope to provide clarity and greater depth about the prosecution of sex trafficking.

Additionally, Hodgins et al. (2023) study highlighted the need for further research on several topics about sex trafficking, including evaluating the strengths and limitations of Canadian anti-trafficking interventions such as current legislation, programs, and funding. Currently, the literature affirms that gaps and barriers exist in Canadian anti-trafficking responses, including prosecution and sentencing for sex trafficking convictions (Hodgins et al., 2023). Issues Hodgins et al. (2023) were able to identify in their scoping review fell under the criminal justice system's struggle to conceptualise human trafficking and sex trafficking (Hodgins et al., 2023). Currently, there are many ambiguous legal definitions of human trafficking crimes, as well as disagreements among law enforcement about the role of coercion and consent (Hodgins et al., 2023). In exploring the prosecution of sex trafficking in Canada I hope to unpack those definitions and contribute to the existing body of research. While the literature review approach does not directly elicit new data or findings on the topic, evaluating the current state of knowledge and using case examples, can amplify issues, identify gaps, build upon previous work, and contribute to the overall discourse.

### **Methodology**

This project analysed the prosecution of human trafficking cases within Canada. The objective is to increase public knowledge of criminal procedure related to prosecuting sexually exploitative human trafficking in Canada, while outlining how prosecution cases are determined, and to identify barriers and limitations in current policies and practices from the Canadian Public Prosecution Services. Currently, public knowledge of human trafficking is limited and more so about how sex trafficking is prosecuted. In doing this project I hope to create a better

understanding of the legal policy and procedure surrounding how this crime is prosecuted in Canada.

To meet this goal, this project takes on a case study format. According to Crowe et al. (2011), a case study “is a project approach that is used to generate an in-depth, multi-faceted understanding of a complex issue in its real-life context” (p. 1). As case studies encourage a more in-depth exploration of a phenomenon (Priya, 2021), I believe I will be able to increase the comprehensibility of my project. In comparison to a traditional literature review, doing a case study will allow me to explore sex trafficking prosecution more densely and intensively (Priya, 2021). By evaluating academic literature and Canadian law and procedure alongside the case of *R. v. Dagg* (2015), readers will gain a more thorough understanding of the reality of prosecuting sexually exploitative human trafficking within Canada. The case of *R. v. Dagg* (2015) was selected because it was seemingly not successful in convicting Dagg due to challenges they encountered during prosecution. These obstacles that appeared consistent with the challenges outlined in the existing literature on sex trafficking prosecutions; therefore, the application of this case will explicitly connect the seemingly notional concepts of law and literature to real-world context. Consequently, in exploring a Canadian sex trafficking case, this project observed and explored the greater strengths and weaknesses of prosecuting sex trafficking in Canada. A case study will allow this project to explore issues, identify gaps, and advance previously completed projects, which would have not been possible with a literature review. The only criteria for case selection is that the court decision had to have been made within the last ten years. Findings from the case will be compared alongside the findings from the literature to create a more comprehensive and in-depth understanding of how sex trafficking is prosecuted in Canada.

As with all project methods, case studies do have their limitations. Case studies have often been criticized for “lacking scientific rigour and providing little basis for generalisation” (Crowe et al., 2011, p. 7). Consequently, their findings have not been applicable to all contexts (Crowe et al., 2011). According to Crowe et al. (2011), one way to increase the generalizability of case study findings is to be transparent during the project process. In order to increase transparency in this project, it is important to note that the case used was hand-selected and could have been affected by personal bias. It is possible that it supported the findings of the literature more than other potential cases, it was seen as a better fit for this project and therefore selected. Additionally, time and length limited the amount of literature that could be included and explored within the project, meaning that it is possible that some opinions and projects were left out.

As my project looks to explore prosecuting sex trafficking in Canada, I have chosen to complete a semi-systematic review. The purpose of semi-systematic reviews, to overview a project area and track its development over time (Snyder, 2019), most closely aligns with the goals of my project. Additionally, semi-systematic reviews often aim to contribute to existing knowledge on a topic and therefore encourage future projects in said field (Snyder, 2019). Similarly, my project aims to enhance public knowledge of the prosecution of sex trafficking and contribute to future development and projects regarding the topic within the criminal justice field. While a semi-systematic review is necessary instead of a systematic review due to the broadness of the question and consequently the excessive amount of literature about the topic, it does create certain limitations (Snyder, 2019). As there is an increased risk of bias in source selection, researchers conducting semi-systematic reviews must be transparent about their project strategy and methods (Snyder, 2019). Being transparent is crucial for readers to be able to

adequately judge whether the findings and arguments presented by the researcher were reasonable (Snyder, 2019). Additionally, as the researcher is not reading every article and piece of literature on the topic, there is the possibility of missing important research. As I am doing a semi-systematic review, my project will primarily rely on the analysis of qualitative data. I analyzed this qualitative data through document analysis. However, this project will look to quantitative data from Statistics Canada to establish a context for human trafficking and sex trafficking within Canada.

This project included a document analysis in order to collect information. Conducting a document analysis will allow me to gain an understanding of the meaning of each document, and further develop and expand upon their contents. One limitation in utilizing this research method is the absence of primary data. It rely on Canadian and worldwide academic literature from criminology and law, relevant sections of the Criminal Code and Canadian Charter of Rights and Freedoms, information provided by the Public Prosecution Service of Canada, United Nations Protocol regarding human trafficking and one specific Canadian cases of sexually exploitative human trafficking will be be found through the database [www.CanLii.org](http://www.CanLii.org). Additionally, it included data from Statistics Canada to back my project and establish a context for human trafficking within Canada.

Literature will be collected from Mount Royal Library and Google Scholar. Only research regarding human trafficking in a sexually exploitative nature will be considered relevant to my research, therefore key terms such as “human trafficking”, “sexual exploitation,” and/or “sex trafficking” will be used in my search. Literature about human trafficking for labour will not be considered. Additional terms that may be included in my search are “prosecution,” “policy” and “procedure.” While worldwide literature may be considered for theory and context,

only Canadian procedure, policy, statistics, and cases will be focused on. Additionally, as previously mentioned, information provided by the Public Prosecution Service of Canada and the United Nations Protocol will be used to properly inform and enhance my research findings. Relevant law, found in the Criminal Code and Charter, will also be crucial to guiding my research and establishing context for the prosecution of sex trafficking within Canada.

### **Human Trafficking in a Canadian Context**

To properly analyse and assess the prosecution of human trafficking for sexual exploitation within Canada, one must first understand the crime and how it is defined in law, alongside its prevalence and other characteristics. This will include an overview of the relevant human trafficking statute as defined by Canadian law enforcement, Canadian legislation, and the international protocol. While this project will be based on human trafficking for sexual exploitation, it will also briefly touch upon other types of human trafficking to provide clarity and depth of understanding.

Sex trafficking occurs in all parts of the world (Farr, 2007). Due to several social, economic, and cultural factors such as poverty, oppression, limited human rights, poor social or economic opportunity, and dangerous situations arising from conflict or instability, victims of sex trafficking often come from developing countries, over to developed countries in search of better opportunities where they are instead exploited and taken advantage of (Farr, 2007). Additionally, massive displacement of populations due to natural disasters, political and civil unrest, and war leave people vulnerable to human trafficking operations (Farr, 2007). Canada is not immune to sex trafficking (RCMP, 2012). Victims trafficked into Canada are typically females arriving from Eastern Europe and Asia (RCMP, 2012). These victims can be then trafficked (i.e., moved)

within Canada for forced sexual exploitation working in escort agencies, massage parlours, exotic dance clubs, bawdy houses, and massage parlours (RCMP, 2012). Canadian victims are often sourced from other provinces and territories within Canada (RCMP, 2012). Organised crime groups and informal or smaller criminal groups or persons often use ads on the Internet, friends, and acquaintances to traffick women into and within Canada (RCMP, 2012). It is also not uncommon for victims in Canada to be trafficked by an acquaintance whom they already know and have some form of relationship with (RCMP, 2012). Women who are facing economic or social hardship are often targeted by traffickers due to their vulnerable position in society (RCMP, 2012). Additionally, victims of sex trafficking within Canada may already be engaged in sex work and then are trafficked and exploited as they are forced to continue working even once they no longer consent (RCMP, 2012). Traffickers use a variety of techniques to control the women they traffic including violence and abuse, seizing personal documents, and isolating them from their family and community to prevent them from seeking support (RCMP, 2012).

### ***Different Forms of Human Trafficking***

While in nearly all cases of human trafficking, victims are acquired through deceptions, threats, or violence with the intent of exploiting them, how victims are exploited varies (Cockbain & Bowers, 2019). The most common forms of human trafficking are trafficking for sexual exploitation and for forced labour; however, other less common forms of human trafficking also exist, such as trafficking for forced criminal activities and for organ removal (Cockbain & Bowers, 2019). All forms of human trafficking can occur nationally, such as within Canada, or transnationally, where victims are brought across borders and are exploited in a different country from that which they originated or previously inhabited (Cockbain & Bowers, 2019). Developed countries typically serve as destination countries for victims of human

trafficking, whereas other countries (particularly developing countries) supply the victims of global human trafficking (Farr, 2005).

Traffickers commonly confiscate money or documentation from victims, and use the threat of deportation against the victim to maintain control over them (Canadian Centre to End Human Trafficking, 2020a). Furthermore, debt bondage, abuse, violence or threats of violence are other broadly used manipulation and control tactics used by human traffickers (Canadian Centre to End Human Trafficking, 2020a).

