

**TECHNOLOGICALLY-FACILITATED VIOLENCE:  
TRAFFICKING CASE LAW**

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**A. OFFENCE ELEMENTS**

### **Trafficking in persons**

**279.01 (1)** Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of five years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of four years in any other case.

### **Consent**

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

### **Trafficking of a person under the age of eighteen years**

**279.011 (1)** Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

### **Consent**

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

### **Material benefit — trafficking**

**279.02 (1)** Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

### **Material benefit — trafficking of person under 18 years**

(2) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.

### **Withholding or destroying documents — trafficking**

**279.03 (1)** Everyone who, for the purpose of committing or facilitating an offence under subsection 279.01(1), conceals, removes, withholds or destroys any travel document that

belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

**Withholding or destroying documents — trafficking of person under 18 years**

**(2)** Everyone who, for the purpose of committing or facilitating an offence under subsection 279.011(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year.

**Procuring**

**286.3 (1)** Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1),<sup>1</sup> recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises

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<sup>1</sup> Obtaining sexual services for consideration.

control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

**Procuring — person under 18 years**

**(2)** Everyone who procures a person under the age of 18 years to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(2),<sup>2</sup> recruits, holds, conceals or harbours a person under the age of 18 who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of five years.

**Advertising sexual services**

**286.4** Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of

- (a)** an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b)** an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months

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<sup>2</sup> Obtaining sexual services for consideration from person under 18 years.

## **B. SELECTED CASE LAW**

### **I. ALBERTA**

#### **i. 2014 ABPC 72**

In **2014 ABPC 72**, Mr. G was charged with disobeying a court order and obstructing justice. Mr. G was accused of trafficking several women and teenage girls. While in jail Mr. G was a cellmate with a friend of one teenage complainant. Mr. G offered his cellmate a car if he could get the complainant to drop the charges. When the cellmate was released, he sent the complainant a Facebook message telling her about the conversation. Mr. G was found not guilty of disobeying a court order but was found guilty of obstructing justice.

### **II. BRITISH COLUMBIA**

#### **i. 2015 BCSC 2055**

In **2014 BCSC 1727**, Mr. M, who was between 25 and 27 during the time of the offences, was convicted on more than 24 charges, most notably: human trafficking, sexual interference, sexual exploitation, and sexual assault. The case involved eleven complainants ages 14-19 at the time the activities took place. All offences occurred in Vancouver, Richmond and North Vancouver.

Mr. M took sexually explicit photographs of the complainants at different times and posted advertisements for their sexual services online from his cell phone and laptops. He coerced some of the younger complainants to use drugs to facilitate their sexual encounters, used violence and threats to coerce them, including hurting and threatening to hurt their pets, and encouraged them to lie to their families so that they would remain out of trouble for their involvement with him. He travelled with a number of the complainants across British Columbia for the purpose of

prostitution, and facilitated all of the appointments through his cellular and computer devices. Mr. M told one victim that there was a tracking device on her cellphone that could be used to monitor her movement. Nearly all of the victims came from poor socioeconomic backgrounds and were subjected to a host of degrading and violent sexual behaviour at the hands of clients and Mr. M. One victim attempted suicide by jumping off of a balcony. Mr. M kept some or all of their earnings.

Police seized numerous laptops, Blackberries and iPhones, which contained data corroborating the allegations against Mr. M, many of which were found in the locations in which the offences occurred. The evidence at trial also included a number of online advertisements for the sexual services of the victims and Facebook messages between Mr. M and the victims. Expert evidence showed that although three Facebook accounts were used to send the messages to the victims, all were created and sent by the accused and log-in information from the victims was used to confirm that the accused had messaged them directly.

In **2015 BCSC 2055**, Mr. M was sentenced to 23 years of incarceration, ancillary orders included a lifetime weapons prohibition, a lifetime sexual offender registration, a no contact order for complainants and some others, a forfeiture of all items seized by the police, and a DNA order. Aggravating factors included the large number of girls that were exploited, some of which were exploited over a long period, the vulnerable circumstances the girls were in, and the fact that Mr. M felt entitled to and did have sex with the young women and girls he was exploiting.

Also see: 2014 BCSC 261 (Application to quash counts in an indictment); 2013 BCSC 2398 (Evidence); 2013 BCSC 2399 (Application to admit videotaped statements)

### III. NOVA SCOTIA

#### i. 2018 NSPC 10

In **2018 NSPC 10**, Mr. G pleaded guilty to advertising sexual services, materially benefiting from human trafficking, receiving a benefit from a prostitution offence, and uttering threats. Mr. G was between 22 and 23 at the time of the offences. He met the complainant, Ms. O, when she was 20 years old and she lived with him and his mother over two separate periods. The first time they lived together, Mr. G posted online advertisements for Ms. O's sexual services. She attended as many as 20 calls a day and contracted HIV during this time. Mr. G kept all of her earnings which were estimated at \$40,000.

