A Critical Analysis on R. v. Orr in Understanding the Management of Human Trafficking in Immigration and Refugee Claims in Canada

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Abstract

Labour exploitation is a form of human trafficking, which is a serious offence in Canada. More and more immigrants, refugees and migrant workers are vulnerable to labour exploitation. To further understand this issue on how the federal government manages such cases of human trafficking, a qualitative analysis was conducted by looking at the effectiveness of anti-human trafficking policies and practices to determine whether they are contributing more harm than good to the vulnerable population, or vice versa. By analyzing the significant R v. Orr case, it is observed that permit programs lack supporting services in monitoring the living of immigrants. In addition, there is an insufficient amount of victim services for exploited persons to receive protection. Immigration officers also do not acquire the technique to correctly identify potential victims at the borders. Legally, victims suffered from great loss when going against the accused on trials with huge financial costs, and legal officials tend to determine the guilt of the accused based on the credibility of the victims and not the traffickers. Reforms are required in improving the policies and practices to reach the goal of providing welfare to immigrants and preventing them to be trafficked. Increasing the amount and geographic coverage of victim services is one of the suggested improvements, and the current Open Work Permit (OWP) is an alternative permit program in benefiting new immigrants. Future research could focus on the anti-sex trafficking policies, or looking at the limitations of OWP in combating human trafficking.

Keywords: human trafficking, labour exploitation, immigrants, policies, practices

Introduction

According to the United Nations, human trafficking is defined as a crime that human traffickers would transfer people with force and fraud to exploit them for profit (United Nations Office on Drugs and Crime, 2022). It could be further categorized into two types of human trafficking, labour exploitation and sex trafficking (Public Safety Canada, 2022). The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also referred to as Palermo Protocol, was the universal instrument that was adopted by the United Nations as the first collaborative tool for all nations to prevent and combat human trafficking in order to protect the vulnerable groups (United Nations Human Rights Office of the High Commissioner, 2000; MacIntosh, 2006). Canada was one of the earliest countries that ratified this Protocol, which means that the nation's policy direction towards combating human trafficking will be following the guidelines in the Protocol (Department of Public Safety and Emergency Preparedness, 2019). Since then, more and more efforts are done in trying to end human trafficking, such as the establishment of the Immigration and Refugee Protection Act in 2001 with a session focusing in mentioning the crimes and punishment towards human traffickers that organize any forms of trafficking of immigrants and refugees into and/or within Canada (Justice Laws Website, 2022). This Act is an example of how the protection of human trafficking victims extends to immigrants and refugees that may not have permanent residency in Canada. Although more support and protection were provided, immigrants and refugees are relatively more vulnerable to human trafficking than other marginalized groups. There is also a lower public awareness of immigrants and refugees that are victims of human trafficking as its focus was more on Canadian and Indigenous women and girls in the past, leading to the

circumstance that human trafficking on immigrants, refugees and migrant workers is more prevalent than expected in Canada.

With an immigration system that welcomes new immigrants to reside permanently every year, immigrants, refugees and migrant workers do aim to flee to Canada to have opportunities for a better quality of living and a better job (Immigration, Refugees and Citizenship Canada, 2018). However, cases of them being treated as exploited labour are frequently reported on major media outlets in recent years. An example of labour exploitation is more than 40 Mexican workers were being brought to Canada and forced to work as hotel cleaners in a squalid living environment and a controlled low wage of $50 per month (Draaisma, 2019). Such circumstances they faced as victims of human trafficking are the opposite of how they should be treated as new immigrants as their basic rights are not realized by themselves and protected by the government. Human trafficking that targets new immigrants and refugees is one of the long-standing problems in society, but current practices and policies are ineffective in identifying victims and protecting the vulnerable population. The Temporary Foreign Worker Program (TFWP) provided by the federal government is one of the policies that allow migrant workers to work in Canada with easy access to the labour market and employers, but this increases their vulnerability to labour exploitation as they could only work to their tied employer or else they would lose their eligibility to work in Canada (Baxter, 2020). Such forms of exploitation are hidden under the surveillance of policing agencies as workers are exploited under this governmental program, which is supposed to provide more opportunities and protection to new immigrants. The above example revealed how current policies and practices could not meet the needs of immigrants, and instead increases their chance of being exploited.

This paper will focus on the policies and practices conducted by policing agencies in trying to examine cases of human trafficking that target immigrants, refugees and migrant workers. Specifically, a legal case analysis will be conducted on the significant R. v. Orr case in looking at real-life situations to understand how judgments were made based on the policies and practices (Province of British Columbia, 2014). To further understand this research focus, a literature review will be conducted in the upcoming section, aiming to outline the circumstances faced by immigrants when they were victims of sex and/or labour exploitation. This part will also discover how officers in policing agencies are identifying possible cases and victims of human trafficking, as an effective identification process could be considered the first step to halting any type of human trafficking crime. Other than looking into practices, the weaknesses and effectiveness of immigration policies will be examined with the use of previous literature in assisting the analytical process of the R. v. Orr case in order to discuss how anti-trafficking policies could be improved in the future in providing new immigrants more rights and freedoms they deserved.

With all the objectives of this paper mentioned, this brings up the main research question of this paper: "Do Canadian immigration and refugee policies and practices regarding human trafficking bring more harm than benefits to immigrants, refugees and migrant workers?" This question sums up the focus of this paper, and it will be answered in the discussion section of this paper in looking at whether it is more harmful than beneficial or the opposite of it based on the findings yielded by the legal case analysis.

Literature review

As human trafficking is a long-standing social issue in Canada, a lot of previous literature focused on studying the adverse impacts on victims after being trafficked, and how policing agencies like the RCMP could combat these crimes. The issue of immigrants and refugees being victims of human trafficking is less frequently studied, with most literature in this aspect focusing on the policies, laws and programs that tried to combat human trafficking that targets this vulnerable population. Most outcomes of these research projects emphasized that labour exploitation occurred relatively more frequently among immigrants than sex trafficking, which could be due to the welcoming attitude of Canadian immigration policies in taking in migrant workers to fill in the economy's labour shortage. Little research has placed their focus on discovering the practices conducted by immigration officers in identifying potential victims, which is an important element in combating human trafficking to rescue victims at the first stage, reflecting the insufficiency of previous literature in generating findings that could suggest effective reform in improving the situations faced by immigrants and potential victims of human trafficking. That said, past research is still important as they provided a solid basis in understanding the circumstances faced by immigrants regarding human trafficking, and the effectiveness of current policies in assisting the vulnerable group in getting out of being trafficked and/or exploited.

Limitations of government-issued permits

Government-issued residing and work permits for immigrants, refugees and migrant workers are limited in terms of amount, and their conditions lack protection for them in preventing human trafficking. The temporary Foreign Worker Program (TFWP) is one of the federal programs that aimed to alleviate the shortage of skilled talents and labour-intensive

workers in different industries (Employment and Social Development Canada, 2022). Although migrant workers do not have permanent resident statuses, those who obtained this permit could still be employed in Canada, which is a method that is more convenient for migrant workers to have the opportunity to be easily employed (Moran et al., 2022). Canadian employers on the other hand could hire suitable talents quickly under this program to match up their labour demand with a lower time cost. Ideally, migrant workers receiving a job under this program could quickly familiarize themselves with a new environment and receive a stable amount of income to pursue their desired quality of living. For employers, their production team would be better equipped with more labour introduced, and to be utilized more effectively to yield more high-quality outputs and profits. It is meant to be a win-win situation for both parties, however, the outcomes of this program are not as satisfactory as expected, especially from the perspectives of migrant workers. They are incapable to choose which employer to work under as the TFWP ties them up with a certain employer, meaning that they lost their basic freedom in the labour market (Strauss & McGrath, 2017). In addition, they would lose their permit if they chose to leave their assigned employers, which does not give them another opportunity to work for another employer but removes them from living in Canada (Moran et al., 2022; Baxter, 2020). It gives to migrant workers no choice but to keep working for their assigned employer in order to maintain their permit and their temporary residency. This limitation of the TFWP condition not only restricts the freedom of migrant workers, but also increased their vulnerability to extreme forms of labour exploitation (Strauss & McGrath, 2017). Employers may ask them to work more than they could to fill up the skill shortage and lower their own production cost in gaining a higher proportion of benefits, and migrant workers have to keep working for the allegedly exploited employer due to the shortcoming of TFWP as mentioned previously. The situation of

labour exploitation could be further worsened as workers themselves are unfamiliar with their labour rights. This is because employers and this program itself rarely inform migrant workers of the rights they have as the federal government does not see it as the first step to protect them, leading workers being unable to differentiate whether they are currently being exploited and thus their situations of exploitation are hardly discovered under these circumstances (Moran et al., 2022).

Such a form of labour exploitation towards migrant workers under this specific permit is not uncommon as various cases of labour exploitation have been identified. An example was mentioned by Baxter (2020) with various Mexico migrant workers who arrived in Canada with false advertisement from the recruiter that they would have food, accommodation and a minimum wage of $16 per hour. However, they are categorized as undocumented workers, do not receive what was promised and had to work for 50 hours a week with an hourly wage under $16. Under the pandemic brought by COVID-19, they also lived in a poor environment with four people sharing two beds in their room without any social distancing (Baxter, 2020). This led to all workers having deteriorating health conditions and as a result one of the workers died of COVID-19 afterwards (Baxter, 2020). This case alerted agencies that support migrant workers and portrayed how human traffickers aimed to exploit migrant workers (Baxter, 2020). This also indirectly reflected the TFWP not only hindered the benefits and working opportunities of migrant workers, and created a high chance for workers to fall into situations of labour exploitation, showing that this program should implement improvements especially in protecting workers from labour exploitation once they arrived.

The Temporary Resident Permit (TRP) is another document on which immigrants could apply to temporarily reside in Canada if they are said to be ineligible to apply through the

Immigration and Refugee Protection Act (Immigration, Refugees and Citizenship Canada, 2019). The purpose of the TRP program for immigrants is different from the Temporary Foreign Worker Program (TFWP) as new permit holders are not permitted to work or study in Canada without another appropriate permit (Immigration, Refugees and Citizenship Canada, 2019). It relates to the issue of human trafficking towards immigrants as it offers a TRP permit specially for those that are victims of human trafficking. The TRP to victims of trafficking in persons (VTIP) aimed to provide protection and assistance to the victims by providing them with a temporary resident status due to their experience of human trafficking (Immigration, Refugees and Citizenship Canada, 2016). Initially, the TRP-VTIP permit aimed to provide temporary protection for victims to recover from their trafficked experience with an extended period for them to settle down in Canada if they wish (Canadian Council for Refugees, 2018). However, the conditions of the permit limited its effectiveness in carrying out its goal of protecting trafficked victims. It is reported that the TRP-VTIP are short of 6 months and permit holders have to renew once again afterwards (Canadian Council for Refugees, 2018). It is not beneficial from the perspectives of the victims as this does not provide them sufficient time to get over what they had experienced and start a new page of their life by setting down in society and finding a new job (Hastie & Yule, 2014). This reflects the reality faced by permit holders was different from what was expected from the goals of this program, showing that the VTIP permit lost its ability to protect victims.

Except for the shortcoming of the program as mentioned above, the permit itself is difficult to apply for and renew successfully by applicants (Hastie & Yule, 2014). The permit applications applied by potential victims of human trafficking are frequently denied by immigration officers, for reasons such as applicants are not categorized as trafficked victims as

their qualifications do not match with the definition of human trafficking victims written in the program (Hastie & Yule, 2014). As seen from the previous data, only 5 to 22 new permits were issued annually from 2011 to 2015, reflecting the number of permits issued in providing protection to victims are insufficient compared to the huge prevalence of reported human trafficking case in recent years (Canadian Council for Refugees, 2018). Failure of the TRP-VTIP permit renewal is also common among applicants. They will receive the renewed 3-year permit only if they are still identified as trafficked persons and could comply with all the criteria (Hastie & Yule, 2014). For example, one of the criteria is "whether the victims are needed, and willing, to assist authorities in an investigation and/or in criminal proceedings of a trafficking offence". This equates that only victims that would like to assist and investigate their trafficking case could be identified as trafficked persons, however, they are in fact more vulnerable than other groups to future counts of human trafficking, regardless of their intention to proceed to offences for their alleged human trafficker. Such limitation could be seen as a policy issue of the program, revealing the inconsistency between written policies and the reality experienced by victims. Therefore, both permit programs could be viewed as inconsiderate towards the circumstances faced by migrant workers and trafficked victims as they are not established for the welfare of newcomers. In light of these limitations, it is suggested by the Canadian Council for Refugees (2018) that policy revisions such as receiving consultation from professional organizations during the process of approving permits by officers are required.