In trafficking for sexual exploitation, which is the focus of this project, victims (most often women and girls) are often forced into sex work, pornography production, exotic dancing or other sexual acts (Canadian Centre to End Human Trafficking, 2020b). Most, if not all of the money they earn, is seized by their trafficker (Canadian Centre to End Human Trafficking, 2020b). Typically, victims are trafficked by someone pretending to be their significant other in an effort to groom them (Canadian Centre to End Human Trafficking, 2020b). When selecting victims, traffickers often target those who are socially or economically marginalised (Canadian Centre to End Human Trafficking, 2020b). The Canadian Centre to End Human Trafficking (2020b), identifies some of the common targeted groups for sex trafficking in Canada as “aboriginal women, youth and children, migrants and new immigrants, teenage runaways, children who are in protection or are in Foster Care” (para. 6). Additionally in sex trafficking, it is not uncommon for traffickers to lure in new victims with gifts, luxury or expensive clothes, and/or narcotics (Canadian Centre to End Human Trafficking, 2020b). These expenses are often held over the victim as a form of debt bondage and money gained through the sexual acts they undergo is seized by their trafficker (Canadian Centre to End Human Trafficking, 2020b). Apart

from debt bondage, violence or threats of violence is a common way sex traffickers maintain authority and power over victims (Canadian Centre to End Human Trafficking, 2020b).

Outside of sex trafficking, labour trafficking is the other most popular and well-known form of human trafficking (Cockbain & Bowers, 2019). Those who are victimised by labour trafficking often relocate from other countries with aspirations of a better life as they are guaranteed well-paying jobs or other opportunities such as travel or education by traffickers (Canadian Centre to End Human Trafficking, 2020a). Instead, when they arrive they are forced to work extensive hours in extremely poor and potentially dangerous work environments (Canadian Centre to End Human Trafficking, 2020a). Similarly to sex trafficking, labour trafficking victims receive little to no pay for the work they complete leaving them vulnerable and powerless (Canadian Centre to End Human Trafficking, 2020a). Labour trafficking is not refrained to a single work sector, with some common sectors being construction, agriculture, manufacturing, nail salons, restaurants, or illegal drug transportation (Canadian Centre to End Human Trafficking, 2020a). Due to their vulnerable position in society, foreign nationals, those who identify as transgender or queer, and homeless youth are more susceptible to human trafficking for labour and therefore often targeted by traffickers (Canadian Centre to End Human Trafficking, 2020a). Additionally in labour trafficking, as well as sex trafficking, language barriers, an inability to access resources, and unawareness of how or where to seek help, play a role in the victimization of trafficked persons (Canadian Centre to End Human Trafficking, 2020a).

### ***Definitions***

This subsection will delve into the definitions of human trafficking and sex trafficking as outlined by relevant authorities, both nationally within Canada and internationally by the United



Nations, and provide an in-depth discussion and explanation of these definitions. The aim is to create more context for protocols and procedures in terms of the prosecution of sex trafficking in Canada.

**United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.** On November 15, 2000, as part of the United Nations Convention against Transnational Organized Crime, the United Nations adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, more commonly known as the *Palermo Protocol* (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). The *Palermo Protocol* provided the first internationally recognized legal definition of human trafficking and bound United Nations member states to this treaty (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Of the 181 involved member states, 117 member states signed on to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UN, 55th Sess, UN Doc. A/55/383 (2000) GA A/RES/55/25, including Canada which signed on December 14, 2000. Legal provisions in the *Protocol* ensured the criminalization of human trafficking and the adaptation of anti-trafficking laws by member countries (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). The *Protocol* includes the following articles:

1. Relation with the United Nations Convention against Transnational Organized Crime 2. Statement of purpose 3. Use of terms 4. Scope of application 5. Criminalization 6. Assistance to and protection of victims of trafficking in persons 7. Status of victims of trafficking in persons in receiving States 8. Repatriation of victims of trafficking in persons 9. Prevention of trafficking in persons	10. Information exchange and training 11. Border measures 12. Security and control of documents 13. Legitimacy and validity of documents 14. Saving clause 15. Settlement of disputes 16. Signature, ratification, acceptance, approval and accession 17. Entry into force 18. Amendment 19. Denunciation 20. Depositary and languages
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However, in order to keep this project succinct and focused on the prosecution of sex trafficking, only articles 2, 3, 5, 7, 10, 11, and 12 will be expanded on. These articles were the most relevant and influential to the prosecution aspect of the criminal justice system.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking (2000) defines human trafficking within Article 3 of the *Protocol*, as:

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. (p. 42)

In comparison to some of the other legal definitions of human trafficking, such as that of the Canadian Criminal Code (which will be touched on later in the section), the United Nations' definition of human trafficking is more expansive including that human traffickers exercise control over victims. Additionally, in expanding upon the various forms exploitation can take within human trafficking, a much fuller picture is provided as to the different ways human trafficking can look.

Article 2 lays out the objectives of the *Protocol* which can be summarised as hindering and opposing the trafficking of persons with specific emphasis on female and child victimisation, protecting and helping victims of human trafficking in accordance with their human rights, and fostering cooperation among United Nation member parties in reaching those goals (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). In order to achieve these objectives, Article 5 of the *Protocol* lays out what is expected of member states regarding the criminalization of human trafficking (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Member states are to implement legislative measures and any other external efforts as seen necessary following the previously given definition of human trafficking as per Article 3 of the *Protocol* (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). This includes criminalising those who unsuccessfully attempt to commit a human trafficking offence, act as an accomplice in a human trafficking offence, or arrange or direct

another individual to commit a human trafficking offence (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Real-world examples could be the criminalisation of brothels, which help facilitate human trafficking, or the criminalisation of those who drive or transport victims in human trafficking operations even if they are not the ones in charge of organising it.

Article 7 encourages state parties to consider taking on compassionate legislative measures that allow victims of international trafficking in persons to remain in their country, either temporarily or permanently (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Consequently, victims of international human trafficking may be more likely to seek assistance from law enforcement if they are not in fear of deportation. Victims of human trafficking coming forth with information on human trafficking operations would ultimately assist in the prosecution of human trafficking offenders.

Regarding human trafficking prevention, Article 10 emphasises the importance of cooperation among State parties in relaying information due to the transnational nature of human trafficking operations (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Failure to communicate between parties allows offenders and victims to travel undetected and prevents law enforcement from knowing valuable information on common trafficking routes, transportation and operations (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Furthermore, Article 10 elaborates on the importance of specialized training regarding human trafficking for law enforcement, immigration, and other relevant officials so they are aware of important indications and signs that human trafficking may be occurring (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Additionally, training should focus on how to prosecute traffickers and protect the rights of trafficking victims

(United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Following Article 10, Article 11 stresses the importance of high-quality border measures and standards in preventing human trafficking (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). This is to prevent traffickers from easily transporting victims internationally across borders undetected (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). Similarly, Article 12 emphasizes the importance of high-quality control of travel and identity documents in preventing international trafficking (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000). By ensuring travel documents are high-quality, it becomes difficult for traffickers to misuse or unlawfully replicate, alter, or issue in order to facilitate human trafficking operations (United Nations Protocol to Prevent, Suppress and Punish Trafficking, 2000).

**Criminal Code of Canada.** In Canada, the statute for human trafficking is found in section 279.01 of the *Criminal Code*, RSC (1985) c C-46 which lays out that “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.” Human trafficking is an indictable offence, and those found guilty can be imprisoned for a mandatory minimum of four years and a maximum 14 years (*Criminal Code*, 1985, s 279.01(1)(b)). However, if the offender kidnaps, commits aggravated assault or aggravated sexual assault, or causes death during the human trafficking offence, they are subject to a mandatory minimum punishment of five years of imprisonment or may be imprisoned for life (*Criminal Code*, 1985, s 279.01(1)(a)). Additionally, consent given to any basis of a human trafficking charge is immediately considered invalid and therefore cannot negate a human trafficking charge (*Criminal Code*, 1985, s 279.01(2)).

**Royal Canadian Mounted Police.** The Royal Canadian Mounted Police (RCMP) recognises human trafficking as a violation of basic human rights and defines the crime as recruiting, transporting, harbouring or controlling the movement of an individual in an effort to exploit them (Royal Canadian Mountain Police [RCMP], 2020). In terms of techniques, aggression in the form of intimidation or violence along with coercion and manipulation tactics are typically used to control victims (RCMP, 2020). Additionally, perpetrators of human trafficking often identify the needs, susceptibilities and weaknesses of their victims and use it to their advantage to further assert their dominance and power over the victim (RCMP, 2020). Human trafficking can occur domestically when victims are trafficked within Canada, or internationally when victims are trafficked across international borders such as to/from the United States, and/or other countries (RCMP, 2020). The RCMP (2020) make an important note clarifying that international human trafficking is not synonymous with human smuggling and therefore needs to be looked at separately. Human smuggling is a form of illegal migration where individuals pay to be transported across an international border (RCMP, 2020). Contrary to human trafficking, the smuggler and the individual typically go their separate ways after reaching the intended destination (RCMP, 2020). However, as noted by the RCMP (2020), occasionally human smuggling cases do escalate into human trafficking cases where the smuggler's actions go beyond the illegal migration the smuggled individual originally consented to as the smuggler begins to exploit and control the individual.

According to the RCMP (2020), human trafficking typically involves movement to another destination for the purpose of forced labour or sexual exploitation, the latter of which will be focused on in this project. In sexually exploitative human trafficking cases (i.e., sex trafficking cases), it is common for victims to be forced to provide sexual services, work in

massage parlours, and/or work in adult entertainment as an escort or entertainer (RCMP, 2020). Occasionally, victims originally willingly agree to work in the sex industry but then are prevented from leaving the industry by their trafficker once they no longer consent (RCMP, 2012). Aside from the exploitative nature of the work, several other factors also contribute to the infringement of human rights in sex trafficking including common violence and abuse against the victim, and the seizure of personal documentation from victims such as driver's licences, social insurance numbers, and bank cards to maintain control over them (RCMP, 2012). Additionally, victims have little to no say in the nature of their work, such as how, where, or with whom it occurs (RCMP, 2012).