The second time they lived together, Ms. O had posted on Facebook that she needed somewhere to live and Mr. G had assured her he could live with them again and he would not expect her to provide sexual services for money. During that time Mr. G placed additional advertisements online and Ms. O was expected to take calls. He took all over her money, which was estimated at around \$10,000 and did not provide her money for food. He and his brother discussed killing her in front of her.

Mr. G was sentenced to 30 months of incarceration, 24 months of probation, and ancillary orders, including a 10 years weapons prohibition, 20 years registered as a sexual offender, a DNA order, and a no contact order with the victim and one witness while in custody.

#### **IV. ONTARIO**

##### **i. 2018 ONSC 3405**

In **2018 ONSC 3405**, Ms. D was charged on 10 counts related to human trafficking, including exploiting a person with a disability. Ms. S alleged to have a disability and testified that Ms. D had forced her into prostitution. She alleged that Ms. D took her disability cheques, most of the money she was paid for her sexual services, assaulted her, controlled her cellphone, took her ID, created a Backpage ad for her, and forced her to do all of the sexual acts advertised including sex without a condom, but her testimony was inconsistent and varying on all of these details.

The court held that Ms. S did have an intellectual disability, but that she was in fact quite independent and had capable social and emotional intelligence. She had control of her money, her social media (Facebook), her cellphone, and her identification cards. She was able to, and did, move out from Ms. D's apartment, had alternative places to live, and enjoyed the independence that the arrangement afforded her. It was found that although Ms. S had the intellectual capacity of an 8-11 year old, she still had the capacity to give her consent to work as a prostitute. Ms. D was acquitted on all counts.

##### **ii. 2018 ONSC 1389**

In **2018 ONSC 1389**, Ms. S, a 15-year-old girl with a drug dependency, had run away from home. She contacted a male teenage friend who she only knew through social media and texting for help. Unbeknownst to her, the boy she contacted for help had been in contact with an adult man through social media who was looking for young females to traffic and would pay the boy for putting him in contact with young females. Her friend put Ms. S in contact with this man through social media so she could make some money, which she understood she would earn selling drugs. However, when she arrived at the hotel in a different city she was drugged and held against her

will by three men. Two of her captors repeatedly sexually assaulted her. They took sexualized photos of her and posted an online advertisement for her sexual services, forced her to provide sexual services and kept all of the money paid for those services. Her captors threatened her with violence and grabbed her, bruising her. She tried to text her mother for help, but did not know where she was to give her mother directions. One of her captors used his phone to check and modify the sexual services advertised on the Backpage account, another used his cell phone as the contact number on the ad. Eventually, Ms. S was able to escape with her cellphone and ran to a store for help. There she learned she could make emergency calls despite not having a service plan for calls on her cell phone, which she had not known, and she then contacted the police with her cell phone. One of her captors used her Facebook account to try and determine her location following her escape.

Ms. S faced long term mental health impacts, struggled in school, attempted suicide, and was plagued by anxiety and fear that make it difficult for her to leave home by herself following her exploitation. She was further traumatized when details of her exploitation were published in a local paper.

Mr. E and Mr. H were found guilty of trafficking a minor, procuring a minor to provide sexual services, receiving material benefit from trafficking a minor, sexual interference, sexual assault and unlawful confinement. Mr. M was found guilty of trafficking a minor, procuring a minor to provide sexual services, and receiving a material benefit from trafficking a minor.

When discussing a proposed prohibition on internet use for one of the offenders, Mr. E, the court stated:

The criminal enterprise in which [Mr. E] was involved unquestionably involved the use of the internet, (such as social media and the posting of photo advertisements on websites), as well as the use of cellular telephones, (such as the use of [Mr.E]'s phone to text organizational messages, monitor and modify the website advertising the

sexual services of [Ms. S], and efforts to track her whereabouts, following her escape, through her Facebook account). In the circumstances, the concerns expressed by the Crown in relation to future possible use of such systems and devices by [Mr. E] have merit.

However, as I observed in my earlier sentencing decision, in today's modern world, people increasingly are obliged to use the internet more and more in their everyday lives, including their employment and communications with service providers. Similarly, telephone landlines increasingly are being replaced by wireless telephones, and public telephones are increasingly scarce. In such an environment, it seems to me that an order preventing a relatively youthful offender from having any access whatsoever to the internet or cellular telephones, for several decades, is not merely preventative but also inherently punitive, and may very well create a serious impediment to long term rehabilitation and productive reintegration into society.

While such orders may be appropriate in some cases, they should be avoided if more limited preventative restrictions, tailored to the situation, are possible and appropriate.<sup>3</sup>

Her three captors, Mr. M, Mr. E, and Mr. M, were sentenced with 6, 7, and 9 years of imprisonment, respectively. Ancillary orders including a mandatory weapons prohibition, a DNA sample order, a lifetime sexual offenders registration, no contact orders with Ms. S, her mother, and any siblings or children of Ms. S during their custodial sentences, forfeiture of cell phones used in the offence, an order to keep distance from Ms. S, a prohibition from volunteering or working with youth under 16, no communication with people under 16 except for strict exceptions, and a 30 year limitation on internet and cell phone use (no social media accounts, online postings/offers/websites must include full name, no interactive messages when offering services).