Incomplete efforts of anti-trafficking policies on sex trafficking

Besides the occurrence of labour exploitation on migrant workers, sex trafficking is another common form of human trafficking among them. Migrant sex workers could be

considered as relatively more vulnerable than other workers as there are even fewer supports and research focused in this aspect when comparing with resources for labour exploitation. With this literature search on human trafficking cases and policies on immigrants, most articles from reliable sources are primarily on labour exploitation or talking about the policies and practices of how organizations combat human trafficking as a whole. According to Liew (2020), there are few research in analyzing the abuse experienced by migrant workers from sex trafficking, showing that this issue is being overlooked and yet to be studied thoroughly. From what the current research have discovered, migrant sex workers receive a lack of support for their job security (Liew, 2020). Laws and policies did not include and fully address the participations of migrant sex workers. For example, the Bill C-36 aimed to protect the welfare and rights of sex workers, but does not have a full coverage for sex workers with different backgrounds (Liew, 2020). To further explain this weakness, the Bill does not include the situation of a proportion of current sex workers as victims of sex trafficking that are being unnoticed in the industry (Liew, 2020). This reflected the vulnerable population (migrant sex workers) are being unprotected by Canadian policies and further pushing them to be sexually trafficked. They could not receive immediate help to get rid of this exploited situation due to a lack of policy awareness to them, revealing that the lack of programs for victims and vulnerable population to apply for permits, unlike the permit programs designed specially for victims of labour exploitation.

Moreover, anti-trafficking laws in the Criminal Code and Immigration and Refugee Protection Act (IRPA) are said to do more harm than good to migrant sex workers (Burns, 2021). These policies aimed to protect migrant workers, but is exposing them to be more vulnerable to exploitation. Raids is a common practice under the goal of anti-trafficking policies. However, officers who conduct raids in the workplaces of sex workers lacked in professionality as they

usually mistaken migrant sex workers as victims of sex trafficking (Lam & Lepp, 2019). These two groups of workers have similar characteristics by working in places such as massage parlors and salons to provide sex services, but their intention of working as a sex worker is totally different (Burns, 2021). Victims of sex trafficking are working under conditions of being forced, threatened and exploited (Burns, 2021). This reflected the policies and practices in combating sex trafficking does not benefit nor help the victims. Officers themselves do not acquire professional knowledge in identifying victims of sex trafficking in their workplaces, and they equate all migrant sex workers with language barriers as victims of sex trafficking, revealing the unfamiliarity of policing agencies with the current situations of trafficking within the sex industry (Lam & Lepp, 2019; Burns, 2021). In addition, the ineffectiveness of policies targeting sex trafficking is shown as their raids caused disturbance to the workplaces of non-exploited migrant sex workers. A wrong direction of surveillance on anti-sex trafficking results in the difficulty of migrant sex workers to maintain their living with their job, as some of them are being racially profiled by officers and may face deportation caused by strict regulation of their workplaces (Zoledziowski, 2020). Some migrant sex workers would be exposed in poorer working conditions in order to escape from such surveillance, which adversely increase the number of workers at the risk of being sexually exploited (Zoledziowski, 2020). Current policies that combat sex trafficking does not match its goal due to its insufficiency in reducing the number of vulnerable sex workers, and does not address the situation of sex trafficking (Guilmain & Hanley, 2020). These policies themselves are incomplete as they do not alleviate the seriousness of sex trafficking by putting other workers in the same industry at risk (Guilmain & Hanley, 2020). Thus, new reforms are required in bringing positive experiences for

immigrants and migrant workers when they come to Canada to live and/or work, and to avoid them from being more vulnerable to sex trafficking.

Ineffective practices on victim identification by immigration officers

Immigration officers are responsible for a huge role of viewing applications of immigrants, refugees and possible victims of human trafficking, but the practices they conducted are not comprehensive for the welfare of the applicants. According to Regino (2022), officers lack sensitivity when looking at immigrant and refugee applications. This means that they may incorrectly identify the factors that may be cause immigrants to have a higher chance of being trafficked. For example, some officers have their own biases when viewing applications and issuing permit to certain social groups (Kaye et al., 2014). Holding racial and ethical stereotypes towards people of color and/or refugees that fled for war from their nations are some common biases of officers as they may think these applicants' background are ineligible to be a new immigrant and contribute useful outputs to society (Regino, 2022). People who are desperate to get into Canada but their permit applications are denied may find other methods to reach their goal, such as paying a large sum of money for illegal organizations to smuggle themselves into the border. However, there is a high opportunity for them to be trafficked and forcefully exploited by doing labour-intensive jobs (Baxter, 2020). These denied appliants are relatively more vulnerable than others to be potential targets of human trafficking, yet officers are not alerted by their vulnerabilities by skipping their applications, revealing how their practices are impractical in hindering the welfare of incoming immigrants and refugees. This reflected the incautious practices by officers when reviewing application, and directly hinder the security of applicants by falling into the traps of alleged human traffickers.

In addition, some immigration officers do hold an inconsiderate attitude towards applicants and have a lack of appropriate training for their duties (Regino, 2022). Common biases among officers lead them not to hold a friendly attitude when having face-to-face interviews with applicants, and a trauma-informed approach is not held. For example, they would scrutinize the abused migrant workers by using a 'hard questioning' interview style, which they would be impatient in waiting victims to answer their questions, and not avoiding sensitive issues, which may trigger the horrible experiences of victims (Regino, 2022). This showed their lack of awareness of their questioning method, which may unintentionally harm the mental health status of potential victims of exploitation, thus reflecting the inability of assisting victims with having a ineffective identification.

For reviewing applications on the Temporary Resident Permit (TRP) in consideration specific for victims of trafficking in persons, officers are given new guidelines in 2020 to assess applications in relation to COVID-19, where severe labour exploitation is more frequent under this pandemic (Baxter, 2020). However, this policy improvement was still unable to issue permits to protect trafficked victims. The reason behind is that migrant workers need to have actual evidence of themselves as victims of human trafficking, which is unrealistic as evidence like videos or recordings that show the trafficking process is hard to be collected. Most victims only realize themselves being exploited afterwards and not at the state of exploitation, showing that the requirement to proof themselves as victims is not illogical at all (Baxter, 2020). To further elaborate this problematic guideline, victims without proof would not be categorized as victims of trafficking in persons by immigration officers, causing them to lose their opportunity to be acknowledged by authorities and receive appropriate supports on their recoveries from human trafficking.

While immigration officers assess profiles of immigrants and victims in determining their status in Canada in providing suitable assistance, police officers are responsible for identifying victims on the scene and reporting serious cases of human trafficking actively. However, they are barely seen with a proactive attitude in investigating suspicious movements of potential human trafficking organizations, nor conducting frequent raids in different working venues. When policing agencies are taking a passive attitude in searching for victims of human trafficking, self-reports to the police are the only method for victims to receive assistance from organizations (Kaye et al., 2014). However, solely relying on reported cases is inefficient to benefit the vulnerable population. Most of this vulnerable group consists of recent immigrants, refugees and migrant workers, and they do not acquire the knowledge of how to ask for help in a new environment. Some of them may also not notice themselves being victims of exploitation as they may assume that working in a poor environment is the first step for them to climb up the social ladder (Baxter, 2020). Moreover, the prevalence of human trafficking targeting these groups are hidden from the surveillance of authorities, which create a challenge to identify victims quickly. Considering these difficulties, improvements should be made specially on the practices of officers and its following guidelines. A previous improvement that is made is to have the Ontario Ministry of Labour, Training and Skills Development to conduct blitz on temporary-employment agencies (Baxter, 2020). This could reduce the harms to victims as governmental organizations are starting to take on an active position in identifying victims of trafficking, more practical reforms are still required for authorities to improve by using a trauma-informed approach in maximizing the assistance towards victims themselves (Canadian Council for Refugees, 2018).

Methodology

The goal of this paper is to understand how human trafficking are managed in immigration and refugee claims in Canada, which generated the main research question in investigating whether immigration policies and practices bring more harms than benefits towards immigrants, refugees and migrant workers. Combining the information from previous literature, a qualitative research will be conducted and focus specifically on practices and policies that combat labour exploitation by analyzing a Canadian legal case. Secondary sources are used in this paper, and the analysis of legal case will be based on existing data that are collected by previous researchers. R. v. Orr (R v. Orr, 2013 BCSC 1883; 2016 B.C. J. No. 2321) is the chosen case in conducting the analysis of this paper due to its significance. It is the first Canadian case in the Province of British Columbia to have a charge and sentence on human trafficking related offences since the establishment of the Act (Boynton, 2016). It is about a migrant domestic worker that alleged her employer of labour exploitation by working under humiliating conditions, having her salary being paid less than the provincial law; and the use of fraud and coercion in bringing her to work and promise to provide her a permanent residency although she was holding a Temporary Resident Visa (R v. Orr, 2013 BCSC 1883; 2016 B.C. J. No. 2321). The data for the analysis was gained by coding new themes from this legal case, and being compared with the themes found in previous literature to discover whether they are consistent.

Conveniency is one of the reasons to conduct a legal case analysis based on existing resources. By searching for secondary sources on the Internet, they are highly reliable as most articles are peer reviewed before publication or published by governmental departments. This process lowers the difficulty in finding reliable first-hand data that are closely relevant to the research focus, which also shorten the data collection process. In addition, analyzing existing

resources is advantageous than conducting interviews as this does not involve in any possible ethical issues. Due to the sensitivity of the research topic and the possibility of traumatizing participants when questioning them, it will be required to have an approval from the Board of Ethics to conduct interviews with participants with experiences of being trafficked by asking their opinion on related topics. Oppositely, conducting an analysis with existing resources does not require such approval as the collection of data does not involve getting any personal information directly from participants. This method prevented the privacy issue of the possibility in revealing confidential information from participants. Additionally, obtaining inaccurate and unreliable information is not a concern as all data are collected from reliable sources such as gaining legal case files from the CanLII law database. Such form of data collection is a more appropriate method than conducting interviews as it is less time-consuming and less complicated to complete within the four-month research period. It is not required to find interview participants that meet the interview eligibility and only have to simply analyze the information I have obtained from the legal case and other supporting articles. Possible obstacles in interviews such as interviewees unwilling to provide useful information from their experiences would not occur, reflecting the usefulness of this data collection method in the focus of finding out the effectiveness of policies related to human trafficking on immigrants.

Besides from the comparative advantages of using secondary sources, the previous experience of the research is another element in determining the method of data collection in this project. Although the researcher has conducted interviews and analyzed data with existing resources in the past, the obtained skills were limited as all these experiences were conducted under university-level courses. This means that the researcher does not have a full exposure of real-life data by only collecting data from a limited sampling size, thus does not have enough

first-handed practices in obtaining primary data from participants within a sensitive topic. Issues such as having interview questions that may trigger unpleasant experiences of participants would occur if the interview method was chosen. Therefore, doing a legal case analysis could prevent these possible problems, and on the other hand the researcher could also gain more insightful knowledge about the topic itself and better equipped with analytical skills by looking into real-life legal cases for the first time as a student qualitative researcher. Relevant academic articles have been referenced in this legal case analysis to have a grasp of its structure, and the process of conducting and writing up the analysis (Hastie & Yule, 2014; Guilmain & Hanley, 2021)

In finding a legal case that fit the research focus, keywords relevant to human trafficking to immigrants were employed (Guilmain & Hanley, 2021). Specifically, phrases such as ‘human trafficking in Canada on immigrants and refugees’ and ‘immigrant labour exploitation’ were used in finding legal cases on law databases named CanLII and Nexis. An additional research assistance was received through the in-person visit to the John and Dotsa Bitove Family Law Library as there was only a certain amount of relevant legal cases through open access. A total of 38 legal case files were extracted from the West Law Canada database with the access of the law librarian, which allow comparison among cases in looking for a case that addresses the focus of this research. R. v. Orr was found to be the most relevant as it is about the applicant reported to be the victim of labour exploitation after she move to Canada and was employed by the accused. Comparison and contrast between two or more legal cases is not the aim of this paper as the goal was trying to analyze a single case in-depth on the circumstances faced by the potential victim, and how the judgement of this case brought benefits and harms in perspectives of the victim, and the vulnerable population in society.

A qualitative analysis was taken by analyzing R. v. Orr with the method of coding its two triak documents that was conducted in different years, first trial in 2013 and second trial in 2016. Themes were identified by mainly referring to the definition of labour exploitation (Guilmain & Hanley, 2021). This resulted in the two themes being ‘occurrence of violation of labour and safety standards’ that is highlighted in yellow, and ‘occurrence of direct threats or coercion’, highlighted in green (Beatson et al., 2017). The third theme highlighted in blue would be looking at the positive and negative impacts on immigrants by the alleged exploitation she experienced, and whether such impacts have changed after the sentence was made. On the other hand, there are limitations when obtaining useful data from the coded themes. The most significant one would be the lack of credibility of the complainant in the case. She gave a lot of testimonies in describing her situation of labour exploitation on her perspective; however, it is shown at the second half of the document where part of her words were only exaggerations of her experiences. Therefore, it is more time-consuming than expected in the data collection process as some highlighted themes at the beginning of the process may not be accurate, and more work was conducted in refining the obtained themes in checking its authenticity.