In terms of combatting this crime, the RCMP's role is to enforce the CCC, investigate cases and apprehend those violating the law. They also utilise awareness campaigns and investigations to actively seek out victims, develop and implement crime prevention initiatives, and partner with other law enforcement and government agencies to share information and work collaboratively (RCMP, 2020). Additionally, the RCMP established the Human Trafficking National Coordination Centre (HTNCC) in an attempt to localize and strengthen Canadian law enforcement efforts against human trafficking (RCMP, 2012). According to the RCMP (2012) National Strategy to Combat Human Trafficking, the HTNCC's main goals are:

- The development of tools, protocols and guidelines to facilitate human trafficking investigations;
- The coordination of national awareness/training and anti-trafficking initiatives;
- The identification and maintenance of lines of communication, identification of issues for integrated coordination and provide support;

- The development and maintenance of international partnerships and coordination of international initiatives; and
- The coordination of intelligence and the dissemination of all sources of information/intelligence to operational units across the country and promotion of the advancement of intelligence in support of enforcement. (p.14)

Ideally, adherence to these five main priorities will facilitate Canadian law enforcement in combat and disrupting human trafficking activities domestically and internationally (RCMP, 2012).

### ***Trafficking Within and Into Canada***

Data in Canada has been collected through the Uniform Crime Reporting Survey (UCR) and the Integrated Criminal Court Survey (ICCS) reported by Statistics Canada. The UCR Survey is police-reported data and contains information on criminal incidents that are reported to law enforcement in Canada (Heidinger, 2023). It collects details on the characteristics of the victims, accused persons and the nature of the reported incidents (Heidinger, 2023). The ICCS is responsible for providing data as per the Canadian adult and youth courts (Heidinger, 2023). This information should include thorough details on charge and case decisions, sentencing outcomes and timelines of court processing time (Heidinger, 2023). It's important to note that police-reported data and court-reported data may have discrepancies as not all police-reported incidents result in charges that are pursued in court, and court data is affected by delays in court processing and the justice system and cannot be entered into a database until it is determined a complete case (Heidinger, 2023). This project uses those surveys over a ten-year period from 2012 to 2022. Additionally, data collected by the Canadian Centre to End Human Trafficking will be included to create a fuller, more well-rounded picture of human trafficking in Canada.



This data covers a four-year period from 2019 to 2022 and is reflective of the calls they receive on their Canadian Human Trafficking Hotline.

Unfortunately, limited government-reviewed data exists separating sex trafficking from other forms of human trafficking. Therefore the majority of the data included in this section will look at human trafficking as one generalised offence, instead of solely sex trafficking offences. However, whenever possible data separating sex trafficking from other forms of human trafficking will be included and identified.

**Prevalence of Human Trafficking in Canada.** According to Heidinger (2023), between 2012 and 2022 there were 3,996 police-reported incidents of human trafficking in Canada resulting in an average rate of 1.0 incidents for every 100,000 people. However, as human trafficking cases are likely to go unreported, this figure does little to illustrate the prevalence of human trafficking in Canada. Due to its secretive and hidden nature and its collusion with other sex work, the reality of human trafficking in Canada is not accurately portrayed through police-reported statistics, and likely only accounts for a fraction of cases. However, police-reported data can give insight into human trafficking trends. Generally speaking, police reports suggest human trafficking rates have been on the rise between 2012 and 2021, excluding a slight decline in 2018 (Heidinger, 2023). In 2021, the rate of reporting had grown to 1.5 human trafficking incidents per 100,000 population and declined slightly the following year in 2022 to 1.4 incidents per 100,000 population (Heidinger, 2023).

In terms of separating sex trafficking from other forms of human trafficking, limited numerical data exists. Heidinger (2023) clearly states that “trafficking for sexual exploitation is the most detected and encountered form of human trafficking by law enforcement in Canada” (para. 4), but provides little to no further data to expand on this claim. However, according to

Froutan (2023), the Canadian Human Trafficking Hotline has identified 1,029 cases of sex trafficking compared to 88 cases of labour trafficking since it launched in 2019. Lastly, they were able to identify that 25% of human trafficking incidents involved a minimum of one other offence (Heidinger, 2023). Of these additional offences, more than half of them (56%) are related to the sex trade (Heidinger, 2023).

**Geographic Data.** Consistently since 2012, Statistics Canada reported that more than eight in ten police-reported human trafficking incidents occurred in urban centres (Heidinger, 2023). Froutan (2023) reports similar findings, with only 13% of calls to the Canadian Human Trafficking Hotline coming from mid-sized cities, small towns, and rural areas between 2019 and 2022. Heidinger (2023) found that of the urban centres, between 2012 and 2022, nearly half (48%) of police-reported Canadian incidents of human trafficking cases have fallen within five census metropolitan areas. The first of these census metropolitan areas is Toronto, which reported an average of 23% of all incidents in Canada, followed by Ottawa at 9%, Montreal at 6%, Halifax at 6%, and Hamilton at 4% (Heidinger, 2023). Notably, during the ten-year period between 2012 and 2022, Thunder Bay reported the highest average annual rate of human trafficking incidents of 5.9 per 100,000 population preceded by Halifax at a rate of 5.0 per 100,000 population (Heidinger, 2023).

Provincially, between 2012 and 2022 Nova Scotia has had the highest rate of human trafficking at 3.1 per 100,000 population (Heidinger, 2023). Remarkably, in 2022 this rate grew to 4.5 per 100,000 population, which was significantly higher than the national average of 1.4 (Heidinger, 2023). According to Heidinger (2023), Nova Scotia's coastal location is likely to blame for its high rate as victims are transported from Atlantic Canada to the remainder of the country. Ontario is the only other province to exceed the national average rate between 2012 to

2022 (1.0 incidents per 100,000 population) as they reported an average of 1.6 incidents per 100,000 population (Heidinger, 2023). Heidinger (2023) attributes this difference to Ontario's high number of cities and urban areas, as populous centres increase human trafficker's ability to profit while making it more difficult for law enforcement to detect (Heidinger, 2023). While Froutan (2023) did not take into account population density, between 2019 and 2022, 67% of calls to the human trafficking hotline came from Ontario, 10% from Alberta, 9% from British Columbia and 7% from Quebec. All other provinces accounted for 2% or less of calls made to the centre (Froutan, 2023).

**Perpetrators of Human Trafficking.** Police-reported data indicate that perpetrators of human trafficking are largely male representing 82% of people accused of human trafficking from 2012 to 2022 (Heidinger, 2023). Additionally, during this period 76% of adults accused of human trafficking fell between the ages of 18 to 34 years old (Heidinger, 2023). In very few incidents the perpetrator was a stranger to the victim as 91% of victims between 2012 and 2022 reported they knew the individual who trafficked them (Heidinger, 2023). During this period in just over one-third (34%) of human trafficking cases the perpetrator and victim were intimate partners, including a current or former married spouse, common-law partner, boyfriend/girlfriend, or someone with whom they have a sexual relationship (Heidinger, 2023). It is common for traffickers to utilize their boyfriend status to lure and trick women, enticing them into situations where they can be trafficked. Furthermore, 22% of perpetrators were a casual acquaintance to the victim, 24% were in a criminal or business relationship with the victim and less than 10% were a friend or non-spousal family member to the victim (Heidinger, 2023).

**Victims of Human Trafficking.** Victims of human trafficking in Canada between 2012 and 2022 were overwhelming women and girls at 94%, while men and boys made up 5.6% of victims (Heidinger, 2023). In terms of female victims, 24% were under the age of 18 and 69% fell under the age of 25 (including those under 18) (Heidinger, 2023). Contrarily, male victims were typically slightly older with the largest age category being 25 to 34 years old at 35% (Heidinger, 2023). Looking solely at sex trafficking, Heidinger (2023) states that the overwhelming majority of victims are female, however, does not expand with numerical data. Furthermore, Heidinger (2023), explains that certain groups, such as those who are marginalised economically or socially are at an increased risk of being a victim of sex trafficking, but once again does not expand with data.

**Prosecuting Human Trafficking.** In instances where the accused person was identified, between 2012 and 2022, more than 90% of the time it resulted in the accused having charges laid or recommended against them (Heidinger, 2023). The number of overall human trafficking charges being laid in Canada has significantly increased since 2012 as there were a total of 21 human trafficking cases (36 total human trafficking charges) in 2011/2012 compared to 139 human trafficking cases (582 total human trafficking charges) in 2021/2022 (Heidinger, 2023), potentially due to an increased focus in combating human trafficking by Canadian law enforcement.

However, only 11% of human trafficking charges between 2012 and 2022 have resulted in a guilty finding (Heidinger, 2023). Instead, the most common decision (83%) has been a stay of proceedings, withdrawal, dismissal, or discharge, which are all court decisions respectively regarded as relatively unserious and minor (Heidinger, 2023). In cases where there was an additional charge related to the sex trade, there was a guilty verdict in 30% of cases (Heidinger,

2023). For those human trafficking cases with a guilty finding, over three-quarters have led to a custodial sentence since 2012 (Heidinger, 2023). However, cases involving a sex trade charge were less likely to receive a custodial sentence at 44% (Heidinger, 2023). Among human trafficking cases, probation sentences were given 10% of the time and a different form of sentence accounted for the other 10% (Heidinger, 2023). Since 2012, probation has been a more popular outcome for cases involving a sex trade charge at 26% or a violent offence charge at 42% (Heidinger, 2023).