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<sup>3</sup> 2018 ONSC 1389 at para 96.

Also see: 2018 ONSC 1152, 2017 ONSC 5290 (Voir Dire), 2017 ONSC 6150 (Voir Dire)

**iii. 2018 ONSC 1022**

In **2018 ONSC 1022**, Mr. M, a 27-year-old man, was acquitted of procuring persons under 18 for the purposes of prostitution, obtaining sexual services from a person under the age of 18 for consideration, human trafficking, benefiting from the trafficking, assault, uttering threats and child pornography offences. In this case, two 17-year-old girls, one of which was a ward of the state, had provided sexual services for money and their services were advertised online on a webpage called Backpage, including sexually suggestive images of them. The two complainants, Ms. M and Ms. L, and the accused, Mr. M, provided conflicting stories about their relationship and the manner in which Ms. M and Ms. L provided sexual services. The complainants accused Mr. M, among other things, of being involved with the two girls in providing sexual services for consideration, forcing one of them to perform sexual acts on him, taking their photos and posting the advertisements on Backpage, taking over \$150,000 of their earnings over five and a half months, promising to buy them a condo, and controlling or assisting with their provision of sexual services. At one stage, Ms. M and Ms. L saw an Amber Alert about Ms. L on television and decided she should contact the police to tell them she was safe. After the police met with Ms. L, and spoke with Ms. M, Ms. M made a statement to the police about the two girls providing underage sexual services. Mr. M contradicted the girls' statements and testimony, alleging that he had met Ms. M and Ms. L at a strip club and admitted to paying Ms. M for sexual services, who had told him that she was 20 years old. He was aware the two girls were providing sexual services for consideration and had been shown their Backpage advertisements and spent time with the two, including finding them somewhere to stay. He claimed they were planning on buying a condo together but that he had not controlled their provision of sexual services.

The judge held that the witnesses lacked credibility and their stories had too many inconsistencies and implausible details, including differing details on how they met, the lack of evidence that Mr. M had taken or posted the images of the girls on Backpage, and the discovery of \$1,000 in Ms. M's wallet and several shopping bags that suggested Mr. M had not controlled all of their finances. The judge could not determine beyond a reasonable doubt whether the offences had occurred, and Mr. M was acquitted of all charges.

**iv. 2018 ONSC 471**

In **2018 ONSC 471**, Mr. E, a 27-year-old trafficker, was convicted of several charges including trafficking and assaulting two young women, criminally harassing one of them, breaching a non-communication order related to the other, trafficking drugs, and careless storage of a firearm. He was acquitted of charges related to procuring the young women. Several other charges related to the firearm were conditionally stayed.

Ms. J and Ms. B both approached Mr. E at different times to begin working in the sex trade. Ms. J was 18 at the time and Ms. B was 19. Ms. J provided sexual services under Mr. E's control and direction for around three years. During this time Mr. E physically assaulted her several times and threatened to kill her. He also controlled her rates and services, kept tabs on her through text message, and kept all of her earnings. At one point, Ms. J left Mr. E and he harassed her and attempted to locate her. After Ms. J left, Mr. E relentlessly texted and called her, once he called and texted her 137 times in a 32-minute period. He also posted fake escort ads using her real photo and phone number and included a warning that Ms. J had a sexually transmitted infection in the ad. This caused Ms. J to call the police and report him.

Ms. B provided sexual services under Mr. E's control and direction, also dictating her location, some of her service hours, and keeping all of her earnings for three months. He kept tabs on Ms. B's hours and earnings through text messages.

Mr. E was sentenced to 10 years of incarceration, and ancillary orders including, being registered as a sex offender for life, a weapons prohibition for life, a DNA order, and a no contact order and order to keep at least 500 metres distance from Ms. J and Ms. B.

Also see: 2017 ONSC 7285 (Cetiorari application), 2017 ONSC 4028 (Conviction), 2017 ONSC 3141 (Search and seizure).

**v. 2017 ONSC 3174**

In **2017 ONSC 3174**, Mr. D, a 32-year-old man, pleaded guilty to human trafficking, receiving a material benefit from human trafficking, kidnapping, assault, and the use firearm to commit an indictable offence. Ms. M, a 27-year-old woman, was living in a homeless shelter and had gotten lost. Mr. D approached her and offered her a ride to the shelter, during the ride they discussed her working for Mr. D in exchange for shelter and drugs. Then they picked up Ms. M's possessions from the shelter and went to Mr. D's home where he lived with his mother. Mr. D's friend Ms. K took sexualized photos of Ms. M and posted them on Backpage to offer her sexual services. These images included Ms. M's face, despite their assurance they would not post photos of her face and calls were directed to Mr. D's phone. Ms. M was encouraged to perform sex acts she did not want to do, was not provided the amount of drugs promised, and was not allowed to keep the money she earned. At one point, she took money from a client and ran away. Ms. M met with her boyfriend and posted another ad on Backpage to continue offering sexual services under her own will. Mr. D found the ad and had a friend make an appointment with Ms. M. Mr. D and some other men attacked Ms. M and her boyfriend, severely injuring her boyfriend and forcing Ms. M to come with them to continue providing sexual services under Mr. D's control. Mr. D made Ms. M give her Facebook passwords and he and Ms. K deleted her account so she could not contact anyone. The police found Ms. M's boyfriend tied up and severely injured in the hotel and used Ms. M's phone to track her location to find her.