The upcoming discussion will explain more by comparing the benefits and/or consequences towards immigrants with findings from previous literature to observe whether the collected themes are consistent, and analyze on the implications on what improvements could be made in maximizing the welfare of immigrants and migrant workers in the future. All the coded scripts of the legal case are attached as appendixes in this paper for a better representation of the details of the R v. Orr case.

Findings

Before discussing the benefits and harms brought by the policies to immigrants with the supporting evidence from R v. Orr, it is essential to observe the details of the case in understanding the alleged circumstances of labour exploitation that the complainant experienced. This could further allow the upcoming analysis to focus on the impacts brought by the incorrect application of visa, limitations of Temporary Resident Visa (TRV) in maximizing immigrants' welfare; and the lack of supporting practices and resources for the victims when necessary.

Occurrence of violation of labour and safety standards

According to Beatson et al. (2017), the acts of labour exploitation could include fraud, violation of labour standards and violation of health and safety standards. The characteristics was shown in the employment of L.S. by Mr. Orr as mentioned in the case that:

> After L.S. and her employer's family arrived Canada, Mr. Orr did not hire a second domestic worker. Unlike the employment situation in Hong Kong, the complainant was required to assist with domestic chores such as cooking and cleaning, in addition to looking after the Orr children. […] It was said that she was forced to work 16 hours per day, seven days per week.

This revealed that L.S. was indeed a victim of labour exploitation as she does not have the freedom to decide the duration to work and what to work. In addition, the workload she had was more than what she had done in Hong Kong and different from what Mr. Orr promised to her, as noted in the case that:

> Under the terms of the Hong Kong contract, the complainant was paid the equivalent of CAD $500 per month plus room and board. When she commenced her employment, she shared a room with another domestic helper. The complainant took care of the children while the other helper did the domestic chores.

Comparing the working situation in Canada and in Hong Kong, there is a huge contrast in showing that L.S. bore more than the amount of workload she was capable to do. L.S. did not

receive the treatment she deserved but work in a relatively poor working condition with a large amount of workload that could hinder her mental health condition. This could be seen as a form of mental control where the use of physical force by Mr. Orr was not found, but providing a stressful working environment with little freedom that could contribute to the burn out of L.S mentally. To continue the circumstances faced by L.S. in the labour exploitation:

> L.S. was originally paid $500 a month when she arrived in Canada, which was the same as her received wage in Hong Kong but was less than what was required by the British Columbia law. In November 2009, the complainant's wage was increased to $700 a month. This amount was still less than what the complainant would have been entitled to be paid pursuant to the provincial law.

The employer (Mr. Orr) was being accused to pay the domestic worker (L.S.) less than required by the British Columbia law. Described in the background information of the accused, Mr. Orr lived in Canada for three decades before his whole family immigrated back to Canada. This showed that he would not be unfamiliar with the minimum wage that an employer should provide in the province he was living at that time. This thus constituted to the allegation act of underpaying L.S., which is an act that occurred under labour exploitation. The lack of freedom is another key element when identifying a person being exploited in form of labour, and L.S. was said to have herself being socially isolated and not allowed to leave her workplace as mentioned in the case that:

> Once in Canada, L.S. said she worked long hours, her duties were increased to include cooking and cleaning and she was essentially locked into the homes the Orr family lived in. […] (L.S.) was not allowed to attend church or to communicate with persons outside of the Orr family.

The above quote is a one-sided explanation by L.S. of how she was being locked up from the outer world. This is not being taken as a form of evidence in Orr's sentence in the later trial, which indirectly revealed the lack of credibility of the victim, which is also a form of consequence due to exploitation that led to exaggerated and extreme testimonies (R v. Orr, 2013 BCSC 1883; 2016 B.C. J. No. 2321). However, L.S. in fact worked for long hours of 16 hours per day with increasing number of duties, which directly led to her lack of freedom as she was required to complete the duties every day. The confiscation of personal documents is another act occurred during the employment of L.S. She did not keep her own passport after the arrival in Canada, but being kept by Mr. Orr where he gave the passport to the police by taking it out in the living room after L.S. called 911 at her last day of employment as she felt physically threatened (R v. Orr, 2013 BCSC 1883; 2016 B.C. J. No. 2321). All of the above elements were accepted in the trial except there is no proof in showing Mr. Orr isolated L.S. physically, thus it is evident that labour exploitation did occur in forms of long working hours, low wages and a loss of her own travel documentation. It is also worth noting that "Mr. Orr did profit from his employment of L.S. by paying a lower wage than what was stated in the provincial law", which further proven the nature of exploitation of the employment situation of L.S. (R v. Orr, 2013 BCSC 1883; 2016 B.C. J. No. 2321).

Being said that L.S. experienced labour exploitation when she started working until the point where she called 911, it is not noted in the case that she had received any form of supports or interruptions in solving the situation. This could explain the lack of execution and the passive attitude of immigration agencies, actions such as active investigation on migrant workers that moved to Canada recently for employment were non-existent at that time, reflecting the lack of long-term observations on new immigrants. Random check-ups on non-working visa holders by

officers could be one of the improvements as this is helpful in examining the dangers they are facing. Additionally, this prolonged their experience of being exploited and increase their vulnerability to be targeted for future human trafficking within Canada, showing that the weaknesses in the TRV program exert more harm than benefits to immigrants in long-term. Nevertheless, the eligibility of L.S. in getting into Canada with TRV legally contributed to a complicity in analyzing this case as a form of human trafficking as TRV holders could legally work for 6 months. In the case of R v. Orr, it is accepted that fraud was conducted by Mr. Orr towards L.S. by making an unrealistic promise that she would become a permanent resident with the TRV after working for his family for two years.

Occurrence of direct coercion and fraud

Coercion is also one of the indications of labour exploitation. It is mentioned in R v. Orr that:

> Sunday, June 14, 2010, was L.S.'s last day with the Orrs. That morning Ms. Huen got angry at L.S. for giving Vanessa a glass of soy milk. Ms. Huen threw the glass of milk in front of L.S. and grabbed the cloth L.S. was using to wipe the counter. Ms. Huen grabbed L.S.'s T-shirt and pushed her into the counter. She yelled in Chinese at L.S. and pushed her index finger at L.S.'s right temple. L.S. was scared and said if Ms. Huen did not stop she would call the police. Megan was crying and Mr. Orr came into the kitchen with Ashley. L.S. called 911.

In this situation, it is evident that physical threating is involved where Ms. Huen, the wife of Mr. Orr, created a damage of the glass object, providing a fearful environment that L.S. must follow her orders to avoid further injuries to herself. L.S. was also insulted with Ms. Huen’s act of pushing the finger onto her temple. This could be seen as a form of physical insult which made L.S. felt helpful as her employer was exploiting the authority and required L.S. to conduct more workload due to the angry and unsatisfied from her employer. How Ms. Huen expressed her discontent towards the duties conducted by L.S. increased the possibility of a worsening working

environment with direct threats, which will further deteriorate the labour exploitation L.S. was facing if she were not able to call the 911 for emergency at that moment. Although Ms. Huen was acquitted of the alleged charges in the trial as there were no proof in showing L.S. faced a prolong period of direct threats, the existence of such coercion behaviour was the beginning of the elevation in the degree of labour exploitation as both physical and mental health of the worker was negatively impacted. In addition, this further added stress onto the condition of L.S. that directly led to her report to the 911 and being identified as a potential victim of labour exploitation by police officers. The fact that L.S. was only being discovered as an exploited worker after she had called for help in an emergency situation echoes with the analysis from the previous theme that the practices conducted by officers were very limited in protecting the security of the permit holders, showing that it was bringing more harm to than benefits the victim itself.

Additionally, it is said that Mr. Orr allegedly conducted a fraud behaviour towards L.S. in order to bring her into the Canadian border and continue to employ her under exploiting conditions. It is written in the case that:

> In the end of 2007 or early 2008, Mr. Orr told the complainant that the family was moving to Canada. The complainant was invited to come to Canada with the family. Mr. Orr told her that if she went to Canada, she would take care of the children and the family would get another helper for domestic chores. She was told that she would work eight hours a day, the same hours as she had in Hong Kong. She was also told she would be paid as required by Canadian law. Mr. Orr told the complainant that once she had been in Canada for two years, he would assist her in becoming a permanent resident of Canada. […] She could also move and settle her children in Canada afterwards.

The above quote provided a detail description of what promised Mr. Orr made to L.S. before the immigration of his family. However, none of the promises were being fulfilled during the

employment period. Labour exploitation was evident: the working conditions were not bearable by reportedly working 16 hours per day and receiving a wage lower than what was defined in the provincial law. Despite of having an increase of workload on L.S., she did not have another co-worker to work with but require completing the unbearable tasks by herself over the two years of employment in the Orr's family. Simply, this indicated a fraud situation where Mr. Orr used unrealistic promises to attract L.S. interests to work in Canada under the same employer. After realizing the reality was different from Mr. Orr's promises, L.S. could only continue to work under exploited conditions, showing how the use of potentially fraud could trap the worker and continue the form of exploitation. This was where the human trafficking allegation of Mr. Orr of using fraud in illegally bringing an undocumented worker raised. Due to the unstable credibility and contradictions in the testimonies of L.S., this charge was not sentenced, but it is still worth to discuss on the policies of how human trafficking and/or labour trafficking are defined and accepted as form of offence.

At first, this could be seen as a form of human trafficking by bringing a domestic worker into Canada and conducted labour exploitation towards the worker. However, the accused of this case was not being sentenced with human trafficking at the second trial, partly due to the lack of reliable evidence provided by the complainant. Even when an experience of human trafficking was noted on the perspectives of L.S., it was invalid to present any sentences to the accused only with some one-sided testimonies. It could be seen as a limitation to victims of human trafficking where they had to find proofs that would be accepted by the courts to fight for their justice in sentencing the human traffickers. This analysis of the R v. Orr have shown a similarity to previous findings, where victims with Temporary Resident Permits (TRP) had to search for materialistic evidence in proofing themselves as victims of exploitation or human trafficking.

The similar yield of findings from past academic articles and this paper exposed the prolonged problem of unable to protect the victims' basic rights even when they were no longer within a exploited situation. Huge reforms are necessary in changing this continuous weaknesses across different immigration policies so as to benefit immigrants, refugees and migrant workers.

Negative impacts on the victim by the act of exploitation and trials

Although some of the testimonies by L.S. lacked in credibility as she mentioned her situation with exaggeration, it is still agreed that she was a victim of labour exploitation (R v. Orr, 2013 BCSC 1883; 2016 B.C. J. No. 2321). She was discovered as a vulnerable person with her self-report by calling the 911 when she faced physical violence by her employer in 2010. She was then identified as a person that require protection from authorities by the issue of a temporary resident permit. With this experience of being exploited, negative impacts to her living was evident as she mentioned in the victim impact statement:

> […] She says she used to trust people, but now doubts everything people say. She says she had to stop working to testify at the trial and recently lost a job because her employer did not believe she was able to legally work in Canada due to the media attention from the trial.

This revealed that her life was still undesired after her report of labour exploitation to the police. L.S. called for help due to the hostile situation in her workplace with Ms. Huen, the wife of the alleged, yelling at her and pushed her into the counter. She was able to get rid of the circumstance of being exploited and threated, however, she did not receive the protection she required to have as an alleged victim of labour trafficking though she was no longer working for her employers. The public and the media was very focused in her trials, and there is no service specifically for victims like L.S. to provide a shelter and safe place for them to recover from their experiences of being exploited. In addition, L.S. as the victim had to deal with all the complicated legal process after her self-report to the police,

which directly lead to her loss of source of income for herself and not have a stability in her life after labour exploitation. This is an example of how supports provided by the governmental programs are insufficient as there are barely any actual supports for victims' living. Issuing a temporary permit for the victim to have a status to stay in Canada is not a form of effective protection policy as this is only a basis for them to live in a place, but not providing them additional opportunities in receiving mental health and economic supports. Victims themselves like L.S. may need to find the suitable supports by themselves through non-governmental organizations, however, most of such services are not free of charge which hinder the condition and recovery of victims. Thus, this revealed the importance of the federal government in publishing new policy reforms in targeting the actual needs of victims in their life for a better settlement in Canada after them being exploited and/or trafficked.