## **Document Review**

### ***Canadian Policy***

The Crown counsel (also commonly known as the Crown prosecutor, or simply the Crown) plays an influential role in ensuring that the trial process follows due process which includes rights protected by the *Canadian Charter of Rights and Freedoms*. Defence counsel ensure that those accused of committing a criminal offence have a fair trial, as protected by Section 11 of the *Canadian Charter of Rights and Freedoms* (Public Prosecution Service of Canada, 2023). According to Section 11 of the *Charter of Rights and Freedoms* (1982), any person in Canada charged with an offence has the right to be informed without unreasonable delay of the charges they are facing and to be presumed innocent until proven guilty by an independent and impartial tribunal. Additionally, they are to be tried fairly and publicly in a timely manner as per section 10 (Charter of Rights and Freedoms, 1982).

In cases where an individual is facing an offence with a maximum punishment of incarceration for five years or more w), the accused has the choice to proceed a trial by jury or judge and jury

The Crown has a vital role in upholding the rights outlined in Section 11 of the Canadian Charter of Rights and Freedoms. Within the Canadian criminal justice system, the Attorney General appoints the Crown to act as a minister of justice representing the Crown, or in other terms, the state (PPSC, 2023). It is important to note that within the trial process, they do not win or lose a trial as their goal is not to seek a criminal conviction by any means necessary but instead the pursuit of justice (PPSC, 2023). It is the Crown counsel's responsibility to make certain prosecutorial discretion and trials are conducted in an impartial, just, transparent and consistent fashion (PPSC, 2023). Therefore, they are expected to act impartially without hostility or animosity towards the accused individual or any victims involved (PPSC, 2023). Additionally, the Crown is expected to be thorough and assiduous in the decisions they make, such as whether or not to prosecute an individual accused of a *Criminal Code* offence (PPSC, 2023). This includes acknowledging and being aware of personal biases (conscious and unconscious), institutional biases, and stereotypes that could affect decision-making (PPSC, 2023).

To ensure all federal prosecutors and persons acting as federal prosecutors are acting justly, fairly, and following legal expectations, they are required to abide by the *PPSC Deskbook* as directed by the Attorney General (PPSC, 2023). The *PPSC Deskbook* provides detailed guidelines and directives for the Crown to follow, as well as the guiding principles that are expected to be followed (PPSC, 2023). Explicit guidelines and directives on prosecution procedure from the *PPSC Deskbook* will be expanded upon in the following section.

**Public Prosecution Service of Canada - Prosecution Procedure.** The initial step in prosecuting a criminal offence is deciding whether or not to proceed with a prosecution in the first place. When deciding whether to prosecute, Crown counsel is bound by the guidelines set out in the *PPSC Deskbook* (PPSC, 2023). The decision to prosecute is a difficult and important

choice and therefore must be thoroughly thought out and based on logic (PPSC, 2023). Before proceeding with a prosecution, Crown counsel must consider and weigh the interest of the public, the individual accused, and any possible victims (PPSC, 2023). Additionally, the decision on whether or not to prosecute must be a decision that promotes the general public's confidence in the criminal justice system (PPSC, 2023).

According to the PPSC (2023), two requirements must be satisfied before any prosecution can proceed:

- (1) There is a reasonable prospect of conviction; and
- (2) The prosecution is in the public interest. (p. 2)

The test applies to the accused person as a whole, as well as each separate charge the accused person is facing (PPSC, 2023). In every province in Canada, excluding British Columbia and Quebec, law enforcement has the duty of laying charges (Department of Justice, 2015). In British Columbia and Québec, the Crown is responsible for laying charges (Department of Justice, 2025). And in New Brunswick, police are expected to lay charges based on the advice of the Crown (Department of Justice, 2025). Failure to meet either of these threshold requirements means the Crown should not proceed with the prosecution (PPSC, 2014). In instances where charges have already been initiated, the charges should be withdrawn or the trial individual should be stopped by entering a stay of proceedings (PPSC, 2014). Additionally, this test remains relevant during all stages of the prosecution and should be constantly evaluated, especially when any new information is brought to attention (PPSC, 2023)

***The Reasonable Prospect for Conviction Standard.*** The reasonable prospect for conviction standard surpasses the standard of a *prima facie* case meaning it goes further than just initial impressions and instead requires having further existing evidence that indicates guilt

(PPSC, 2023). However, this does not mean that a guilty verdict must be probable in order to proceed with a prosecution, but instead that there's enough evidence for a reasonable jury, with proper guidance, to potentially result in a conviction (PPSC, 2023). Additionally, the PPSC (2023) states that the Crown is required to “assess the reasonable prospect of conviction standard objectively, and on the assumption that the trial will unfold before an impartial trier of fact acting in accordance with the law” (p. 6). When applying the standard, it is the responsibility of the Crown to unbiasedly assess witness credibility taking into account their reliability and competency, any potential defences the accused could use, and the impact of any violations of the *Charter* on greater society (PPSC, 2023). They must consider what evidence will likely be admissible and readily available if they were to proceed with a prosecution, as well as the credibility of any evidence in favour of the defence (PPSC, 2023).

Additionally, this assessment includes taking into account any evidence from the standpoint of the accused, while also considering any relevant information on the background or personal experiences of the accused that may have impacted their life and/or choices (PPSC, 2023). However, the Crown may not allow “ race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, socio-economic status, or political association” (p. 7) to have an impact on their decision of whether or not to prosecute (PPSC, 2023). Additionally, the personal opinions of the accused, any victims or witnesses involved, as well as their own opinions, should not influence the Crown’s decision (PPSC, 2023). The Crown may consider the consequences of this choice on their own personal or professional circumstances, investigative agencies, or its members solely in instances where it is not the only factor affecting their decision (PPSC, 2023). Lastly, the Crown has a duty to protect privileged information, and if the reasonable prospect of



conviction standard cannot be met without disclosing said information, the case cannot go forth with a prosecution (PPSC, 2023).

***Protecting Public Interest.*** When the reasonable prospect of conviction threshold has been met, the Crown must then consider if proceeding with a prosecution is in the best interest of the public (PPSC, 2023). By considering the public interest, the PPSC (2023) encourages the Crown to prioritize the more serious cases with the largest societal impacts, such as those which involve violence or threaten the safety of the public. However, this is not to say that they should ignore less serious cases, but instead look to alternative measures outside of criminal prosecution (PPSC, 2023). When considering which cases are in the public's interest to prosecute, there are a number of factors to consider (PPSC, 2023). None of the factors are intended to be conclusive, but instead are meant to be adaptable and considered alongside the context of circumstances (PPSC, 2023).

The first factor to take into account is the nature and gravity of the suspected offence, including aggravating and mitigating factors (PPSC, 2023). As a general rule, the more serious the offence, the more probable it is that proceeding with a prosecution would be in the public interest (PPSC, 2023). On the other hand, the less serious the offence, the more probable it is that not proceeding with the prosecution or continuing with alternative measures would be in the public interest (PPSC, 2023). When considering the nature and gravity of the alleged offence, it is important to weigh the damages or risk of damages resulting from the offence (PPSC, 2023). Usually, this encourages the prosecution of offences resulting in physical bodily harm, or large-scale offences that affect the greater community such as trafficking large amounts of controlled substances, hate crimes, or crimes disproportionately affecting a specific demographic

(PPSC, 2023). Additionally, when larger societal factors (homelessness, mental health, addiction, etc.) play a role in the offence, the Crown must contemplate not prosecuting (PPSC, 2023).

The second factor to consider is the circumstances of the accused, including any relevant background information or personal factors (PPSC, 2023). Possible factors identified by the PPSC (2023) include Indigenous identity, systemic and background factors (for example members of Black or racialized community), underlying issues (for example substance-use disorders or homelessness), mental health of the accused, previous history and progress with treatment and rehabilitation, age if the accused is young or quite old, disabilities, previous criminal record, and the consequences for the accused (PPSC, 2023). Many of these factors play a role in the marginalisation, oppression, or over-representation of certain population demographics (PPSC, 2023). Other factors may affect their decision-making in some capacity or lead to disproportionately harsh consequences if prosecuted (PPSC, 2023).

Thirdly, the crown must take into consideration the circumstances and views of the victim and/or the victims family members (PPSC, 2023). This includes any serious or harmful impacts the victim suffered physically or emotionally as a consequence of the alleged crime (PPSC, 2023). It also considers the personal characteristics of the victim, such as their age, vulnerability, cognitive and physical abilities, and mental health (PPSC, 2023). The Crown may also consider if the victim has strongly expressed wanting to hold the accused accountable for their actions, however, they must remember that this alone is not a determinative factor in the judgement of whether to prosecute (PPSC, 2023). Lastly, they must consider the victim's willingness to participate in the prosecution, including providing testimony (PPSC, 2023). The PPSC (2023), clearly states that “in cases of domestic or sexual violence, a victim’s unwillingness to testify weighs in favour of not proceeding with a prosecution, unless there is a reasonable belief that the

victim may change their mind” (p. 12). In cases where the victim is considered particularly vulnerable, such as Indigenous women and girls, the Crown is urged to consider prosecution due to the disproportionate harm many vulnerable groups suffer from in Canadian society (PPSC, 2023).

The Crown must next consider how their decision will influence confidence in the administration of justice (PPSC, 2023). They must look to act in a manner that promotes and maintains public confidence in court proceedings and the greater criminal justice system (PPSC, 2023). For example, if the Crown prosecuted a case where serious police misconduct was apparent, it would almost certainly negatively affect the public’s trust in the justice system and perception of the administration of justice (PPSC, 2023). If there is any uncertainty regarding potential state misconduct, the Crown should reach out to the investigative agency, and potentially even the accused, for more information (PPSC, 2023). When state misconduct is at play, but the crime is serious or a victim is involved, they must carefully consider whether to proceed with prosecution as an involved party could be harmed as a result of their decision (PPSC, 2023).