Mr. D was found guilty and given an 8-year sentence, with ancillary orders including a lifetime weapons ban, a lifetime sexual offender registration, and a DNA order.

**vi. 2017 ONCJ 145**

In 2017 ONCJ 145, the co-accused – a boyfriend, Mr. M, and girlfriend, Ms. F, in their mid-twenties - were jointly charged with six offences relating to the complainant, Ms. W, including: unlawfully recruiting and exercising control over the movements of the victim, receiving a financial or other material benefit from the commission of, and advertising sexual services. The boyfriend was also charged with breaching his probation order. Twenty-year old Ms. W communicated with Ms. F through Facebook and text messaging about acting as an escort. The co-accused advertised W's sexual services on the website Backpage, including sexually suggestive identifying photos and contact information. Ms. W received responses to the ad on her cell phone and testified she feared for her safety, but was afraid to leave the situation after receiving excessive and harassing text messages from the co-accused. The co-accused told her to make money for them and threatened to hurt her if she didn't give them all the money. The co-accused ultimately deprived Ms. W of use of her cell phone so they could solely be responsible for managing her services.

The co-accused were convicted of human trafficking, receiving financial benefit from trafficking, and procuring a person to facilitate sexual services for consideration, although the Court stated it was treating W's testimony with caution because of inconsistencies with evidence from law enforcement interviews.

**vii. 2017 ONCA 141**

In 2017 ONCA 141, Mr. S, a 33-year-old man, appealed his conviction and sentence. He had been convicted of human trafficking, receipt of material benefit from trafficking, withholding

documents to facilitate trafficking, assault, uttering death threats, and breach of undertaking. For six months, Mr. S controlled Ms. C, a 19-year-old woman, through physical violence, threats of violence, taking away her cellphone and taking all the money she earned providing sexual services. He advertised her sexual services on the Backpage website and forced her to provide sexual services, even when she was sick.

Mr. S had a history of abusing women, a lack of accountability for his violence, victim blaming, and failing to comply with programming. He had a poor response to community supervision. Aggravating factors in his sentencing included his multiple violent offences against women and the judge's determination that Mr. S posed "a serious threat to women for whom he seems to lack any respect."<sup>4</sup> He was sentenced to 5 years of imprisonment, with ancillary orders including a weapons prohibition for life, a DNA order, and a no-contact order with the victim during the custodial period.

On appeal, his conviction was upheld, but the appeal of his sentence was allowed. The trial judge had miscalculated the amount of credit Mr. S should have received for his pre-sentence/pre-conviction custody.

#### **viii. 2017 ONCJ 22**

In **2017 ONCJ 22**, a couple, Mr. F, a 21-year-old man, and Ms. R, forced a 14-year-old girl, Ms. D, to offer sexual services over a one-week period. The couple controlled her movements, the types

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<sup>4</sup> 2015 ONCJ 494 at para 19.

of services she provided, and means of contact, but did not use violence or threats of violence to control her. They posted an online ad of Ms. D with nude photos of the girl claiming she was 19 years old. She tried to leave with her boyfriend but he was threatened and Ms. D was not allowed to leave. Ms. R took her cellphone and told her she couldn't contact anyone. Mr. F pleaded guilty to trafficking a minor, but also argued that the minimum sentence for this offence was unconstitutional. The court held that it could have given a sentence lower than the minimum five years, but not one so low that it would be considered unconstitutional. The judge sentenced him to four years of incarceration, with ancillary orders including a DNA order, a 10 years weapons prohibition, and a 20 registration as a sex offender, stating: "As a judge of the Ontario Court of Justice, I have no jurisdiction to declare the mandatory minimum sentence unconstitutional under section 52 of the Constitution Act , but, having found the law unconstitutional I need not apply the minimum sentence."<sup>5</sup>

**ix. 2017 ONSC 377**

In **2017 ONSC 377**, the court decided on the admissibility of several pages of Instagram posts which included themes recruiting women off of the internet to provide sexual services for money and of violent control of prostitutes by pimps and some were considered relevant to the accused's state of mind and were probative about his intent. Those that did not have clear probative value, were excluded.

In a related decision, the Court ordered that 45-year-old Mr. B be held in custody pending trial. B faced seven charges, including sexual assault, receiving a material benefit from the commission

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<sup>5</sup> 2017 ONCJ 22 at para 93.

of human trafficking, receiving financial benefit from Ms. M's prostitution recruiting a minor for the purpose of exploitation, obtaining sexual services for consideration from a minor, advertising sexual services of another person, and possession. B was alleged to have coerced a 19-year-old woman into going to Toronto with him to act as an escort. They had met when Mr. B began liking her photos and messaging her on Facebook. M allegedly placed her photo and an advertisement on the internet and brought the complainant to meet with clients at various hotels, where he confined her to her room by keeping the key card for the room. Also tendered at the bail hearing was evidence suggesting B had posted numerous Facebook and Instagram posts publicizing the availability of sexual services, as well as text messages between B and a former girlfriend allegedly discussing the recruitment of the complainant as a sex worker.