Additionally, L.S. also had negative experiences during the period of labour exploitation as the legal case noted:

> When she came to know that she was in the country illegally, because she had no friends or relations in Canada, she was socially isolated with limited available options to resolve her situation. It was only after she made her 911 call that she found the assistance she required.

This statement could explain what the weaknesses of the permit programs are. At first, L.S. had no idea what permit she was holding in order to work in Canada as the permit was applied by Mr. Orr. After she realized that she was holding a Temporary Resident Visa (TRV), which is not a long-term working visa, she could not think of any solutions to continue work in Canada legally, and not harming her own safety and welfare at the same time. It is said that 'she had nowhere to go for help and could not extract herself from the situation', showing that there is a lack of supports specifically in dealing with

undocumented workers that were working in Canada illegally without themselves realizing at the first place. Deportation is one of the most feared consequences for migrant workers like L.S. as this equates to them losing their current job directly. From this case, it could be seen that the lack of flexibility and out-dated terms are the two limitations of the TRV permit program. First, this visa had to be applied overseas before migrant workers arrive in Canada, but it does not have a strict regulation of requiring the worker to apply all by herself. In this case, Mr. Orr helped L.S. to complete all the application forms and only required her to have a sign on the document. This led to the problem where there is no monitoring by government officers to confirm the migrant worker is clear and understand all the conditions and the characteristics of the program. This carelessness in the permit application process provided a loophole for employers to possibly exploit migrant workers after arrival in maximizing their own benefits. Although this limitation could be avoided by having migrant workers to have an awareness in understanding the applied permit, the government should also have a role in acknowledging the rights of migrant workers to prevent any possibilities of human trafficking and labour exploitation at the first stage. Moreover, the government did not invest in providing free services in supporting the circumstances migrant workers faced when they realized themselves as victims of exploitation. When migrant workers tried to ask for help, it is most likely that officers would deport them by following the policies and guidelines. This inflexibility should be improved by taking the workers' circumstances into account before making any decisions that may deteriorate the quality of living of migrant workers. Thus, reforms are a must in reducing the number of labour exploitation and actively giving out resources that victims required when necessary. This could customize the terms in the permit programs to

maximize the benefits of immigrants and migrant workers, and could be effortful in preventing harms related to labour exploitation.

Discussion

The findings in this paper have shown a consistency with previous research in providing a strong explanation on how current policies and practices failed in providing welfares to immigrants and migrant workers, but increasing their vulnerability towards human trafficking and exploitation. With the supporting themes generated from the R v. Orr case, the research focus of this paper could be answered with such policies and practices are bringing more harms than benefits to the vulnerable population.

In terms of policy works, the terms stated in the anti-trafficking policies are unhelpful to victims as they had to find evidence in proofing themselves as those who once faced exploitation, which discourage exploited immigrants and migrant workers to clarify their rights and fight for their justices themselves. The number of human trafficking cases is greatly underestimated due to the characteristics of victims not reporting to policing agencies, as some of them assume that identifying themselves as victims of human trafficking would do no good to themselves in gaining additional benefits. Sadly, this perception is true as supported by the findings. In the case of R v. Orr, minimal protection is given to the victim (L.S.) by issuing a 12-month Temporary Resident Permit specifically for victims of trafficked persons (TRP-VIP). This is consistent with the previous findings, where victims are no longer undocumented residents and could legally reside in Canada in short-term. However, there is no actual protection provided as victims have to find various resources by themselves in getting back into society, such as finding job opportunities and places to live in. The immigrant programs provided by the federal government does not have such resources to supply their living immediately as there are no sufficient assistance targeting victims of human trafficking specifically. In addition, when victims decided to put on accusations towards the alleged human traffickers, they are required to

pay a huge amount of expenses only for the trials. Legal services that are free of charge are not one of the services provided by the government, which legal intervention such as providing legal assistance in filling the knowledge gaps of the victims does not exist (Guilmain & Hanley, 2020). On the perspectives of victims, they are required to invest more expenses to afford professional legal services and these further burdens their financial condition and stability of their life after experiencing exploitations. To providing constructive resources for victims, financial aids could be established in lessen their burden on legal processes so their personal expenses could be spent on self-recovery and healing from past exploitation experiences. Other reforms such as professional mental health services should also be provided, especially for victims that get rid of situations of human trafficking recently. Organizing gatherings for victims to open up their experiences with other victims if they are comfortable to do so, and counselling sections by professionals are some of the suggested improvements that could be made. These could further speed up the recovery for victims and alleviate their mental stress after being exploited. It is recognized that such services are currently being provided by government organizations such as the police force. For example, the crisis intervention and victim supporting unit in London, Ontario provides services like therapeutic solutions and stress management could be provided to victims when required (Department of Justice, 2016). However, further improvement is still required as such governmental services are still minimal in every city. There are only two locations in the city that provides services specifically for adult human trafficking victims, showing the lack of service coverage geographically. Thus, an increase of victim services by the government would be useful in providing more benefits to victims. Such federal and/or provincial victim services have a great significance as they could provide a wider coverage of service to more people that are in need, and this is difficult to be done non-profit

organization that provide similar victim services. Also, charges in using government services are usually in a relatively lower rate than average, and the service locations are more convenient to access for victims (i.e. located in downtown of a city), leading to more victims to benefit from such services and improve from the current weakness insufficiency of resources (Department of Justice, 2016).

On the other hand, victims also face difficulty during the legal process. Specifically, it is difficult for them to find strong evidence to proof themselves as persons who experienced human trafficking, leading to the low chance of finding the accused guilty of human trafficking allegations. This is evident in the R v. Orr case, where the credibility of L.S. was the main element in determining the degree of guilty of the accused (Guilmain & Hanley, 2020). L.S. mentioned that she worked under the Orr's family dehumanizing conditions in the two years of employment, but this portion of the testimony was not being accepted in the trial (R v. Orr, 2013 BCSC 1883; 2016 B.C. J. No. 2321). It is true that there was a lack of credibility in the victim, but it was reasonable to have discrepancies among testimonies when considering the unstable mental condition of the victim. This revealed the weakness of the terms in the Immigration and Refugee Protection Act (IRPA) section 118 (1), specifically the method of how actual decisions were made based on this act by judges in trials (Guilmain & Hanley, 2020). In R v. Orr, the credibility was often being questioned as if this was the main concern rather than the alleged trafficking acts conducted by the accused. As consistent with the previous research conducted by Guilmain and Hanley (2020), the trials largely focused on investigating the reliability of the victim and not centering on the intention and causes of the labour exploitation by the accused, nor looking into the past conduct of the accused in a detailed way. This is problematic as the vulnerability of the exploited victims was not being properly accessed, which could pose a bias

situation within the judgement of human trafficking charges. When proofs provided by the victims were not being accepted during the trials, their vulnerability on human trafficking and exploitation would increase further as the terms within the IRPA does not provide a legal protection towards them by having a sentence that may not totally reflect the experiences of the victims. To solve this weakness, legal reforms are hard to be carried out due to the complicated legal review process. However, there are still improvements that could be done such as having new trainings towards legal officials in emphasizing the importance of viewing different parties equally in trials and the importance of digging into the circumstances they face before deciding any sentences towards the accused. The reason to have such suggestions is due to the unique nature of human trafficking. The crime of human trafficking and exploitation is the issue that more people are involved in caring about the victims and the increase of cases within Canada. Also, the continuous rise of accepted immigrants and refugees into Canada lead to the increase of public awareness on the hardships this vulnerable population face in relation to being trafficked. Therefore, small efforts could still be conducted starting from the practices of legal officials in order to lessen the barriers for victims to face during the legal process.

In terms of practices by officers, there is a lack of additional governmental resources in assisting victims in exploited situations to get rid of the situation, leading to the lack of continuous protection on the living of permit holders by immigration officers. Immigration programs such as the Temporary Resident Visa (TRV) do not have follow-up monitoring towards permit holders that arrived Canada recently. In R v. Orr, L.S. used the TRV to enter the border and could work for 6 months legally. If she would like to continue her employment in Canada, she should apply to extend this visa. This situation did not occur on L.S. as she was not responsible for her own visa application process entirely. Mr. Orr was the person that decide

which visa should L.S. acquire and helped her with the initial application. L.S. had no idea which visa she was obtaining as Mr. Orr did not inform her about the concerns of the visa (i.e. she could only work as a domestic worker for 6 months and unable to work permanently under this visa, which was opposite of what Mr. Orr promised her at the beginning). This was a form of fraud, which begins the process of labour exploitation of the victim. The border officials were unable to identify L.S. as an potential victim of labour exploitation at arrival as he/she wrongly identify her as a Hong Kong citizen entering Canada, and not a domestic worker of a Hong Kong family (R v. Orr, 2013 BCSC 1883; 2016 B.C. J. No. 2321). L.S. was not holding a working visa but a TRV is another factor in causing this mistake. From this instance, it revealed the lack of regulation of the TRV. Officers could easily misinform themselves without having a detail look on every immigrant's passport at the time of arrival due to the complicities of the working conditions of TRV permit holders. In addition, there was not monitoring services available in having a brief check-up on the living of the immigrants, which created a loophole for situations such as the R v. Orr to have a domestic worker holding a non-working visa and increase her possibility of being exploited after arrival. Monitors towards permit holders are thus important in preventing and identifying cases of human trafficking as soon as possible, and to provide suitable assisting services immediately in lowering the harms to victims caused by the traumatic experiences. The current policy improvement of the new permit – Open Work Permit (OWP) would be a long-term effective solution in reducing exploiting cases like R v. Orr. OWP is a relatively new permit that was introduced in June 2019, and permit holder could work for 12 months under this program. Unlike the TRP and Temporary Foreign Worker Program (TFWP), OWP as a working visa would not limit migrant workers and immigrants to work under one employer only which allows a higher level of freedom. In addition, people with OWP could have

the condition to apply for permanent residency in Canada with a certain number of working experiences, this reduces their vulnerability to human trafficking as migrant workers would choose rather choose reliable and desired job offers in maximizing their opportunity of their residency to be approved. OWP holder could also bring their family member to reside in Canada during their working period, providing relatively more benefits towards immigrants and their living conditions when compared to past permit programs (Immigration, Refugees and Citizenship Canada, 2022). Moreover, the OWP also provides a temporary protection towards vulnerable foreign workers who are victims of abuse (Immigration, Refugees and Citizenship Canada, 2022). Victims of human trafficking could then apply for this permit as a form of protection and eligible to work, which hoping to offset the weaknesses of other immigration and working permits that are identified in the findings in this paper and previous literature.

With the continuous influx of immigrants, migrant workers and refugees arriving to Canada in hoping to start a better life of their own, it is important to have the immigration policies and practices in efforts of anti- human trafficking to be effective at its best to protect the incoming vulnerable population. As seen from the findings yielded from the coded theme in the R v. Orr case, it is concluded that the current immigration policies and practices are ineffective towards this population as they bring more harms than benefits towards this group, and increasing their vulnerability to be targets of human trafficking and labour exploitation. Weaknesses of these policies include the lack of protection resources to migrant workers, problematic policy conditions in omitting the victims' circumstances when defining the level of guilty on alleged human traffickers; and unreliable practices of border officers in identifying potential victims of human trafficking. Although improvements are difficulty to be conducted in short term, a few possible directions for reforms are suggested, such as renew training guidelines

towards legal practitioners and officers, and continue the reliance on the issue of Open Work Permit to immigrants and victims when necessary. These suggestions may allow cases of human trafficking to be more visible in the perspectives of the federal government, thus able to control the prevalence of these offences within Canada. As human trafficking targeting immigrants and refugees is relatively a new research aspect within the academia, future research should focus on undiscovered aspects of human trafficking. The situations of sex trafficking towards migrant workers and related policies could be one of the research areas as there is an insufficient amount of primary data related to these victims. Another direction could be assessing the potential weaknesses of the Open Work Permit in observing whether this permit is able to identify and prevent cases of human trafficking and exploitation towards immigrants effectively. When there is a consistent amount of future research conducted, it would be interesting to compare and observe whether immigration policies and practices are still providing more harms than benefits towards towards immigrants, refugees and migrant workers.

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Appendix A: Coded legal case – R. v. Orr (2013)

2013 BCSC 1883 British Columbia Supreme Court

R. v. Orr
2013 CarswellBC 4173, 2013 BCSC 1883, [2013] B.C.J. No. 2257, [2015] B.C.W.L.D. 3070, [2015] B.C.W.L.D. 3071, 109 W.C.B. (2d) 701, 20 Imm. L.R. (4th) 456
Regina v. Franco Yiu Kwan Orr and Oi Ling Nicole Huen

Goepel J.