The fifth factor the Crown is responsible for considering is the risk of harm to the community (PPSC, 2023). It should include “any loss or injury caused by the alleged offence, and the impact of the alleged offence on public safety, public health, public welfare, the environment, natural resources, and other economic, cultural or societal public interests” (PPSC, 2023, p. 15). This should take into account over-policed and under-policed groups and how they might be affected by the decision to prosecute (PPSC, 2023). When the offence is serious enough that a local community may lose faith in the administration of justice, the Crown may lean towards continuing with prosecution (PPSC, 2023). Additionally, if the alleged offence actively

adds to the disproportionate victimization and continued trauma of a marginalized group, the Crown is urged to consider prosecution (PPSC, 2023).

Lastly, the Crown must weigh alternatives to sentencing and if public satisfaction can be met without prosecuting (PSSC, 2023). Alternatives to prosecution are intended to promote accountability and rehabilitation while removing the attached stigma that comes with a criminal conviction and sparing the resources of the criminal justice system (PPSC, 2023). Moreover, prosecution may be considered a disproportionately harsh route depending on the offence and/or circumstances of the accused (PPSC, 2023). However, when considering alternative measures, the Crown must consider if general deterrence and denunciation of the criminal offence are still likely (PPSC, 2023). Alternative measures must be considered for Indigenous offenders (PPSC, 2023). Additionally, extrajudicial sanctions should be considered for young offenders, and referrals to mental health courts and drug treatment courts when applicable for those offenders suffering from serious mental health issues and/or substance use disorders (PPSC, 2023).

**Prosecutions of Trafficking of Human Beings.** Like many other countries, Canada has encountered numerous challenges when prosecuting human trafficking (Broad & Muraszkievicz, 2020). Despite being one of the first countries to sign on to the *Protocol* and making numerous legislative amendments to aid in the prosecution of human trafficking, Canada has not been overly successful in prosecuting sex trafficking, or human trafficking in general (Broad & Muraszkievicz, 2020). These legislative amendments were intended to provide law enforcement and prosecutors with new strategies and tools specifically tailored to human trafficking offences in hopes of a more successful outcome (Broad & Muraszkievicz, 2020). For example, in 2017 the government made legislative amendments that made it possible to include the cohabitation between the victim and trafficker, or the trafficker constantly being with the

victim, as evidence of control (Broad & Muraszkiewicz, 2020). Additionally, the Canadian government recognized the need to make testifying less traumatic for victims and therefore introduced support for victims testifying in 2012 (Broad & Muraszkiewicz, 2020). These supports include being able to testify outside of the courtroom in a separate location and access to other people who can provide support during testimony (Broad & Muraszkiewicz, 2020). As recommended by the *Protocol*, Canada also no longer requires victims who are trafficked internationally to provide testimony in exchange for permanent or temporary residency (Broad & Muraszkiewicz, 2020). Despite efforts to increase victim support, research shows that victims of human trafficking in Canada remain hesitant to testify due to an ongoing fear of their trafficker (Broad & Muraszkiewicz, 2020). The lack of cooperation between victims of human trafficking and law enforcement creates difficult challenges for prosecution as it leads to a lack of overall information and evidence (Broad & Muraszkiewicz, 2020). It is important to remember that victims often face job loss, deportation, or other personal factors that may make it difficult to cooperate with law enforcement (Broad & Muraszkiewicz, 2020).

The Department of Justice (2015) has laid out clear guidelines for prosecutors of human trafficking, including how to interview and involve victims of human trafficking to encourage cooperation among parties. It is important to recognize that the majority of victims of human trafficking cases will have limited knowledge of the workings of the Canadian criminal justice system and therefore it is important for prosecutors to take the time to introduce themselves and explain their role, the purpose of the interview, and what will happen next following the interview before asking anything about the case (Department of Justice, 2015). During the length of the interview, the Crown must remain sympathetic to the victim and their circumstances, and remember the extreme state of distress that they are likely under (Department of Justice, 2015). It

is not uncommon for victims of human trafficking to be hostile when initially beginning an interview, therefore, the Crown mustn't ask too many challenging or direct questions in the initial stages of the interview to maximize the overall effectiveness of the questioning (Department of Justice, 2015). While these harder questions need to be answered, building a rapport with the victims needs to be prioritised before they can be asked (Department of Justice, 2015). The Crown should also be accommodating in providing frequent breaks or even finishing the interview early if it appears necessary, and provide a support person and/or interpreter for the victim if required (Department of Justice, 2015). Additionally, they should be careful to pay attention to the body language and comments of the victim as they could have any fears the individual has for their own safety or the safety of their loved ones (Department of Justice, 2015). The prosecutor should carefully and diligently explain all the resources available for the victims to get them the assistance they need (Department of Justice, 2015).

In human trafficking cases, human trafficking is rarely the only offence involved and where applicable, laying additional charges should be considered (Department of Justice, 2025) such as:

- Uttering threats (section 264.1);
- Assault (section 265);
- Assault with a weapon/causing bodily harm (section 267);
- Aggravated assault (section 268);
- Sexual Assault (section 271);
- Sexual assault with a weapon (section 272);
- Aggravated sexual assault (section 273);
- Trafficking of a person under the age of eighteen years (subsection 279(11));

- Kidnapping (subsection 279(1));
- Forcible confinement (subsection 279(2));
- Extortion (section 346);
- Intimidation (section 423); and,
- Criminal organization offences (sections 467.11-467.13).

Difficulty collecting evidence also poses a threat to human trafficking prosecution (Broad & Muraszkievicz, 2020). Prosecutors are encouraged to utilise mutual legal assistance in order to overcome this challenge and gather evidence and information (Department of Justice, 2015). As of 2015, Canada was a member of 35 bilateral mutual legal assistance treaties and many multilateral conventions, which includes the *UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Department of Justice, 2015).

When preparing for bail hearings and trial, the Department of Justice (2015) recommends the prosecutor take the following steps to encourage the detention of the trafficker, and later on a conviction. Whenever possible, an officer should testify and attend bail hearings as they likely have additional information on the case and/or victim that can help create a fuller picture of the circumstance and factors at play (Department of Justice, 2015). Law enforcement should also look into any outstanding charges the accused may have at the time of the offence and consider how these charges could play an influence in the possibility of early release (Department of Justice, 2015). When the accused is not from Canada, this may include outstanding charges or a previous criminal record in another country (Department of Justice, 2015). Police should therefore communicate with law enforcement in the accused home country to ensure everything is current and accurate (Department of Justice, 2015). Additionally, the Canadian Border

Services Agency (CBSA) may have information relevant to the case that could be used in cross-examination and therefore should be communicated with (Department of Justice, 2015). The Department of Justice (2015) also prosecution should also consider bringing the following materials to court: statements (or summaries of statements) from victims or the accused, background information on the accused individual, and corroborative material that could function as evidence such as “debt lists and ledgers, immigration documents, cell-phone records to show the accused’s movements, surveillance videos or photos, before and after photos of the victim, and past occurrence reports” (p.55). Additionally, the prosecution is encouraged to utilise testimonial aids and supports such as audio-video recorded statements from victims, allowing the victim to testify in an alternative room to the courtroom by closed-circuit television, providing the victim with a screen while testifying so they can avoid looking at their trafficker while testifying and allowing a support person to accompany the witness while they testify (Department of Justice, 2015). These measures may help reduce the anxiety and trauma victims suffer from while going through the court process, and allow them to further contribute to and cooperate with law enforcement (Department of Justice, 2015).

**Sentencing Human Trafficking.** When sentencing those found guilty of a criminal code offence, certain justice-oriented goals must be kept in mind. These goals are laid out in section 718 of the *Criminal Code*, RSC (1985) c C-46, which states that in addition to upholding the law, promoting a fair, and safe society also involves requires imposing sanctions that serve one or more of the following aims:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;



- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or to the community. (para. 2)

Additionally, sentences need to be proportionate to the gravity of the offence and accurately reflect how responsible the offender is (Department of Justice, 2015). These same objectives apply when imposing sentences for sex trafficking or human trafficking.

Due to the severe nature of the offence, section 279.01 of the *Criminal Code*, RSC (1985) c C-46 lays out high penalties for human trafficking varying from four years imprisonment to imprisonment for life (see section on the *Criminal Code* for more details). In addition to considering the objectives listed above, other aggravating and mitigating factors must also be considered when determining an appropriate sentence for a human trafficking offence (Department of Justice, 2015). One common aggravating factor to consider is whether the offence victimised a child (Department of Justice, 2015). Section 718.01 of the *Criminal Code*, RSC (1985) c C-46 is very clear that when an offence involves the abuse of a child, deterrence and denunciation become the most important sentencing objectives and therefore should be prioritised above all other sentencing objectives. Other aggravating factors which are commonly involved in human trafficking cases are the involvement in a criminal organization that benefited by the offence and the abuse of a position of power or trust by the perpetrator (Department of Justice, 2015). While they are considered less common aggravating factors in human trafficking cases, it may also be relevant to consider if the trafficker preyed on vulnerable victims (women, children, marginalized populations, individuals with uncertain or unstable immigration status,

etc.), used extension planning and organization when committing the offence, has a previous criminal record, used violence, weapons, drugs or alcohol in order to maintain control over the victim, or had an intimate relationship with the victim (Department of Justice, 2015). This list is not exhaustive, and more aggravating factors may play a role in sentencing human trafficking offences.