Also see: 2016 ONSC 7641 (Applications to introduce opinion evidence and evidence of accused's discreditable conduct); 2015 ONSC 4858 (Application for a review of a decision granting judicial interim release by a Justice of the Peace).

**x. 2016 ONCJ 842**

In **2016 ONCJ 842**, the complainant was a university student who left school to provide sexual services for money. She allegedly received a text from an old friend who convinced her to come to a different city to work with her and her boyfriend, Mr. M, who the complainant believed to be in charge of the operation, kept all of her money and posted advertisements of her sexual services on Backpage. Mr. M was charged with human trafficking and sexual exploitation offences, as well as sexual assault and possession of stolen property. The sexual assault charge was dismissed. There were significant inconsistencies, gaps in memory and a mocking tone in the complainant's testimony which impacted the complainant's credibility. The accused was acquitted of the human trafficking and sexual exploitation charges because there was not enough evidence to prove beyond a reasonable she had been controlled or exploited. There was also a

lack of evidence that Mr. M had posted the advertisement on Backpage, sexually assaulted her, or was in possession of money that belonged to the complainant. The accused was found guilty of possessing stolen property, the complainant's cellphone.

In an admissibility ruling, the court concluded that a PDF book from Mr. M's laptop entitled, "Pimpology – The 48 Laws of the Game" was admissible.

Also see: 2016 ONCJ 843 (Admissibility ruling)

**xi. 2016 ONSC 5915**

In **2016 ONSC 5915**, Mr. D, a 58 year old man, was charged with 13 offences including exercising control over young person, receiving proceeds of crime, living on avails of prostitution, procuring young person to become prostitute, possession of child pornography, uttering death threats, possession, possession for purpose of trafficking, and firearms offences. Mr. D allegedly coerced a 17-year-old girl to provide sexual services for money, advertised her sexual services online, and pointed a firearm at her. Several court appearances occurred relating to the admissibility of evidence and the accused Charter rights.

Mr. D was acquitted on the charge of trafficking, but was convicted for drug possession and possession for the purposes of trafficking.

Also see: 2017 ONSC 4380 (sentencing); 2016 ONSC 5855 (Charter rights), 2016 ONSC 4294 (Expert evidence), 2016 ONSC 4293 (Charter rights), 2016 ONSC 2749 (Charter rights), 2016 ONSC 777 (Joint or separate trial).

**xii. 2016 ONCJ 882**

In **2016 ONCJ 882**, a pre-trial procedure, three defendants, Mr. A, Mr. B, and Mr. N were accused of human trafficking and other prostitution related offences. Mr. A faced additional charges of assault and uttering threats. Mr. N faced additional charges of uttering threats. This case determined whether Mr. A would stand trial on the offences he was charged with.

Ms. D allegedly met Mr. B over Instagram and later helped Ms. D make an ad on a website advertising sexual services. Ms. B allegedly gave Mr. D all the money she earned and later passed her on to another man Mr. N, who then assisted her with her sexual services but did not control her in the way Mr. B had but threatened her. Allegedly, she later worked for Mr. A who she met over Instagram and he asked her to post an ad for sexual services online because he did not know how to do it. She allegedly communicated with Mr. A via text about her clients and how much she was paid. Mr. A allegedly assaulted Ms. B, pointed a gun at her, and said he would kill her if she “snitched” on him.

The judge found that there was enough evidence for Mr. A to stand trial on assault, human trafficking, uttering threats, materially benefiting from human trafficking, procuring a person for the purposes of prostitution. Charges were dismissed related to the firearm. The judge found there was enough evidence for Mr. N to stand trial for uttering threats, human trafficking, procuring a person for the purposes of prostitution and materially benefiting from the same. The judge found there was enough evidence for Mr. B to stand trial for the materially benefiting from Ms. D providing sexual services, but did not find there was enough evidence for him to stand trial on the procuring count or receiving a material benefit from trafficking.

**xiii. 2016 ONCJ 594**

In **2016 ONCJ 594**, Mr. L was pleaded guilty to receiving financial or material benefit from sale of sexual services and advertising the sale of sexual services (s. 286.4). L offence was commissioned when the first complainant was 15 and Mr. L was 17. Mr. L met the complainant at a party and

they began to follow each other on Twitter. L messaged her on Twitter and convinced her to sell sexual services. The first complainant included her 16-year old friend in the planned transaction. The complainants met with L who took them to a hotel to take explicit photos, which were then posted in advertisements on the website Backpage. After the ads were posted, L managed the complainants' communications and responses to their ads via the internet and text message. He kept essentially all of the money earned. Police recovered a substantial amount of electronic evidence capturing text communications between the complainants and L, which was tendered at trial. J had tried to convince them to delete the texts between them. The Court found L's actions were planned and deliberate and that he demonstrated an exploitative, misogynistic, and demeaning mindset towards the complainants (as revealed in text messages), which were aggravating factors in sentencing. The court also concluded Mr. L caused the girls bodily harm by causing a long-term impact on their mental health. He was sentenced to 6 months deferred custody and 2 years of probation