Heard: August 21, 2013 Judgment: October 15, 2013 Docket: Vancouver 26094

Counsel: P.R. LaPrairie, C.F. Hough, for Crown
N.J. Preovolos, for Defendant

Subject: Contracts; Criminal; Immigration
Related Abridgment Classifications
Immigration and citizenship V Enforcement
V.1 Offences
V.1.a Human smuggling and trafficking
V.1.a.ii Penalties Immigration and citizenship
V Enforcement
V.1 Offences
V.1.c Misrepresentation
V.1.c.iii Penalties

Headnote
Immigration and citizenship --- Enforcement — Offences — Human smuggling and trafficking — Penalties

Accused brought foreign domestic worker to Canada on temporary resident visa when he knew they were planning to stay permanently — Accused paid worker amounts less than required by provincial law — Extension of temporary resident visa was denied, but accused continued to employ complainant — Accused was convicted by jury of human trafficking, employing foreign national in unauthorized capacity, and misrepresentation contrary to Immigration and Refugee Protection Act — Parties made submissions on sentence — As this was first conviction in Canada under s. 118 of Act, there were no Canadian sentencing authorities — Sentences imposed for human trafficking under Criminal Code were of little assistance, as exploitation is essential ingredient of that offence, which was not present in this case — Complainant's evidence that she worked in humiliating and degrading conditions was not accepted — Fact accused had been productive, law-abiding member of society for 30 years was mitigating factor — Aggravating factors included that accused profited from offence by paying worker less than legislated minimum wage, and continued to employ her after receiving letter requiring worker to

leave immediately — Conditional sentence would be inconsistent with denunciation and general deterrence — Accused sentenced to 18 months in jail on human trafficking charge — Accused sentenced to six months in jail on other charges, to be served concurrently.

Immigration and citizenship --- Enforcement — Offences — Misrepresentation — Penalties Accused brought foreign domestic worker to Canada on temporary resident visa when he knew they were planning to stay permanently — Accused paid worker amounts less than required by provincial law — Extension of temporary resident visa was denied, but accused continued to employ complainant — Accused was convicted by jury of human trafficking, employing foreign national in unauthorized capacity, and misrepresentation contrary to Immigration and Refugee Protection Act — Fact that accused had been productive, law-abiding member of society for 30 years was mitigating factor — Aggravating factors included that accused profited from offence by paying worker less than legislated minimum wage, and continued to employ her after receiving letter requiring worker to leave immediately — Conditional sentence would be inconsistent with denunciation and general deterrence — Accused sentenced globally to 18 months in jail, 18 months for human trafficking charge and six months in jail on each charge of misrepresentation and employing foreign national in unauthorized capacity, to be served concurrently.

Table of Authorities

Cases considered by *Goepel J.*:

R. v. Brisson (2009), 2009 BCSC 1606, 2009 CarswellBC 3153 (B.C. S.C.) — followed

R. v. Choi (2013), 2013 MBCA 75, 2013 CarswellMan 442, 294 Man. R. (2d) 261, 581 W.A.C. 261, 301 C.C.C. (3d) 390, 5 C.R. (7th) 85, 21 Imm. L.R. (4th) 1, [2013] 12 W.W.R. 711 (Man. C.A.) — considered

R. v. Ferguson (2008), [2008] 5 W.W.R. 387, 290 D.L.R. (4th) 17, 371 N.R. 231, 87 Alta. L.R. (4th) 203, [2008] 1 S.C.R. 96, 2008 SCC 6, 418 W.A.C. 79, 2008 CarswellAlta 228, 2008 CarswellAlta 229, 54 C.R. (6th) 197, 228 C.C.C. (3d) 385, 425 A.R. 79, 168 C.R.R. (2d) 34 (S.C.C.) — followed

R. v. Hupang (2008), 2008 CarswellBC 2498, 2008 BCCA 4, 76 Imm. L.R. (3d) 1, 440 W.A.C. 298, 261 B.C.A.C. 298 (B.C. C.A.) — considered

R. v. Li (2009), 2009 CarswellBC 449, 2009 BCCA 85, 267 B.C.A.C. 77, 450 W.A.C. 77 (B.C. C.A.) — followed

R. v. Shropshire (1995), 43 C.R. (4th) 269, 102 C.C.C. (3d) 193, 188 N.R. 284, 129 D.L.R. (4th) 657, 65 B.C.A.C. 37, 106 W.A.C. 37, [1995] 4 S.C.R. 227, 1995 CarswellBC 906, 1995 CarswellBC 1149 (S.C.C.) — referred to

R. v. Tongo (2002), 2002 BCPC 463, 2002 CarswellBC 2657 (B.C. Prov. Ct.) — considered

Statutes considered:

Criminal Code, R.S.C. 1985, c. C-46

s. 279.01 [en. 2005, c. 43, s. 3] — considered

s. 718-718.2 — considered

s. 718.1 [en. R.S.C. 1985, c. 27 (1st Supp.), s. 156] — considered s. 724(2) — considered

s. 724(3) — considered

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Generally — referred to s. 118 — considered
s. 118(1) — considered s. 120 — considered
s. 121 — considered
s. 121(1) — considered
s. 124(1)(c) — considered
s. 125 — considered
s. 127 — considered
s. 127(a) — considered
s. 128 — considered

Regulations considered:
Immigration and Refugee Protection Act, S.C. 2001, c. 27
Immigration and Refugee Protection Regulations, SOR/2002-227

Generally — referred to

SENTENCING of accused convicted of human trafficking and other offences under *Immigration and Refugee Protection Act*.

***Goepel J.*:**

Introduction
On June 26, 2013, a jury found Mr. Orr guilty of the following offences under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*]:

Count 1

Franco Yiu Kwan ORR, between the 1 st day of December, 2007 and the 14 th day of June, 2010, at or near the cities of Richmond and Vancouver, in the Province of British Columbia, and in the Hong Kong Special Administrative Region of the People's Republic of China, did knowingly organize the coming into Canada of [the complainant], by means of abduction, fraud, deception or use of threat of force or coercion, thereby committing an offence contrary to section 118(1) of the *Immigration and Refugee Protection Act*.

Count 2

Franco Yiu Kwan ORR, between the 8 th day of September, 2008, and the 14 th day of June, 2010, at or near the Cities of Richmond and Vancouver, in the Province of British Columbia, did employ a foreign national, to wit: [the complainant], in a capacity to which the foreign national was not authorized under the *Immigration and Refugee Protection Act* to be employed, contrary to Subsection 124(1)(c) of the *Immigration and Refugee Protection Act*.

Count 3

Franco Yiu Kwan ORR, on or about the 25 th day of June, 2008, at or near the Hong Kong Special Administrative Region of the People's Republic of China, did misrepresent or withhold material facts relating to a relevant matter that induced or could induce an error in the administration of the *Immigration and Refugee Protection Act*, to wit: providing false information to the Consulate General of Canada in support of the application for a temporary

> resident visa for entry to Canada for [the complainant], contrary to section 127(a) of the *Immigration and Refugee Protection Act*.

The jury acquitted Mr. Orr's wife, Ms. Huen, on counts one and two.

I must now impose a sentence. The Crown seeks a global sentence for the three offences of between five and six years.
The defence seeks a conditional sentence.

Circumstances of the Offence
The task of sentencing is made more difficult in this case because a jury is not required to give reasons for its decision or to set out the facts that it found in arriving at those decisions. The role of the sentencing judge after conviction by a jury is set out in ss. 724(2) and (3) of the *Criminal Code*, R.S.C. 1985, c. C-46, [the *Criminal Code*].

The applicable principles were summarized by Joyce J. in *R. v. Brisson*, 2009 BCSC 1606 (B.C. S.C.) at para. 5, distilling the Supreme Court of Canada's judgment in *R. v. Ferguson*, 2008 SCC 6 (S.C.C.):

1. The sentencing judge must determine the facts necessary for sentencing from the issues before the jury and from the jury's verdict.
2. The sentencing judge is bound by the express and implied factual implications of the jury's verdict, and must accept as proven all facts express or implied that are essential to the jury's verdict.
3. The sentencing judge must not accept as fact any evidence consistent only with a verdict rejected by the jury.
4. When the factual implications of the jury's verdict are ambiguous, the sentencing judge should not attempt to follow the logical processes of the jury, but should come to his or her own independent determination of the relevant facts.
5. Aggravating facts must be established beyond a reasonable doubt. Other facts must be established on a balance of probabilities.
6. The sentencing judge should therefore find only those facts necessary to permit the proper sentence to be imposed in the case at hand. The judge should first ask what the issues on sentencing are, and then find such facts as are necessary to deal with those issues.

In this case, the findings of fact are of critical importance in determining the appropriate sentence. As such, I find that the facts that follow were proven at trial.

The complainant was born and grew up in the Philippines. She graduated from high school and attended one year of college. She has three children, who were aged three, 18 months and eight months when she first left the Philippines in 2000 to work as a caregiver.

The complainant worked as a caregiver in various countries in order to support her children. She sent back to the Philippines almost all of the money she earned in her various positions.

The complainant was initially employed as a caregiver in Saudi Arabia on a two-year contract which commenced in 2000. That contract was subsequently renewed for an additional two years. In June 2004, she commenced work as a caregiver in Lebanon. That position ended because of civil strife in that country. In 2006, she obtained a position in Hong Kong as a domestic worker. That position terminated on or about June 12, 2007.

After her initial position in Hong Kong terminated, the complainant entered into a two year contract to work for the Orr family in Hong Kong. She commenced that employment on August 15, 2007. At that time, the Orrs had two children: Vanessa who was two and a half and Ashley who was less than one. A third child, Megan, was born on December 8, 2007.

Under the terms of the Hong Kong contract, the complainant was paid the equivalent of CAD $500 per month plus room and board. When she commenced her employment, she shared a room with another domestic helper. The complainant took care of the children while the other helper did the domestic chores.

After Megan was born, the complainant shared a room with Megan. Her duties included changing diapers, feeding and bathing Megan, and taking care of Megan if she was ill. If the baby woke up in the night, it was the complainant who took care of her. She also provided some assistance taking care of Vanessa and Ashley. The other worker continued to do the domestic chores.

Sometime towards the end of 2007 or early 2008, Mr. Orr told the complainant that the family was moving to Canada. The complainant was invited to come to Canada with the family. Mr. Orr told her that if she went to Canada, she would take care of the children and the family would get another helper for domestic chores. She was told that she would work eight hours a day, the same hours as she had in Hong Kong. She was also told she would be paid as required by Canadian law. Mr. Orr told the complainant that once she had been in Canada for two years he would assist her in becoming a permanent resident of Canada.

The complainant relied on these representations in agreeing to come to Canada. She enjoyed working for the Orr family and they treated her well in Hong Kong. Based on her discussion with Mr. Orr she expected that she would continue to work for them as long as they need her services which she expected to be several years.

The general rule is that any foreign national who wishes to work in Canada must first obtain a work permit. A work permit must be applied for from outside the country.
Canada has established a specific program under *IRPA* for foreign nationals who wish to work as live-in caregivers. Applicants must apply from outside the country for a work permit. To obtain the work permit the applicant must meet certain minimum standards of education and experience, be able to communicate effectively in either French or English and have an employment contract with their intended employer. The employment contract must meet the employment standards of the province in which the caretaker proposes to live. A person accepted into the caretaker program can ultimately apply for permanent residence in Canada.

The *Immigration and Refugee Protection Regulations*, SOR/2002-227, have a special provision which exempts foreign national caregivers from the work permit requirement. The exemption allows a caregiver to work in Canada for a maximum of six months while accompanying their employer. In such situations the caregiver is issued a Temporary Resident Visa.

The complainant relied on Mr. Orr to arrange her travel documentation. Mr. Orr had her complete an application for a Temporary Resident Visa.

Mr. Orr wrote a letter, dated June 25, 2008, to Citizenship and Immigration Canada ("CIC") in support of the visa application. In his letter he disclosed that the complainant had been employed as a domestic helper looking after the family's three young children since September 2007. He wrote that he would purchase a return airline ticket for her "after we have completed our visit" and that "she would travel back to Hong Kong with us".

The June 25, 2008 letter is the basis for the offence set out in Count 3. Essential to the jury's verdict on that count is a finding that at the time the letter was written, Mr. Orr intended to remain permanently in Canada and if that information had been known to the immigration authorities, the application for a Temporary Resident Visa would have been rejected.

The complainant was granted a Temporary Resident Visa. The visa expired March 1, 2009. The visa allowed but a single entry into Canada.

The Orr family and the complainant arrived in Canada on September 9, 2008. Mr. Orr did not hire a second domestic worker. Unlike in Hong Kong the complainant was required to assist with domestic chores such as cooking and cleaning, in addition to looking after the Orr children.

After the family arrived in Canada the complainant continued to be paid $500 a month plus room and board. When she raised this issue with Ms. Huen she was told she would continue to be paid that amount until her Honk Kong contract expired.

In November 2009, the complainant's wage was increased to $700 a month. This amount was still less than what the complainant would have been entitled to be paid pursuant to British Columbia law.