There are also mitigating factors that should be considered when sentencing human trafficking offences (Department of Justice, 2015). The first mitigating factor to consider is whether or not they are first-time offenders (Department of Justice, 2015). With first-time offenders, the court is encouraged to emphasise rehabilitation practices (Department of Justice, 2015). Next, the court must take into account whether the trafficker has expressed remorse, which includes the perpetrator pleading guilty or cooperating with law enforcement (Department of Justice, 2015). In certain circumstances, expressing remorse can be seen as the offender moving away from their criminal habits (Department of Justice, 2015). It is also possible for human traffickers to be victims of human trafficking themselves, as they are sometimes offered their freedom in exchange for working a position in a human trafficking operation (Department of Justice, 2015). Lastly, the court must consider the age of the offender; however, in cases involving serious violence, as human trafficking cases often do, age is not considered a mitigating factor when sentencing (Department of Justice, 2015).

When sentencing human trafficking, it is important to take into consideration the harm victims face during the exploitation, abuse, and violence they experience (Department, 2015). Therefore, the use of victim impact statements is encouraged during the sentencing procedure to allow the victim an opportunity to share how the offence has affected them (Department of Justice, 2015). The statement should include any physical or psychological harm the victim has

suffered as a result of the offence and must be considered by the court when imposing a sentence (Department of Justice, 2015). In cases where the victim is too uncomfortable or traumatized to share their own statement, the court should consider alternative measures to ensure the statement is heard such as having a third party read the statement or having it filed with the court (Department of Justice, 2015).

***R. v Dagg, 2015 ONSC 2463***

*R. v. Dagg* (2015) is a human trafficking case coming out of the Ontario Superior Court of Justice. Dagg was charged with the trafficking of a woman, as per section 279.01 of the *Criminal Code*, RSC (1985) c C-46, from June 16, 2013 to July 20, 2013. In totality, the charges laid in *R. v. Dagg* (2015) are as followed:

1) he exercised influence over the movements of A. S. for the purpose of exploiting or facilitating her exploitation, an offence generally referred to as “human trafficking”; 2) that between the same dates he received money, knowing that it resulted from the human trafficking of A.S.; 3) that between the same dates he unlawfully confined A.S.; 4) that between the same dates he uttered a threat to cause bodily harm to A.S.; 5) that between the same dates he compelled A.S. to have sex with men and women against her will through intimidation by threats of violence; 6) that between the same dates he uttered a threat to cause bodily harm to A.S. and; 7) that between the same dates he stole a cellphone belonging to A.S. of a value not exceeding \$5,000. (para. 1)

The victim of this case was 36-year-old A.S., who had struggled with addiction for most of her life. By age 15, A.S. was addicted to alcohol, and by age 18, she had become addicted to crack cocaine. For the year prior to her appearance in court, she had also struggled with an addiction to crystal methamphetamine. However, over her lifetime, she had several clean periods where she

abstained from drugs and alcohol. A.S. was even able to graduate from St. Lawrence College with a Bachelor of Arts degree in Psychology, testifying to her intelligence and potential. At one point she worked alongside autistic children, but had not held a job since 2011.

In 2013, She attended a long-term recovery home in Ottawa for five months. After leaving the home, she immediately drank a 26-ounce bottle of vodka. The drinking left her with an overwhelming desire to get high, therefore, she left the residence of the friend she was staying with in search of crack cocaine. This led her to reunite with her friend Pearl, who happened to be a prostitute. A.S. testified that she had also been a prostitute during her 20's and more recently had prostituted herself as a streetwalker before entering the halfway home. In both instances, A.S. engaged in sex work to earn enough money to purchase crack cocaine. After meeting up with Pearl, she was offered an opportunity to be introduced to some men on St. Laurent Boulevard who could allegedly get her working in hotel rooms instead of on the street. A.S. agreed to meet these men and therefore arrived at a duplex where she was introduced to two men, Dagg and Apollo, along with a couple of other women who also appeared to be prostitutes working for the men. A.S. was unable to account how she arrived at the duplex as she admitted to being under the influence at the time this took place. After being introduced to these men, she came to an agreement with them to engage in sex work and give half her earnings to Dagg in exchange for him managing her services, providing her with a place to work, and giving her access to drugs and alcohol. It should be noted that during this interaction, Dagg and Apollo graciously supplied her with crack cocaine free of charge giving her the impression that this is how their relationship would be. A.S. also recounts being promised new clothes and food, both of which she never received.

From there, A.S. began working from the St. Laurent address. Eventually, she also began to provide services to clients at their residences or in hotels. Dagg was in charge of managing A.S. and put up advertisements for her services online via a website called *Backpage*. She gave half of what she earned to Dagg, whereas some of the other girls were managed by Apollo and therefore paid him. However, A.S. testified that at times when she was working in a hotel, she had to give Dagg all the money she earned due to the large amount of crack cocaine she was consuming, and because Dagg was responsible for costs with the hotel and advertisements. To make the advertisements, Dagg downloaded photos off of A.S.'s Facebook profile and photoshopped her face onto the bodies of some of the younger women they managed in the sex industry. Additionally, according to her testimony, Dagg managed the price and type of the services she offered clients, occasionally offering discounted rates and adding on additional charges for anal intercourse and if the client wished to have sex without a condom.

A.S. testified that on numerous occasions Apollo, Dagg's partner, was aggressive and rude to her, calling her names awful names like "crack whore" (para. 15) and threatening to hurt her (*R. v. Dagg*, 2015). According to A.S., Apollo also physically assaulted her twice, as well as sexually assaulted her. She believes she mentioned the injuries she obtained in the physical assault to Dagg, but could not be completely certain as she was drinking and using drugs at the time. Dagg's testimony supports this claim as he admitted he was aware that Apollo beat A.S. and that she had shown him the bruises she had from the beating. Due to a conversation she overheard between Dagg and another man, he also believed that Dagg was aware of the beatings Apollo gave to one of the other girls when she left their operation. While A.S. testified that Dagg never physically assaulted her, she testified that he relentlessly called her degrading names and at

one point threatened to stab her in the leg. Overall, this gave her the impression that she had no option but to continue to work for these men.

According to A.S., Dagg would occasionally leave her for a few hours, during which Apollo would take over. During her testimony, she recounts an incident where both men had fallen asleep so reached out to her mother, who told her to just leave. When the men awoke and saw the messages they were furious, leading to them confiscating her phone. A.S. admits that during this period she was heavily drinking and using drugs, therefore her memory was foggy. Testimony given by her boyfriend contradicted this statement, as he claims to have reached out to her mother asking if A.S. had contacted her at any point, which the mother said she had not. However, while Dagg claims he never went through her messages, he eventually admitted to confiscating the phone and selling it.

Testimony from Dagg indicates that he was aware A.S. had just gotten out of rehab and knew about her past including her drug and alcohol use, history with prostitution, and education when he began working with her. He denied allegations that he had promised her clothing, food, or drugs, claiming that while it was important for a girl working for him to feel comfortable and secure, he didn't cover all the expenses. Dagg admitted to posting the advertisements but believed that it was in fact A.S. who typed them out, while he only told her what to write. Additionally, he claimed that the threat to stab her was intended as a joke. Dagg testified that on numerous occasions he offered to take her to her boyfriend's house and that he often saw her calling him. However, it's important to note that Dagg's story constantly changed during his testimony as he went back on many of his initial statements. He originally stated that he did not receive any money from A.S., which he later contradicted, admitting that he took half of her

earnings. He also initially claimed that he only knew her for a week and that he did not deal drugs, both of which he eventually admitted were false claims.

The testimony provided by A.S. is problematic as many of the statements she made in her initial interview on July 21, 2013, are contradicted by the statements made in a later interview on August 13, 2013, and her testimony in the preliminary hearing in May 2014. In some statements, she recounts never being left alone without either Dagg or Apollo being present, but at other times she mentions leaving to go shoplift, buy liquor, or spend the night at a former client's house. When asked if she was scared of Dagg, she originally stated that “he didn’t scare her at all” (para. 67), however, at trial she claimed to be equally scared of Dagg and Apollo (*R. v. Dagg*, 2015). A.S. also originally denied ever prostituting herself before moving to Ottawa, however, later admitted to lying saying she was embarrassed. Numerous other statements provided by A.S. go on to contradict themselves, all of which appear to be the result of a compromised memory affected by severe alcohol and drug abuse, or deliberate lie stemming from feelings of embarrassment or shame. Additionally, her statements are not always supported by the police reports recounting the interactions they had. For example, police dealt with A.S. one night at the Delta Hotel. When asked about this night A.S. has recounted anywhere from four to six people being at the scene, whereas police reports clearly state there being four people.

During court, the Crown took the position that Dagg utilized Apollo to manipulate A.S. by causing her to believe that her safety was at risk unless she continued to prostitute herself for them. Additionally, Dagg himself, alongside Apollo, controlled, directed and influenced the movements and behaviours of A.S. The judge disagreed with the Crown, stating that because both men would leave her alone each day it was not clear as to whether they truly had control over her. Moreover, the contradictory evidence provided by A.S. made it difficult to establish

beyond a reasonable doubt whether the accused aided or abetted Apollo's actions, or was aware of how he was treating A.S. Due to A.S. previous history of sex-work and substance abuse, the judge did not believe that drugs were being used to exploit her but that she was simply "a slave to her addiction" (*R. v. Dagg*, 2015, para. 104). As a result, Dagg was acquitted on the count of human trafficking. While this case did not result in a human trafficking conviction, it does bring to light some of the many challenges prosecutors face when dealing with human trafficking charges. These challenges will be unpacked in the following section.