**xiv. 2016 ONCJ 694**

In **2016 ONCJ 694**, the court sentenced Ms. R, a young offender who pleaded guilty of procuring a minor to become a prostitute (286.3(2)) to 16 months of probation with restrictive terms, including no access to Facebook, Twitter or Backpage. In October 2015, Ms. R (17 at the time) contacted the 12-year-old female complainant, Ms. HK, through Facebook and convinced her that she could help her make money if they and her boyfriend, Mr. K, worked together. She arranged to have the complainant meet them at a location, instructing her to bring "lots of sexy underwear and a bra as well as a Halloween costume because she could make more money." Within the following days, K took nude and sexually explicit photos of the complainant, alone and with other girls, and posted her advertisements for sexual services on Backpage. The accused and K instructed the victim how to answer many of the calls from prospective customers and taught

her how to speak to clients. She was required to provide sexual services over a ten-day period and subjected to a number of degrading acts, some of which caused her injury.

Ms. R claimed that she was simply following her boyfriend's directive when it came to engaging in procuring girls for the sex trade. The Court noted significant psychological and physical challenges posed to Ms. R in her upbringing, as well as her current residency at an intensive therapy and counselling program through the province. It further found that Ms. R showed no remorse for her actions and required extensive restrictions in order to rehabilitate.

**xv. 2015 ONCA 558**

In 2015 ONCA 588, Mr. A, a 16-year-old boy, convinced a 16-year-old girl he met at a park, Ms. S, to dance at a strip club for money, traveling to several cities to do so. He kept all of the money she was paid, including money she received from one customer for sex and another for a lap dance after Mr. A encouraged her to provide those sexual services. He monitored her earnings and actions through daily text message. Mr. A physically abused the girl on various occasions, drawing blood on one occasion. Ms. S eventually texted the police about her exploitation.

In Youth Court, Mr. A was acquitted of trafficking a minor, receiving material benefit from trafficking a minor, and living on the avails of prostitution, but convicted of other offences. The Crown appealed the acquittals. At the Court of Appeal, the acquittals on trafficking and receiving material benefits from trafficking a minor were set aside and a new trial was ordered. The court held that the trial judge had mistakenly applied the wrong legal standard looking to Ms. S's subjective understanding of her exploitation, rather than looking at the facts to objectively to determine whether she was exploited. Text and Facebook messages provided evidence that would suggest she may have been exploited, among other evidence. The trial judge also mistakenly determined that one act of providing sexual services for money was not enough to make her a prostitute when determining if Mr. A was living on the avails of prostitution.

**xvi. 2015 ONCJ 392**

In **2015 ONCJ 392**, Ms. C was charged in Youth Court with procuring Ms. T to become a prostitute, attempting to procure Ms. B to become a prostitute, failing to comply with a youth sentence, intimidating Ms. T to perform acts of prostitution, and participating in a criminal organization to traffic a minor. Ms. H was charged in Youth Court with obstructing a police officer, failing to comply with a youth court order, procuring Ms. T to become a prostitute, aiding and abetting Ms. T to engage in prostitution, living on the avails of Ms. T's prostitution, trafficking Ms. T, intimidating Ms. T to perform acts of prostitution, and participating in a criminal organization to traffic a minor.

Ms. C was recruiting teenage girls to provide sexual services for money. Ms. H acted in a supervisory role in the enterprise and profited from the exchanges. Ms. C tried to recruit Ms. AB into prostitution a month earlier. Ms. AB confirmed that Ms. T was comfortable with the idea of going to a city for the purposes of prostitution. Ms. T went to a city with other girls when she was 14, she was unfamiliar with the city, had no money, phone, or personal connections in Toronto. She claimed she did not know the purpose of the trip. When Ms. T's father began looking for her, her friends, including Ms. C, provided misinformation so he would not find her. While in the city, two other men joined the group and advertisements for Ms. T's sexual services were placed on Backpage's website through one of the men's phone, including sexualized images of Ms. T and Ms. H. This group of people had organized trips like this before. Ms. T provided sexual services over 10 days and was not allowed to keep any of the money she was paid, she was told that unnamed persons "were after her". Ms. T returned home 10 days later sick, malnourished and with infected and injured genitalia.

Ms. C was convicted with procuring Ms. T to become a prostitute, attempting to procure Ms. B to become a prostitute, and failing to comply with a youth sentence. She was acquitted of

intimidating Ms. T to perform acts of prostitution, and participating in a criminal organization to traffic a minor. Ms. H was convicted with obstructing a police officer, failing to comply with a youth court order, procuring Ms. T to become a prostitute, and aiding and abetting Ms. T to engage in prostitution. She was acquitted of living on the avails of Ms. T's prostitution, trafficking Ms. T, intimidating Ms. T to perform acts of prostitution, and participating in a criminal organization to traffic a minor.