On or about March 1, 2009, Mr. Orr prepared on behalf of the complainant an application to extend her Temporary Resident Visa until August 30, 2009. By letter dated June 11, 2009, immigration officials advised the complainant that her request for an extension was denied and she was to leave Canada immediately. Mr. Orr knew the extension was refused.

Mr. Orr admits that he employed the complainant from September 9, 2008 until March 9, 2009. He says that subsequent to that date the complainant was a guest in their home, but not employed there. He says he would from time to time give her money to assist her.

The jury was instructed that if Mr. Orr was convicted on Count 3, it would mean that the complainant's visa was obtained by misrepresentation and as such would be a nullity. If the visa was a nullity, the complainant could never have legally been employed in Canada and the jury

must return a guilty verdict on Count 2 based on Mr. Orr's admission that he employed the complainant from September 2008 until March 2009. Accordingly, it was not essential for the jury, in reaching its verdict, to decide whether the complainant remained employed in the period of March 9, 2009 to June 13, 2010.

The complainant testified that she remained employed until June 13, 2010. Her reason for coming to Canada with the Orr family was to earn money which she could send back to her family. If the complainant was not employed, there was no reason for her to stay in Canada. The complainant continued to receive a monthly wage and in November 2009 that wage was increased from $500 a month to $700 a month. I do not accept Mr. Orr's evidence that he did not continue to employ the complainant after receiving the letter from CIC rejecting the extension of her visa in June 2009. His evidence does not raise a reasonable doubt. I find that Mr. Orr continued to employ the complainant until June 13, 2010.

The complainant remained in the Orr home until June 13, 2010. On that day, after a quarrel with Ms. Huen, the complainant called 911. The police came to the Orr home in response to the call and ultimately removed the complainant from the home.

It is implicit in the jury's findings that the complainant's conditions of employment were different in Canada than in Hong Kong. The complainant was told there would be a second domestic helper who would do the household chores. There was not. She was also told she would be paid Canadian wages. She was not. Even when her wages were increased in November 2009 to $700 a month she was being paid less than the required wage under British Columbia law.

The more contentious factual questions are in regards to the particulars of her working conditions and whether the complainant was the victim of exploitation. In that regard, I note that the Crown did not lay charges under s. 279.01 of the *Criminal Code*, which makes it an offence to exercise control, direction or influence over the movements of a person for the purpose of exploiting them or facilitating their exploitation.

The particulars the Crown now relies on were not essential to the jury's verdict. The Crown relies on them, however, as the foundation of their sentencing submission. The particulars constitute aggravating factors which must be proven beyond a reasonable doubt.

The Crown submits that the complainant worked for 22 months in the Orr household under humiliating and degrading conditions. It submits she was forced to work 16 hours per day, seven days per week and was not allowed to attend church or to communicate with persons outside of the Orr family. It submits that her passport was withheld from her and she was not permitted to venture out of the house on her own. It submits that contact with her family in the Philippines was limited and she was only able to wire money to her family through Mr. Orr. It says the doors to the Orr resident could only be opened by means of an electronic keypad and that the complainant was not told the code. It says she was kept in a situation of isolation and control amounting to a form of modern-day slavery.

Mr. Orr denies the complainant was kept as a virtual slave. He says she was free to come and go from the house as she desired. He denies that she worked 16 hours per day. He says she could

make unlimited phone calls to the Philippines. He denies that the complainant's passport was kept from her. He says she was treated as a member of the family and the family all celebrated her birthday.

The Crown's submission in relation to these aggravating facts is entirely dependent on the testimony of the complainant. It submits that it is implicit in the jury's verdict that it rejected Mr. Orr's evidence as untruthful and believed the complainant's evidence as to the manner in which she was treated in the Orr household.

As noted, all aggravating factors must be proved beyond a reasonable doubt. The fact that Mr. Orr was convicted does not mean that the jury believed all of the complainant's evidence. The jury was free to accept some or all of her evidence.

The jury's decision to acquit Ms. Huen of the charges against her is a clear indication that the jury did not accept all of the complainant's evidence. Some of her testimony was contradicted by other evidence led at trial from independent witnesses. Four examples will suffice.

The complainant testified that she only learned that her visa had expired and she was in Canada illegally on June 13, 2010, when she saw the immigration authorities on the day the police took her from the Orr home. She says she never knew her immigration status prior to June 13, 2010. Ms. Velasco, a Filipino nanny in whom the complainant had confided, testified that the complainant had told her that she was in Canada without status. She said that the complainant had told her that she had entered Canada as a tourist and had now overstayed as her employer had not renewed her visa.

The complainant testified that in the fall of 2008, Mr. Orr made all remittances on her behalf to the Philippines. She further testified that she did not have her passport at any time subsequent to the issuance of the visa in July 2008. She testified the remittances totalled less than $1,000. She denied that she had used her passport to open an account at the Philippines National Bank (the "PNB"). She denied that she had made those remittances from the PNB.

The records of the PNB indicate there were four remittances made in the fall of 2008 totalling in excess of $1,800. The PNB records show that an account was opened in the name of the complainant on October 22, 2008. Mr. Barros of the PNB testified that a party can only open an account if they show identification. A Filipino passport is an acceptable form of identification. When an account is opened, the bank's practice is to have the teller examine the passport to verify that the individual presenting the passport is the person to whom it belongs.

The complainant testified that she needed to enter a code in order to exit the Grant Street residence. She said there was a keypad lock on the front door. She testified people inside the house needed a key to open the door. She testified a key was needed to leave the townhouse premises. Several witnesses testified that there were ordinary locks on the doors. All testified that you did not need a key to open the doors from the inside.

The complainant testified that she was only allowed to call home to the Philippines once a month. In Hong Kong she called home three times a week. Evidence at the trial showed that

some 95 calls were placed on the phone in the Grant Street residence to a cell phone number in the Philippines. The first calls were made on September 15, 2008 within a week of the family arriving from Hong Kong. No calls were placed to the number between December 6, 2008 and August 8, 2009 when the family was living in Richmond. The last four calls to the number were placed on June 8, 9 and 11, 2010. No calls were placed to the number after the complainant left the residence on June 13, 2010.

In regard to each of the four examples I find that the complainant's recollections are mistaken. I find that she had access to her passport when in Canada. I find that she attended at and opened an account at the PNB. The doors to the Orr home were not controlled by an electronic keypad. A person did not need a key to leave the Orr home. The complainant knew she was in Canada illegally long before she left the Orr home. The complainant called the Philippines from the Grant Street residence on a regular basis.

Given the totality of the evidence and the frailty of the complainant's recollections, I find that the Crown has not proven beyond a reasonable doubt the aggravating factors it alleges. I cannot find beyond a reasonable doubt that the complainant was treated as a virtual slave. While her working conditions were not the same as in Hong Kong, I cannot accept her evidence that that she was forced to work 16 hours a day, seven days a week. She was not forced to work in humiliating and degrading conditions. The Crown has not proven the aggravating facts concerning her employment.

Circumstances of the Offender

Mr. Orr was born in Hong Kong and is now 50 years old. He came to Canada when he was 16 years old. He eventually obtained permanent residence status and is now a Canadian citizen. He initially lived in Vanderhoof, British Columbia and graduated from Nechako Secondary School.

Subsequent to graduating from high school, Mr. Orr went to the College of New Caledonia in Prince George and then moved to Vancouver where he attended BCIT. He ultimately obtained a Bachelor's of Arts in Economics from the University of Victoria.
Between 1988 and 1995, he was employed in the computer industry. Between 1995 and 1998 he worked for an immigration consultant firm. Commencing in 1998 he began to work as an agent and promoter in the entertainment field.

Mr. Orr met in his wife in 1998 and they were married in 2003. After they were married, they moved to Hong Kong where he became involved in the development of commercial real estate. In 2006, he became involved in a development project in Cambodia. The failure of that business lead to the family's decision to return to Canada in 2008 to seek out business opportunities here.

Unfortunately for Mr. Orr, he was not able to find any suitable business opportunities. He was unemployed from his return to Canada in September 2008 through to December 2010, when he obtained employment as a security guard. He worked as a security guard until recently. As a result of the publicity arising from his trial he has now lost that employment.

Mr. Orr and his wife have three daughters who were born in 2005, 2006 and 2007. Ms. Huen has taken a real estate course, but due to the publicity that has arisen as a result of this case, she has not been able to make a living in that field.

At the sentencing hearing, eleven letters attesting to Mr. Orr's good character were filed as exhibits. Most of the writers have known Mr. Orr for many years. The letters describe him as an honest, hardworking person who always tries to do his best and to be fair to those around him. The letters indicate that he is a devoted father as well as a loyal and supportive friend who is always concerned with others' feelings.

Impact on the Victim

A victim impact statement was filed by the complainant. In her statement she says she used to trust people, but now doubts everything people say. She says she had to stop working to testify at the trial and recently lost a job because her employer did not believe she was able to legally work in Canada due to the media attention from the trial. Her children, who are still in the Philippines, do not understand why she is no longer able to send them money. She writes that she left her home in the Philippines in order to support her family and help them get an education and a better life. She says she feels that she is going crazy and she cries all the time. She also says she feels noticed when in public because of the media attention, leading her to feel embarrassed and judged. She believes it would have been better if she never came to Canada.

Legal Parameters

The offences which are the subject of the three counts all arise from breaches of the provisions of *IRPA*. Count 1 concerns s. 118(1) of *IRPA*, which makes it an offence for a person to knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion. In this case, it is alleged that Mr. Orr organized the complainant's coming into Canada by means of fraud and deception.

Section 118 of *IRPA* concerns human trafficking. In 2000, Canada signed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 2237 U.N.T.S. 319 [the *Protocol*]. *IRPA* was enacted in 2001. The objectives of the *Protocol* are to prevent and combat trafficking in persons, to assist the victims of trafficking and to promote international cooperation amongst states to achieve these objectives. The *Protocol* defines trafficking in persons, in part, as the "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..." This language is similar to the language found in s. 118 of *IRPA*.

Pursuant to s. 120, a person who contravenes s. 118 is liable on conviction by way of indictment to a fine of not more than $1,000,000 or to life imprisonment, or to both.
56 Pursuant to s. 121(1), the court, in determining the penalty to be imposed under section 120, shall take into account as aggravating factors whether

a) bodily harm or death occurred, or the life or safety of any person was endangered, as a result of the commission of the offence;

b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;
c) the commission of the offence was for profit, whether or not any profit was realized; and
d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.

Section 124(1)(c) holds that it is an offence for a person to employ a foreign national in a capacity in which the foreign national is not authorized to be employed under *IRPA*.

Pursuant to s. 125, a person who commits an offence under s. 124(1)(c) is liable on conviction on indictment to a fine of not more than $50,000 or to imprisonment for a term of not more than two years, or to both.

Pursuant to s. 127(a) of *IRPA*, no person shall misrepresent or withhold material facts relating to a relevant matter that could induce an error in the administration of that act.

Pursuant to s. 128, a person who contravenes s. 127 is liable on conviction on indictment to a fine of not more than $100,000 or to a term of imprisonment of not more than five years, or to both.

None of the offences of which Mr. Orr has been convicted carry a minimum sentence.

Position of the Crown and Defence

The Crown submits that deterrence and denunciation are the main objectives of sentencing to be applied in this case. It notes that the provisions of s. 118 of *IRPA* were enacted in Canada as a legislative means to address the objectives of the *Protocol*, namely to prevent, supress and punish trafficking in persons, especially women and children.

In regards to the individual offences, the Crown submits an appropriate sentence for the conviction under s. 118 is between 5 and 6 years. For the misrepresentation offence under s. 127(a), the Crown submits an appropriate sentence would be two years in jail. In regards to the offence of employing a foreign national under s. 124(1)(c), the Crown submits an appropriate sentence would be 18 months in jail. The Crown seeks a global sentence for Mr. Orr for all three offences of between 5 and 6 years.

The defence submits that in the circumstances of this case, a conditional sentence of two years less a day plus a fine would be appropriate. The defence submits that Mr. Orr is not a danger to society, nor is there a concern about re-offending. As counsel notes, he is the sole provider for a young family that has been devastated by the publicity that this case has garnered. He is also facing civil claims brought by the complainant and the Employment Standards Branch who seeks to recover money they claim is owed to the complainant for unpaid wages.

Case Law

Counsel has advised that, although the legislation has been in force for more than ten years, this is the first conviction in Canada under s. 118 of *IRPA*. Accordingly in regard to sentencing this is a matter of first impression and there are no Canadian authorities to assist.