## **Impacts and Outcomes**

### ***Limitations and Commentary of Project***

Understanding the reality of prosecuting sex trafficking in Canada is difficult as it is a highly underreported crime (Public Safety Canada, 2018). Victims are often reluctant to come forward to authorities for a variety of reasons including receiving threats from their traffickers, feelings of shame, fear of job loss or deportation, language barriers, and a lack of trust in authorities (Public Safety Canada, 2018). Additionally, law enforcement and other relevant Canadian agencies (e.g., CBSA) have struggled to identify human trafficking victims and perpetrators outside of those reported cases (Public Safety Canada, 2018). While both these issues, the barriers stopping victims from seeking help from law enforcement and the battle to identify cases of human trafficking, are problematic to the prosecution process, they will not be focused on within the findings of this project. However, it should be noted that addressing both these issues is vital to successfully prosecuting sex trafficking as without the identification of cases, the courts do not have an opportunity to prosecute traffickers (Public Safety Canada, 2018).



Additionally, these factors also have a strong impact on the current knowledge and understanding of prosecuting sex trafficking. Due to underreporting, current data does not accurately reflect the reality of the situation in Canada. The absence of accurate and representative data could affect current legal and academic perspectives on the effectiveness of prosecuting sex trafficking in Canada; therefore ultimately shift the findings of this project and make it difficult to draw accurate conclusions. Regarding the *R. v. Dagg* case, we do not have access to the thoughts and commentary of the Crown and consequently, have to make assumptions about what obstacles they encountered. With that note in mind, this project will look to base its findings on what data and literature are currently accessible and available.

### ***Effectiveness of Prosecuting Sex Trafficking***

Canada has encountered many challenges when it comes to prosecuting human trafficking offences, including cases of trafficking for sexual exploitation. Charges against human trafficking appear to be on the rise. As previously discussed, utilizing data from the UCR and ICCS, Heidinger (2023) found that there were over than six times as many human trafficking cases and sixteen times as many completed charges in 2021/2022 compared with 2011/2012 in Canada. While there is still room for improvement, it does indicate progression within the criminal justice system in identifying cases of human trafficking. However, the court has continued to struggle with expanding on these charges to secure a guilty conviction. Within the same time frame, Heidinger (2023) found that just over one in ten human trafficking cases led to a guilty conviction. There are a few factors which scholars have attributed to this low conviction rate, including challenges with the *Criminal Code* definition of human trafficking, undertrained prosecutors, and difficulty securing evidence. Some of these factors also appear in the *R. v. Dagg* case.

**Challenges with the Criminal Code.** Although the *Criminal Code* definition of human trafficking appears promising in theory, in practice, it is challenging if not impossible to apply. According to Winterdyk (2017), some criminal justice agencies have reported the definition to be so “unbelievably onerous” (p. 228) that they’ve been unable to apply it to cases. As the definition currently stands, it demands a standard that is nearly impossible to reach and therefore prosecutors remain hesitant to prosecute it in the first place (Winterdyk, 2017). Additionally, while the *Criminal Code* explicitly states that consent is irrelevant in human trafficking cases, in actuality prosecutors find themselves having to prove the victim was not a willing participant and was instead exploited (Winterdyk, 2017). This can be particularly difficult in cases where the individual originally was participating in consensual sex work but then found themselves in a position they could not leave once they no longer consented (Winterdyk, 2017). Furthermore, this is complicated by the misogynistic assumption that exists in sexual assault cases and human trafficking cases alike, that once an individual consents to one sexual activity, they are assumed to consent to all sexual activity (Roots, 2022). While this has been proven to be extremely harmful, the reality is within a courtroom it still exists (Roots, 2022). In human trafficking cases, the defence has often tried to use this assumption to discredit the character of the victim and any claims that the victim was exploited, using the logic that once an individual willingly engages in sex work, they are unable to be forced into it (Roots, 2022).

The terminology within the *Criminal Code* definition of human trafficking has also created challenges for prosecutors, specifically with defining and proving exploitation and control (Roots, 2022). From a legal perspective, this term is difficult to characterize, nevertheless demonstrated in the court of law (Wade, 2011). Prosecutors have struggled to identify what constitutes exploitation and therefore have been resentful to pursue human trafficking charges

(Wade, 2011). As previously discussed, exploitation and control often go beyond physical restraints and/or violence and therefore can be difficult to prove.

Problems with the *Criminal Code* definition of human trafficking emerge in *R.v. Dagg* (2015). To begin, one may argue that Dagg was aware that the woman was recently out of rehab and used her drug addiction to control her and exploit her for his own financial benefit. However, the judge disagreed stating that she was a willing participant in her sex work and used it to fuel her drug addiction (*R. v. Dagg*, 2015). As discussed by Roots (2022), her history with consensual sex work may have impacted this judgement and the judge's ability to view her as a victim of sexual exploitation. Additionally, the judge believed that because she could move around freely, Dagg was ultimately not in control of her (*R. v. Dagg*, 2015). One could counter this argument by pointing out that her reliance on drugs to feed her addiction and threats and physical violence created other means of control over her beyond physical restraints. The case of *R. v. Dagg* (2015) is a prime example of why section 279.01 of the *Criminal Code*, RSC (1985) c C-46 as it currently stands is not able to adequately cover and protect against the realities of sex trafficking.

**Insufficient Training of Prosecutors.** In addition to challenges with applying the *Criminal Code* definition, prosecutors receive insufficient training regarding human trafficking (Roots, 2022). Human trafficking is a complex crime with more abstract concepts than many other *Criminal Code* offences, such as the need to prove the use of exploitation and control by the trafficker over the victim, therefore it requires more specialised training (Wade, 2011). However, according to Roots (2022), prosecutors receive little to no training on human trafficking and are responsible for seeking out any training on their own. Most of the available training comes in the form of conferences, which do not necessarily provide the high level of training and skill that is required to deal with these cases (Roots, 2022). As a result of their lack

of training, prosecutors often find themselves uncomfortable with proceeding with human trafficking charges and therefore move forward with charges they are more familiar with such as bodily harm, rape and kidnapping (Wade, 2011). This is problematic as by seeking the easier conviction and avoiding the prosecution of human trafficking, justice is not completely served and traffickers are not held accountable for the entirety of their actions (Wade, 2011). As we do not have access to the viewpoint of the Crown in *R. v. Dagg* (2015), it is not possible to apply it with certainty to that specific case.

**Obstacles with Evidence Collection.** Human trafficking offenses are unique in that the burden of proof rests primarily on victims (Housefather, 2018). Unlike many other crimes, the prosecution has to rely on those who were victimized to provide and act as the evidence (Housefather, 2018). This is troubling for a number of reasons. As discussed prior, in order to proceed with a prosecution the case must meet the reasonable prospect for conviction standard, meaning that beyond initial impressions there is enough evidence that a reasonable and properly guided jury may find the accused guilty (PPSC, 2023). In cases of sex trafficking, this standard can be difficult to meet when the evidence rests within the testimony of a vulnerable and likely highly traumatised individual (Wade, 2011). Additionally, as seen in *R. v. Dagg* (2015), sex traffickers often target women from at-risk sectors of society, therefore, other factors such as drugs, alcohol or even shame may cause an individual's testimony to be contradictory at times and viewed as unreliable. Victims may also be scared to testify in court for other reasons including threats from their traffickers or fear the personal consequences it may have on them such as deportation or job loss (Wade, 2011). Giving testimony also forces victims to relive their trauma which can be troubling and cause further distress, especially as defence attorneys attempt to discredit their character or story by highlighting their sexual or criminal history (Roots, 2022).

In these instances, it is not uncommon for victims to lose composure while giving testimony and act aggressively, ultimately affecting the quality of evidence they are able to provide (Roots, 2022).

Beyond trauma, it is also common for victims of human trafficking to distrust law enforcement authorities, whether it be a result of their own experiences, preconceived notions, or by the influence of their trafficker (Housefather, 2018). Regardless of why, this mistrust may make them hesitant to cooperate fully with law enforcement and thus affect the quality or quantity of evidence the prosecutor has access to (Housefather, 2018). Additionally, due to the international nature of human trafficking and how commonly migrant women are targeted by traffickers, severe language barriers are also a frequent barrier for prosecution to overcome (Housefather, 2018). Language barriers prevent the victim from understanding the totality of the investigative and court process, as well as prevent them from contributing to the best of their abilities towards the case (Housefather, 2018). Overall, these obstacles make it difficult for prosecutors to locate witnesses who are both reliable and available to testify (Wade, 2011). Consequently, it is a challenge to satisfy the reasonable conviction standard.

In *R. v. Dagg* (2015), all evidence discussed in the case comes from the testimony of a handful of people and primarily relies on the testimony of the victim. It is apparent how drugs, alcohol, shame and likely trauma play a role in A.S.'s ability to testify and ultimately prevent her from providing reliable evidence. On numerous occasions A.S.'s statements contradict themselves or the observations of officers, making her testimony weak overall and difficult to trust. A.S. was not able to remember many details, admitting that her memory was foggy as she had been heavily drinking or very high (*R. v. Dagg*, 2015). Unfortunately, in A.S.'s case, her

testimony may have prevented her from seeking justice as it was impossible to prove Dagg was guilty beyond reasonable doubt when all evidence was considered unreliable.

### ***Addressing Gaps and Weaknesses in Canadian Policy***

In order to increase the effectiveness of prosecuting sex trafficking in Canada, certain shortcomings and weaknesses in current Canadian policy and practice must be addressed. For starters, amendments to section 279.01 of the Criminal Code, RSC (1985) c C-46 must occur to ensure it is clear and functional within Canadian law. Concepts such as the exploitation and control of the victim by the trafficker need to be expanded upon so prosecutors are certain of the standard they are required to meet when proving the trafficking of a person. As a result, the hope is that prosecutors would ultimately feel more confident pursuing a human trafficking conviction and therefore would be more likely to. Additionally, prosecutors need specialized training that prepares them for the complexities and unique challenges of human trafficking cases (Roots, 2022). This could also entail the introduction of prosecutors who specialize in human trafficking cases, and hence would become more familiar and equipped to deal with these cases (Roots, 2022). Moreover, prosecuting sex trafficking will require more than just local law enforcement agencies and Crown prosecutors. To ensure prosecution of traffickers is possible there must be extensive collaboration among stake-holders (Housefather, 2018). Communication needs to expand beyond different police departments to include other agencies such as CBSA, translators, and even law enforcement from other nations (Housefather, 2018).