**xvii. 2015 ONSC 2463**

In **2015 ONSC 2463**, Mr. D was charged with human trafficking, receiving money from human trafficking, unlawful confinement, uttering threats, threatening violence to compelling the complainant to have sex with men and women against her will, and theft of the complainants' cell phone. He was acquitted of all charges other than theft of the complainant's cell phone. He had told Ms. S that he would share money earned through her provision of sexual services with her. Ms. S, a 36-year-old woman, was dependent on drugs and alcohol, which impacted her ability to remember events. Sexual service advertisement were placed on the Backpage website, using images that contained her face but another woman's body, but Ms. S could not remember who placed the ads, the number of ads placed, or whose cellphone was used to make the ads. Ms. S testified that she was given drugs but not much food, was threatened and was not provided with basic toiletries. Ms. S testified that an associate of Mr. D's assaulted and sexually assaulted her. Mr. D provided contradictory evidence, stating he had posted the ads on Backpage, but that Ms. S had dictated what he write and that Ms. S was not controlled or coerced, but was a willing participant in providing sexual services. He admitted to taking her phone and selling it. The court held that there was not sufficient evidence to convict Mr. D on the prostitution and trafficking related offences, and that Ms. S's evidence had too many contradictions and unclear memories to be reliable.

**xviii. 2014 ONCJ 736**

**2014 ONCJ 736**, was a preliminary inquiry for Mr. B and Mr. R's 41 weapons, trafficking and prostitution charges. Mr. R allegedly told Ms. M she had to engage in providing sexual services for money to pay for the hotel they were staying in with her friend, Ms. P, or she had to leave. Ms. M allegedly had nowhere else to live, so Mr. R used her phone to take sexualized photos of her and created a Backpage website to advertise her sexual services. Ms. M allegedly had no say in the detail of the ads, which services were offered and what sum would be paid for those services. He also made a Backpage ad and a Plenty of Fish profile for Ms. P for the purposes of offering sexual services. During this time, Mr. R allegedly took Ms. M's only piece of identification, kept all of the money they earned, assaulted other women, and threaten Ms. M and Ms. P. There allegedly were guns in the hotel rooms. Mr. B was allegedly involved in the activities by assisting with renting the rooms used to provide sexual services. Mr. B had a third woman involved in providing sexual services for money. He helped Ms. B take photos for her online sexual services advertisement. He took her identification, threatened to harm her and her possessions. There was sufficient evidence for Mr. R and Mr. B to stand trial on the majority of the prostitution, trafficking charges and firearms charges. We did not locate a trial or sentencing decision for this case.

**xix. 2014 ONCJ 542**

In **2014 ONCJ 542**, the judge stated that this was "essentially a 'he said/she said' trial."<sup>6</sup> Ms. K alleged that she began providing sexual services for money and Mr. S was controlling her and

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<sup>6</sup> 2014 ONCJ 542 at para 2.

taking the money that she was paid for those services. She testified that there was a power imbalance between the two of them and she was afraid of him. Many of her statements were inconsistent about how and why she began providing sexual services for money, however, there was some evidence that Mr. S was involved in the decision making about the services she provided, influenced some of her movements, and regularly physically assaulted her. Ms. K's sexual services were advertised on a sexual services website, Backpage. Ms. K also testified that she used social media to fraudulently convince people to send her money, typically by under a false identity pretending to be interested in being in a romantic relationship and asking for money to come and visit the other person, which impacted her credibility. Mr. S alleged that he was not aware she was providing sexual services for money until he saw her Backpage ad on his phone after Ms. K failed to properly log out of his phone. He admits to sending photos of Ms. K offering her sexual service for money to Ms. K's mother. The court held that it was not proven beyond a reasonable doubt that Mr. S trafficked Ms. K as there was not enough evidence to demonstrate that Mr. S had exploited Ms. K and acquitted him on those charges, but the court did find Mr. S guilty of breaches of recognizance and assaults against Ms. K.

Also see 2011 ONSC 3654 (Charter rights).

**xx. 2014 ONSC 990**

In **2014 ONSC 990**, Mr. B, who had been found guilty of, among other things, human trafficking. At age 21, Mr. B had lured the 17-year-old complainant from Montreal to Windsor through the assistance of a mutual friend on the premise that Mr. B desired a romantic relationship. The complainant, who was a ward of the Children's Aid Society at the time and had been diagnosed as having bipolar disorder and Fetal Alcohol Spectrum Disorder, was told by Mr. B that she "belonged to him" and would be working for him. When she attempted to resist, Mr. B threatened and physically assaulted her. The complainant was forced to perform increasingly

risky sex acts with more than 100 men over a year and a half. Mr. B kept all of the money paid for the sex acts. In addition, Mr. B posted semi-nude pictures of the complainant in sexual service advertisements on the internet offering services that provided little or no protection from sexually transmitted infections that were rarely offered due to their high risk, which were posted countless times on the internet. In this regard, the Court noted (at para 36):

All cases of this nature must be taken very seriously. Young people must be protected from being trafficked, exploited and abused in this fashion. Sadly, in this era of social media and the use of the internet, the online advertisements for sexual services continually victimize those who have been forced into prostitution against their will because it is impossible to remove those images from the internet. This is particularly tragic when the individual is a minor, as was [the complainant].