Sentences have been imposed for human trafficking under s. 279.01 of the *Criminal Code*. I note, however, that exploitation is an essential ingredient of that offence. Exploitation is defined in the *Criminal Code* for the purposes of s. 279.01 as conduct that in all the circumstances could reasonably be expected to cause the victim to believe that their safety or the safety of a person known to them would be threatened if they failed to provide or offered to provide labour or services. This case does not involve such conduct and the cases under s. 279.01 are accordingly of little assistance.

Given the absence of Canadian authorities in regards to s. 118 the Crown asked this Court to consider Australian, British and American authorities which have considered cases of domestic servitude. The difficulty with that submission is that the principles of sentencing in those jurisdictions do not mirror those that I must apply. I also note that the legislation and the facts in the cases put before me are clearly distinguishable from the case at bar. In these circumstances I can place no reliance on those authorities.

There have been cases dealing with ss. 124(1)(c) and 127(a) of *IRPA*. In *R. v. Choi*, 2013 MBCA 75 (Man. C.A.), the accused plead guilty to one count under s. 124(1)(c) of *IRPA* arising from his illegal employment of six foreign nationals in a sushi restaurant. The trial judge imposed a conditional discharge. This sentence was reversed by the Court of Appeal who substituted a conviction and a fine of $20,000.

In *R. v. Hupang*, 2008 BCCA 4 (B.C. C.A.), the accused was charged under s. 127(a) for making misrepresentations in an application to extend a study permit and to apply for temporary resident status. The offender was a young man without a criminal record who had entered Canada legally to study and improve his circumstances. At trial he was sentenced to two months imprisonment and fined $2,500 following a guilty plea. He was released pending his appeal after serving 17 days in custody. The Court of Appeal allowed the appeal, set aside the custodial sentence and imposed a sentence of 17 days imprisonment that represented the time Mr. Hupang had already served.

In *R. v. Tongo*, 2002 BCPC 463 (B.C. Prov. Ct.), the three accused plead guilty to a single count of misrepresentation involving a scheme to smuggle three Chinese migrants into Canada. The accused were each sentenced to a period of incarceration of two months in addition to the equivalent of six weeks which they had already spent in jail.

Mitigating and Aggravating Factors

The most significant mitigating factor in this case is that Mr. Orr has been a productive, law-abiding member of society since first coming to Canada as a teenager more than 30 years ago.

Mr. Orr continues to maintain his innocence in relation to these matters. That there is no expression of remorse is not an aggravating factor and is not to be taken into account in sentencing.

Section 121 of *IRPA* requires the court to take into account various matters as aggravating factors. In this case the only factor that applies is that Mr. Orr profited from the offence in that he paid the complainant less than the legislatively mandated minimum salary for the services that she was providing. In addition, I find that Mr. Orr's decision to continue to employ the complainant after he had received a letter from CIC in June 2009 requiring her to leave Canada immediately is also an aggravating factor.

Principles of Sentencing

The principles of sentencing are set out in ss. 718 to 718.2 of the *Criminal Code*. Deterrence, denunciation and rehabilitation are all important sentencing objectives. Pursuant to s. 718.1, the sentence must be proportionate to the gravity of the offence and to the degree of responsibility of the offender. A fit sentence must take into account the nature of the offence, the character of the offender and the circumstances surrounding the commission of the offence: *R. v. Shropshire*, [1995] 4 S.C.R. 227 (S.C.C.) at para. 18. While past cases can provide guidance, a fit sentence inevitably depends on the specific circumstances of the particular case.

In cases involving multiple offences, consideration must be given to the concept of totality. The principle was summarized in *R. v. Li*, 2009 BCCA 85 (B.C. C.A.) at paras. 26-28:

> [26] Whether sentences for multiple offences are made consecutive or concurrent, it is the task of the sentencing judge to fix an appropriate global sentence that reflects the specific circumstances of the offences and the unique circumstances of the offender. The importance of this balancing is reflected in the principle of proportionality, which has been codified in s. 718.1 of the *Criminal Code* under the heading "fundamental principle":

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[27] The principle of totality also factors into the imposition of an appropriate aggregate sentence for multiple offences. In *M.(C.A.)*, Lamer C.J.C. described the principle:

> [42] In the context of consecutive sentences, this general principle of proportionality expresses itself through the more particular form of the "totality principle". The totality principle, in short, requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. As D.A. Thomas describes the principle in *Principles of Sentencing* (2nd ed. 1979) at p. 56:
>
> > The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate sentence is "just and appropriate".

[28] Thus, there is a two-stage approach to sentencing an offender convicted of multiple offences. The first stage is to determine the appropriate sentence for each offence, and decide whether the individual sentences should be made consecutive or concurrent. If consecutive sentences are imposed, then the second stage is to determine whether the sentences, in the

aggregate, offend the totality principle. If the sentence, as a whole, is unduly harsh or disproportionate, then the length of the individual sentences should be adjusted in order to arrive at an appropriate global sentence. See *R. v. P.P.H.*, 2003 BCCA 591.

Discussion

These offences concern breaches of *IRPA*, which contains an integrated regulatory scheme to manage this country's immigration policies. The legislation includes protection for potential immigrants and penalties for those who might deceive them. The legislation provides protection for Canadian workers by prohibiting the employment of foreign nationals absent specific authorization for those nationals to work. The legislation depends upon the honesty of individuals who make representations for visas and other documentation.

I have little doubt that Mr. Orr has been, and will in the future again be, a productive member of Canadian society. The jury has, however, found that he brought the complainant into Canada by means of fraud and deception, that he illegally employed her and that he made misrepresentations to immigration officials so that she could obtain a visa.

The gravity of the offence created by s. 118 of *IRPA*, which was enacted to address human trafficking, is reflected in the fact that it carries a maximum sentence of life imprisonment. It is important to note, however, that the offence carries no minimum sentence. Parliament has clearly recognized that the circumstances of the offence and the offender must be specifically considered in determining the appropriate sentence.

Offences under s. 118 of *IRPA* will fall across a broad continuum of conduct. Aggravating factors can include whether bodily harm or death occurred, whether the life or safety of any person was endangered, whether the commission of the offence involved a criminal organization, whether the commission of the offence was for profit or whether the victim was subject to humiliating and degrading treatment. I have found above that the Crown has not proven that the complainant was subject to humiliating and degrading treatment. Mr. Orr did profit from his employment of the complainant due to the low wage paid, albeit the profit was relatively modest. The lack of significant aggravating factors puts this offence at the lower end of the continuum.

While the Crown did not prove beyond a reasonable doubt that the complainant was subjected to humiliating or degrading treatment, she was nonetheless the victim of these offences. She came to Canada at the behest of the Orrs. She was misled as to her working conditions, salary and her opportunity to stay permanently in *Canada*. When she came to know that she was in the country illegally, because she had no friends or relations in Canada, she was socially isolated with limited available options to resolve her situation. It was only after she made her 911 call that she found the assistance she required.

Individuals cannot be allowed to disregard the immigration laws of this country with impunity. The main sentencing objectives in the circumstances of this case must be those of denunciation and general deterrence. A conditional sentence would not be consistent with these objectives.

Mr. Orr would you please stand.

Given the nature and circumstances of this offence, and taking into account your past good character and lack of criminal record, I sentence you in regard to Count 1 of the indictment to 18 months in jail. In regard to each of Count 2 and Count 3, I sentence you to six months in jail. Although the three counts are separate offences under *IRPA*, they all arise from the same general circumstances. The misrepresentation to CIC allowed the complainant to come into the country where she then was illegally employed. Her employment arose from the initial deception that she would have the same working conditions in Canada as she did in Hong Kong. In these circumstances, and taking into account the concept of totality and proportionality, the sentence on counts 2 and 3 shall be served concurrently with the sentence under Count 1. Mr. Orr, your global sentence will be 18 months in jail.

I am not going to impose a victim surcharge or a fine. The complainant is actively pursuing in other proceedings her claims for compensation and those proceedings are the proper form to address the financial consequences of these offences.

Accused sentenced globally to 18 months in jail.

End of Document.

Appendix B: Coded legal case – R. v. Orr (2016)

2016 BCSC 2062 British Columbia Supreme Court
R. v. Orr
2016 CarswellBC 3116, 2016 BCSC 2062, [2016] B.C.W.L.D. 8154, [2016] B.C.W.L.D. 8155, [2016] B.C.W.L.D. 8156, [2016] B.C.J. No. 2321, 134 W.C.B. (2d) 480, 46 Imm. L.R. (4th) 256
Regina v. Franco Yiu Kwan Orr
Duncan J.
Heard: June 13-17, 20-23; July 4-6, 2016
Judgment: September 9, 2016
Docket: Vancouver 26094

Counsel: P.R. LaPrairie, C.F. Hough, for Crown
K.A. Blok, for Accused

Subject: Evidence; Immigration
Related Abridgment Classifications
Immigration and citizenship
V Enforcement
V.1 Offences
V.1.a Human smuggling and trafficking
V.1.a.i General principles Immigration and citizenship
V Enforcement
V.1 Offences
V.1.c Misrepresentation
V.1.c.i General principles
Immigration and citizenship
V Enforcement
V.1 Offences
V.1.d Miscellaneous

Headnote
Immigration and citizenship --- Enforcement — Offences — Human smuggling and trafficking — General principles
LS was Philippine national who began working for accused and his wife in Hong Kong in 2007, looking after their children — Crown alleged that accused and wife decided to move back to Canada, that accused discussed bringing LS to Canada where she would become permanent resident, and that accused told LS he would help her to move her own children to Canada — Crown alleged that accused applied on LS's behalf for tempory resident visa which would only enable LS to work for him if he was business visitor in Canada for six months or less — Crown alleged that accused intended to move his family back to Canada and deceive LS and Canadian visa office in Hong Kong, in order to short-circuit proper route for LS to obtain work permit in Canada — Once in Canada, LS allegedly worked long hours, with increasing duties and was essentially locked into family homes — Accused was charged, inter alia, with human trafficking — Accused found not guilty of this offence — In light of inconsistencies or illogical aspect of

LS's evidence, it required corroboration before it could be relied on to base any conviction — There was some evidence which corroborated LS's account that family was moving to Canada rather than visiting — On other hand, LS and accused had return tickets from Hong Kong to Vancouver, which cast doubt on Crown's assertion that accused intended to relocate to Vancouver or that LS was induced to attend Canada with family on fraudulent or deceptive means — Given general concerns about credibility and reliability of LS, guilt on this count was not established beyond reasonable doubt.

Immigration and citizenship --- Enforcement — Offences — Miscellaneous
Employing foreign national without authorization — LS was Philippine national who began working for accused and his wife in Hong Kong in 2007, looking after their children — Crown alleged that accused and wife decided to move back to Canada, that accused discussed bringing LS to Canada where she would become permanent resident, and that accused told LS he would help her to move her own children to Canada — Crown alleged that accused applied on LS's behalf for tempory resident visa which would only enable LS to work for him if he was business visitor in Canada for six months or less — Crown alleged that accused intended to move his family back to Canada and deceive LS and Canadian visa office in Hong Kong, in order to short-circuit proper route for LS to obtain work permit in Canada — Once in Canada, LS allegedly worked long hours, with increasing duties and was essentially locked into family homes — Accused was charged, inter alia, with employing foreign national without authorization — Accused found guilty of this offence — Offence was one of strict liability — There was significant corroboration for LS's account that she was employed by accused until day she called 911 over incident at home — Police observations of accused's words and actions amounted to admission that LS was in his employ — Accused tried to distract or dissuade police from obtaining LS's passport, as he knew police would find out LS was illegally in Canada, living and working in his house — Accused did not advance defence of due diligence.

Immigration and citizenship --- Enforcement — Offences — Misrepresentation — General principles
LS was Philippine national who began working for accused and his wife in Hong Kong in 2007, looking after their children — Crown alleged that accused and wife decided to move back to Canada, that accused discussed bringing LS to Canada where she would become permanent resident, and that accused told LS he would help her to move her own children to Canada — Crown alleged that accused applied on LS's behalf for tempory resident visa which would only enable LS to work for him if he was business visitor in Canada for six months or less — Crown alleged that accused intended to move his family back to Canada and deceive LS and Canadian visa office in Hong Kong, in order to short-circuit proper route for LS to obtain work permit in Canada — Once in Canada, LS allegedly worked long hours, with increasing duties and was essentially locked into family homes — Accused was charged, inter alia, with misrepresenting or withholding material facts — Accused found not guilty of this offence — Count centred on accused's June 25, 2008 letter stating that his family was travelling to Vancouver and would return to Hong Kong and they wanted LS to accompany them to look after their children — In those circumstances visa accused sought for LS was much less complicated to obtain — Date range for this count was between June 24 and July 4, 2008 — Events that occurred after that date range were not necessarily of assistance in determining accused's intentions and assertions when he wrote letter — While accused may not have been entirely candid when he wrote letter, proof

of this count turned on evidence of LS, which lacked corroboration that would establish guilt beyond reasonable doubt.