As previously mentioned, the struggle to collect evidence is also a major hurdle for sex trafficking prosecution. Wade (2011) stresses the importance of recognizing the trauma of victims in the greater prosecution process. Because victims are the primary source of evidence in the prosecution of sex trafficking cases, their well-being must be prioritised to ensure they are

reliable witnesses (Wade, 2011). This includes ensuring victims have access to support throughout the trial as well as access to external counselling services (Wade, 2011). Canada has currently implemented support for human trafficking victims throughout the trial process; however, Winterdyk (2017) argues that the current structure of this support system may be ineffective and even potentially counterproductive to the prosecution process. Presently, the investigative side of the court is responsible for providing support to the victim (Winterdyk, 2017). According to Winterdyk (2017), investigators are inherently selfish and therefore will prioritize securing evidence above all else, including the emotional and physical well-being of the victim (Winterdyk, 2017). Additionally, resources amongst the investigative team are often scarce and therefore the victim may not have access to as many resources as they could otherwise if another party was responsible for providing support (Winterdyk, 2017). Therefore, if the support role were separated from the investigative team and assigned to a different entity, victim support would be prioritized and of a much higher quality (Winterdyk, 2017). This would allow victims to provide more reliable and effective evidence in court (Winterdyk, 2017). Consequently, prosecutors would be more inclined to meet the reasonable prospect for conviction standard, allowing them to proceed with prosecution and increase the likelihood of obtaining a guilty conviction.

However, in terms of evidence collection, increasing support may not be as effective for some of the most vulnerable victims, such as A.S. in *R. v. Dagg* (2015) who was heavily under the influence at the time of the offence and therefore struggled to recount details of what happened. With that being said, it would still be beneficial to the well-being of victims suffering from substance abuse and may prevent them from being further victimized in the future.

## Conclusion

Overall, this project added to the body of knowledge existing on prosecuting sex trafficking in Canada, and more importantly, where it currently falls short. This project revealed that while the Canadian criminal justice system has implemented changes regarding how sex trafficking is addressed in law and practice there is still a long way to go. From a prosecution angle, Canada has not been successful in convicting sex trafficking. While legislation and additional protocols have been introduced to address sex trafficking in Canada, it is simply not enough. Additionally, further issues within these new protocols and procedures are beginning to emerge as prosecutors attempt to apply them. Legally, prosecutors have struggled to understand some of the concepts within the *Criminal Code* definition of human trafficking, such as what constitutes exploitation and control and how it can be proven within the court of law. Therefore have been unable to successfully convict traffickers or have been reluctant to try altogether. This is also affected by the unfamiliarity of prosecutors with the complexity of human trafficking cases. Prosecutors are not adequately trained concerning human trafficking and as a result, are not properly equipped to deal with the realities and obstacles of the cases.

This project also highlights how our current justice standards and procedures, such as the reasonable conviction standard, and current strategies for prosecuting sex trafficking are not compatible. The evidence needed to fulfil this standard is difficult, if not impossible, to achieve when the prosecution is heavily relying on the testimony of such a traumatized and vulnerable population. As seen in *R. v. Dagg* (2015), current victim supports are not able to overcome the challenge of evidence collection in sex trafficking cases and are consequently preventing sex traffickers from being convicted. Amendments need to be made to make the Canadian Justice System compatible with the realities of sex trafficking, as currently, the protocols, procedures,



and legislation surrounding human trafficking are preventing the women and girls affected by trafficking from seeking justice.

### **Discussion**

This project was not able to identify any strategies to strengthen evidence collection concerning some of society's most vulnerable populations, such as those who struggle with substance use disorders as seen in *R. v. Dagg* (2015). While the literature has generally suggested that increased support could assist in collecting reliable evidence collection, it is clear that in cases where the individual is severely affected by addiction, this may not be enough. Therefore, this project encourages additional research on how to support victims of sex trafficking, especially those heavily affected by a substance use disorder. Additionally, research should be done on how and what evidence could be collected outside of victim testimony to relieve the pressure on victims and increase their ability to receive justice.

Furthermore, future projects should consider the use of primary evidence collection from both prosecutors and victims alike. By considering the opinions of those who experience the challenges and hardships of sex trafficking and its prosecution first-hand, research may be more fit to influence policy and legislation that is well adapted and fit to handle the realities of sex trafficking.

## References

- Broad, R., & Muraszkievicz, J. (2020). The investigation and prosecution of traffickers: Challenges and opportunities. *The Palgrave International Handbook of Human Trafficking*, 707-723.  
[https://link.springer.com/content/pdf/10.1007/978-3-319-63058-8\\_43.pdf](https://link.springer.com/content/pdf/10.1007/978-3-319-63058-8_43.pdf)
- Housefather, A. (2018, December). *Moving Forward in the Fight Against Human Trafficking in Canada: Report of the Standing Committee on Justice and Human Rights*. 42nd Parliament, 1st Session, No 7.  
<https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10243099/justrp24/justrp24-e.pdf>
- Canadian Centre to End Human Trafficking. (2020a). *Labour trafficking*.  
<https://www.canadiancentretoendhumantrafficking.ca/labour-trafficking/>
- Canadian Centre to End Human Trafficking. (2020b). *Sex trafficking*.  
<https://www.canadiancentretoendhumantrafficking.ca/sex-trafficking>
- Canadian Charter of Rights and Freedoms*, s 2, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
- Cockbain, E., & Bowers, K. (2019). Human trafficking for sex, labour and domestic servitude: How do key trafficking types compare and what are their predictors? *Crime, Law, and Social Change*, 72(1), 9–34. <https://doi.org/10.1007/s10611-019-09836-7>
- Criminal Code*, RSC 1985, c C - 46.
- Crowe, S., Cresswell, K., Robertson, A., Huby, G., Avery, A., & Sheikh, A. (2011). The case study approach. *BMC Medical Research Methodology*, 11, 1-9.  
<https://bmcmedresmethodol.biomedcentral.com/articles/10.1186/1471-2288-11-100>

Department of Justice. (2015). *A handbook for criminal justice practitioners of trafficking in persons*.

<https://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/hcjpotp-gtpupjp/hcjpotp-gtpupjp.pdf>

Farr, K. (2005). *Sex trafficking: The global market in women and children*. Worth Publishers.

Froutan, A. (2023, July 27). Human Trafficking Trends in Canada (2019-2022).

<https://www.canadiancentretoendhumantrafficking.ca/human-trafficking-trends-in-canada-2019-2022/>

Heidinger, L. (2023) *Trafficking in persons in Canada, 2022*.

<https://www150.statcan.gc.ca/n1/pub/85-005-x/2023001/article/00002-eng.htm#shr-pg0>

Hodgins, E., Mutis, J., Mason, R., & Du Mont, J. (2023). Sex trafficking of women and girls in Canada: A scoping review of the scholarly literature. *Trauma, Violence, & Abuse*, 24(4), 2363-2378. <https://doi.org/10.1177/15248380221094316>

Priya, A. (2021). Case study methodology of qualitative research: Key attributes and navigating the conundrums in its application. *Sociological Bulletin*, 70(1), 94-110.

<https://doi.org/10.1177/0038022920970318>

*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UN, 55th Sess, UN Doc. A/55/383 (2000) GA A/RES/55/25.

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en)

Public Prosecution Service of Canada. (2023). *Decision to prosecute*. (2.3).

<https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/d-g-eng.pdf>

- Public Safety Canada. (2018). *The Way Forward to End Human Trafficking National Consultations Discussion Paper*.  
<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/wy-frwr-d-hmn-trffckng-ppr/wy-frwr-d-hmn-trffckng-ppr-en.pdf>
- Roots, K. (2022). *The domestication of human trafficking : law, policing, and prosecution in Canada*. University of Toronto Press.
- Royal Canadian Mounted Police. (2020, July 16). *Human trafficking and the law*.  
<https://www.rcmp-grc.gc.ca/en/human-trafficking/human-trafficking-and-the-law>
- Royal Canadian Mounted Police. (2012). *RCMP national strategy to combat human trafficking*.  
[https://publications.gc.ca/collections/collection\\_2014/grc-rcmp/PS64-104-2012-eng.pdf](https://publications.gc.ca/collections/collection_2014/grc-rcmp/PS64-104-2012-eng.pdf)
- R. v Dagg*, 2015 ONSC 2463
- Snyder, H. (2019). Literature review as a research methodology: An overview and guidelines. *Journal of business research*, 104, 333-339.  
<https://doi.org/10.1016/j.jbusres.2019.07.039>
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000,  
[https://www.unodc.org/res/human-trafficking/2021the-protocol-tip\\_html/TIP.pdf](https://www.unodc.org/res/human-trafficking/2021the-protocol-tip_html/TIP.pdf)
- Wade, M. (2011). Prosecution of trafficking in human beings cases. In J. Winterdyk, P. L. Reichel, & B. Perrin (Ed.), *Human trafficking : exploring the international nature, concerns, and complexities* (pp. 153-180). Taylor & Francis Group.

Winterdyk, J. (2017). Combating human trafficking at the local level: Better informing (inter)national action plans. *Annales Internationales de Criminologie*, 55(2), 220–236.  
<https://doi.org/10.1017/cri.2017.14>