Mr. B did not accept responsibility for the offences and was sentenced to 6 years of incarceration, with ancillary orders including a 20-year registration as a sex offender, a 10 year weapons prohibition, a DNA order, and a no-contact order with Ms. B.

**xxi. 2011 ONSC 195**

In **2011 ONSC 195**, a 25-year-old man, was charged with human trafficking offences related to two different women. Mr. J, met Ms. S, who was 17, on Facebook. Ms. S alleged that she messaged and texted with Mr. J and his girlfriend, Ms. M, about moving to the city to model and dance in strip clubs. Ms. J came to the city and stayed with the couple. She alleged that she felt that Ms. M controlled her and kept all of the money Ms. S earned. Ms. S left after two weeks. Mr. J alleged that he never asked Ms. S to come and stay with him and thought that she was a friend of his girlfriend who was coming to stay, however, he did drive her to buy outfits for stripping and helped her obtain a fake ID. The court held that Ms. M had been the main person in communication with Ms. S and that Mr. J did not coerce her into stripping.

Two years later a second woman, Ms. A, who was 19, also moved to the city to work as a dancer at a strip club, she was introduced to Mr. J and she planned to rent his apartment. She alleged

that she moved into the apartment and Mr. J who she gave all of her earnings and was expected to work under his rules. Mr. J said he met Ms. A and drove her to the strip club on occasions. He claimed that she gave him the money she earned to pay for rent in the apartment. There was inconsistent evidence about whether Ms. A moved out or was kicked out of the apartment by Mr. J. The court held that during the one week that Ms. A stayed at the apartment, she was acting in her own accord and was not exploited by Mr. J.

The court held that both Ms. S and Ms. A had inconsistencies in their testimony, and the fact that Mr. J was a small man suggested that he could not pose a serious threat to the young women, nor did he live a lifestyle beyond the means of a person operating a small entertainment business, as he did. The court stated, “[i]n any event, tricking or stealing money from exotic dancers is not necessarily the same as criminal exploitation or the commission of prostitution-related crimes.”<sup>7</sup> Mr. J was acquitted on all counts.

**xxii. [2008] OJ No 6022 (ONCJ)**

In **[2008] OJ No 6022 (ONCJ)**, Mr. N pleaded guilty to a number of offences, including trafficking and living under the avails of prostitution. Ms. B was homeless and providing sexual services for money from the age of 14. When she was 15, Mr. N began controlling her provision of sexual services. A log book Ms. B kept of her records estimated that she turned approximately \$360,000 to Mr. B. When Ms. B tried to leave, Mr. N threatened her, threatened to harm her family, assaulted her and told her that she would have to pay a \$100,000 exit fee. Another young woman, Ms. S, a 14-year-old ward of the Children’s Aid Society, estimated that she gave \$65,000 she had

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<sup>7</sup> 2011 ONSC 195 at 171.

been paid for sexual services to Mr. B. Mr. B used photographs of the girls to solicit clients for the two girls and communicated with clients through his cell phone.

Mr. B was sentenced to 5 years of incarceration.

## V. QUEBEC

### i. 2013 QCCA 46

In 2013 QCCA 46, Mr. U appealed his guilty convictions of human trafficking, sexual assault, harassment, threats, and assault, among other things. He argued that there was a miscarriage of justice because his victim was allowed to testify outside of the courtroom, the convictions were not based on evidence, and that trafficking requires forced movement, not just forced labour.

Mr. U, a 25-year-old man, convinced an 18-year-old woman to dance at a strip club so he could keep the earnings. He gave her gifts and drugs, but also physically abused her and intimidated her, including threatening to kill her, beating her with a belt, and tasing her head. He kept all of her earnings. Mr. U took her cell phone and said that she belonged to him and he could do anything he wanted with her. Mr. U had photographs on his phone allegedly taken for the purposes of prostitution.

The court held that the trial judge properly allowed the victim to testify outside of the courtroom due to the difficulty she had testifying in the presence of Mr. U and that the complainant suffers from post-traumatic stress, among other reasons. The court deferred to the trial judge's assessment of credibility and noted that the trial judge gave lengthy reasons for his decision. The trial judge also held that there does not need to be any movement of persons for a trafficking offence to have been committed, exercising control over them to exploit them is sufficient.

Trafficking in persons: *Criminal Code*, RSC 1985, c C-46, s 279.01, 279.011, 279.02.

Also see: 2011 QCCA 265 (Requête pour permission d'appeler du verdict de culpabilité); 2010 QCCA 2222 (Requête pour prorogation du délai d'appel); 2010 QCCA 1657 (Requête pour prorogation du délai d'appel); 2010 QCCQ 4475 (Requête)