Table of Authorities

Cases considered by *Duncan J.*:

Browne v. Dunn (1893), 6 R. 67 (U.K. H.L.) — followed

R. v. Khelawon (2006), 2006 SCC 57, 2006 CarswellOnt 7825, 2006 CarswellOnt 7826, 42 C.R. (6th) 1, 215 C.C.C. (3d) 161, 274 D.L.R. (4th) 385, 355 N.R. 267, [2006] 2 S.C.R. 787, 220 O.A.C. 338 (S.C.C.) — followed

R. v. Sault Ste. Marie (City) (1978), [1978] 2 S.C.R. 1299, 85 D.L.R. (3d) 161, 21 N.R. 295, 7 C.E.L.R. 53, 3 C.R. (3d) 30, 40 C.C.C. (2d) 353, 1978 CarswellOnt 24, 1978 CarswellOnt 594 (S.C.C.) — considered

Statutes considered:

Criminal Code, R.S.C. 1985, c. C-46

s. 486.5 [en. 2005, c. 32, s. 15] — referred to

s. 715 — referred to

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Generally — referred to

s. 118 — considered

s. 118(1) — pursuant to

s. 124(1)(c) — pursuant to s. 127(a) — pursuant to

s. 186 — considered

s. 187 — considered

TRIAL of accused on charges of human trafficking, employing foreign national without authorization, and misrepresenting or withholding material facts.

***Duncan J.* (orally):**

The accused, Franco Yiu Kwan Orr, is charged with three offences under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*]:

> Count 1: between December 1, 2007, and June 14, 2010, at or near Richmond and Vancouver, in the Province of British Columbia, and in the Hong Kong Special Administrative Region of the People's Republic of China, did knowingly organize the coming into Canada of [L.S.], by means of abduction, fraud, deception or use of the threat of force or coercion, contrary to section 118(1) of the *Act*.
>
> Count 2: between September 8, 2008, and June 14, 2010, at or near Richmond and Vancouver, did employ a foreign national, [L.S.], in a capacity to which [she] was not authorized to be employed, contrary to subsection 124(1)(c) of the *Act*.
>
> Count 3: between June 24, 2008, and July 4, 2008, at or near the Hong Kong Special Administrative Regions of the People's Republic of China, did misrepresent or withhold material facts relating to a relevant matter that induced or could induce an error in the administration of the *Act* by providing false information to the Consulate General of Canada

> in support of the application for a temporary resident visa for entry to Canada for [L.S.], contrary to section 127(a) of the *Act*.

There is a ban on publication of the name of the complainant, to whom I shall refer as L.S., pursuant to an order made at the first trial of this matter under s. 486.5 of the *Criminal Code*.

L.S. is a Philippine national. She is a single mother of three children. She has worked as a caregiver or nanny in Saudi Arabia, Lebanon, and Hong Kong. L.S. began working for Mr. Orr and his wife, Nicole Huen, in Hong Kong in August 2007. The Orrs had two daughters, aged nine months and two-and-a-half years, with another child on the way. L.S. was paid about $500 CAD per month and provided room and board at the Orr family condominium for looking after the children.

The Crown's theory is that shortly after the Orrs' third child arrived they decided to move back to Canada, where they had citizenship. Mr. Orr discussed the move with L.S. and told her after two years of working in Canada she would become a permanent resident and he would help her move her children to Canada. In addition, L.S. would be covered by Canadian employment rules of eight hours work per day and proper wages. She would look after the children while someone else took care of the housework.

The Crown says that as a result of Mr. Orr's promises L.S. agreed to accompany the Orr family to Canada. Mr. Orr and Ms. Huen sold their condominium in Hong Kong and packed everything up to send to Canada. Mr. Orr then orchestrated L.S.'s visa arrangements without telling her he had applied on her behalf for a temporary resident visa, (a "TRV"), which would only enable her to work for him if he was a business visitor in Canada for six months or less. The Crown maintains Mr. Orr intended to move his family back to Canada and deceived L.S. as well as the Canadian visa office in Hong Kong, in order to short-circuit the proper route for L.S. to obtain a work permit for Canada.

Once in Canada, L.S. said she worked long hours, her duties were increased to include cooking and cleaning and she was essentially locked into the homes the Orr family lived in. Ultimately, L.S. called 911 after Ms. Huen frightened her and threw water on her. The police took L.S. out of the home and she has since obtained permanent resident status in Canada.

The defence position is that L.S. was neither credible nor reliable and her evidence cannot be the basis of proof beyond a reasonable doubt that any of the offences occurred.

Entry into Canada for Foreign Nationals

Jessica Poon works for Citizenship and Immigration Canada. She explained that nationals of some countries, including the Philippines, are required to obtain TRVs to enter Canada. An application for a TRV is submitted to a visa officer outside of Canada. The visa officer considers whether the person will leave at the end of the permitted stay by examining factors such as ties to home country and sufficient funds while in Canada.

The applicant must submit his or her passport with the application for a TRV. If the TRV is granted, it is attached to the passport. The TRV also states the period of time within which the

foreign national can enter Canada. When the person enters Canada his or her passport is stamped and they have six months from that date to be legally in Canada. The time can be extended or shortened by a visitor record issued at entry. A TRV does not authorize a person to work or study in Canada. Work and study permits require a different application. If a foreign national in Canada on a TRV wishes to extend his or her stay an application is submitted to a processing centre in Vegreville, Alberta. Some extension applications are referred to local immigration offices.

Between 2008 and 2010, an employer wishing to hire a foreign national would have to submit an application to Service Canada for a Labour Market Opinion ("LMO"). If Service Canada was satisfied an employer could not find a Canadian citizen or permanent resident for the job, a positive LMO would be issued. A foreign national would submit the LMO along with an application for a work permit to an overseas visa office. The process to obtain an LMO is about four to six weeks. The subsequent process to obtain a work permit can take weeks to months.
11 In 2008 through 2010, the material dates on the indictment, Canada permitted foreign nationals to work as caregivers. The work permit requirements were the equivalent of a high school education, six months training or one year work experience in the field, and sufficient English or French to work in an unsupervised setting. A positive LMO was required, but it was almost automatic as long as the contract met B.C. employment standards for wages, vacation and arrangements for room and board. The LMO and contract would be provided to an overseas visa office along with the application.

Under ss. 186 and 187 of the *IRPA*, there are some exceptions to the requirement that a foreign national must obtain a work permit. In 2008 to 2010, if a business visitor was coming to Canada for a temporary visit, the visitor's nanny could come to Canada without a work permit for up to six months. If the employer ceased to be a temporary visitor the nanny would need to apply for a work permit which would involve an overseas application along with an LMO.

Ms. Poon said that if at some point after the TRV was issued under the business visitor exception an employer wanted to stay longer than six months it would not affect the validity of the existing visa. The TRV holder would be entitled to stay in Canada for six months.

CIC has an electronic database. In 2008 to 2010 it was called FOSS. FOSS has since been replaced by GCMS. FOSS recorded the immigration history of visa applicants and the types of applications made at different offices. The CAIPS database was used by offices outside of Canada to collect information, which was then subsumed into the FOSS database.

The FOSS records for L.S. show a TRV was issued on July 4, 2008. L.S. had to enter Canada before January 3, 2009. The visa category was WX1, which refers to the exemption from the requirement of a work permit under ss. 186 and 187 of the *IRPA*.

L.S. was permitted to accompany her employer, Mr. Orr, and his family, to Canada. It was a single entry visa, valid for six months from the date she entered Canada.
L.S.'s TRV application was done online. The application listed three dependents which tended to support the conclusion that L.S. would leave Canada after her authorized stay. The purpose of her visit was to accompany her employer and their children while visiting Canada. The proposed

length of the stay, from August 5, 2008, to November 30, 2008, was less than six months and fell within the business visitor exemption guidelines. The application also stated L.S. would be living with her employers' in-laws which lent credibility to the plan. The application was accompanied by a letter from Mr. Orr, a photo of his family with L.S., and a return plane ticket.

Ms. Poon testified that if Mr. Orr had said he was leaving Hong Kong and moving to Canada long term L.S. would not have been issued a TRV. She would have required a work permit. If false or misleading information was included in the application the visa officer would refuse it, and the form warns of this.

L.S.'s TRV was date-stamped on September 9, 2008, at Vancouver International Airport. It was valid until March 9, 2009. FOSS records show that on June 11, 2009, there was a visitor extension refusal at Vegreville and L.S. was advised to leave Canada immediately. Anyone in Canada on a TRV could not apply for a work permit from within Canada. It would have to be done through a visa office overseas.

L.S. made her extension application before her status in Canada expired, so she had implied status until a decision was made on the extension application. Her implied status ended on June 11, 2009, and she was required to leave Canada immediately.

Ms. Poon said there was no notation on L.S.'s FOSS or CAIPS file that she had a representative assisting her, so when she went to the overseas office to collect her visa and passport they would only be released to her. L.S. would also have to show a receipt and identification to retrieve the passport and visa. The receipt in this case stated that money was paid for a TRV.

Chantal Simeoni is employed by Canada Border Services Agency. She worked at Vancouver International Airport in 2005 and 2006, in both Customs and Immigration. The work is divided between primary inspection, which is the first line a traveller or Canadian national goes through, and secondary inspection, which is more intensive and addresses concerns about the importation of goods or immigration issues. As people go through primary inspection, their passports are scanned and entered into ICS, the Integrated Customs System. This system is affiliated with ICES, the Integrated Customs Enforcement System. ICS is useful as it shows if people are travelling together, which port of entry they used and when their passports were scanned.

L.S.'s passport was scanned at 9:44 p.m. on September 9, 2008, at Vancouver International Airport. Ms. Simeoni was not the officer who scanned the passport, but she could tell by ICS the time and place of the scan. Ms. Simeoni also looked at L.S.'s passport. It had a Customs stamp on page 14, but no Immigration stamp. From that, Ms. Simeoni said L.S. may or may not have seen an Immigration officer, although the ICS records indicated that an Immigration secondary inspection was mandatory for L.S.

Mr. Orr's passport was scanned around the same time as L.S.'s. He was not referred to secondary inspection. His wife, Ms. Huen, entered at the same time as L.S. and Mr. Orr in the same lane. All of them listed an address on Grant Street in Vancouver on their declaration forms, although since they were visiting Canada Ms. Simeoni would expect to see their Hong Kong address listed.

Someone, likely a Border Services officer, wrote Hong Kong on L.S.'s declaration card as her place of residence. L.S.'s declaration card stated a 90-day stay in Canada whereas Mr. Orr's and Ms. Huen's were blank concerning the length of their stay. Mr. Orr and Ms. Huen are both Canadian citizens, but at the time were not Canadian residents. Ms. Simeoni said they should have filled in the length of stay on their declaration card.

The Evidence of the Complainant, L.S.

L.S. is 43 years of age. She was born in San Jose, a six to eight hour drive north of Manila in the Philippines. Her parents were farmers. She obtained a high school diploma and did some post-secondary studies in hotel and restaurant management, but did not complete the program.

L.S. married when she was 17. Her three children were born in 1992, 1995, and 1996. When she was pregnant with her third child, her husband abandoned her. After her third child was born, L.S. left her children with her parents to work in Manila. She sent money home from Manila and saved up to buy a passport, so she could work overseas and earn more money to support her family.

L.S. first left the Philippines to work overseas in 2000. She found an employment agency in Manila that did not require money up front and obtained a job in Saudi Arabia. The contract was for two years. L.S. gave the agency her passport and they looked after her travel documents. Once in Saudi Arabia, her employer showed her an Igama or working visa.

L.S. sent money home from Saudi Arabia to her children and the agency fees were deducted from her paycheque. Her employer was a bank manager and took care of sending money back to the Philippines. L.S.'s stay in Saudi Arabia was extended by two years when her employer became pregnant.

After L.S.'s second two-year contract had expired in Saudi Arabia she returned to the Philippines to visit her family. A month later she began to look for another employment agency. She found one and secured a job in Lebanon. The agency looked after her contract and immigration documents.

L.S. cared for an elderly lady in Lebanon. She sent money home by attending at the Philippine National Bank and transferring the money herself through a global remit account. She arrived in Lebanon in late 2004. Her employer sent her home in 2006, before her two-year contract had ended, because a conflict had erupted between Israel and Lebanon.

Once back in the Philippines, L.S. began looking for another job. She found the Concorde agency, which could arrange for work in Hong Kong but required an up-front payment of 100,000 Pesos. L.S.'s mother suggested a mortgage to cover the payment.

The Concorde agency arranged L.S.'s immigration documents and two-year contract. She went to Hong Kong on December 28, 2006 to work for Ms. Wing. L.S. took care of Ms. Wing's son. She continued to send money home through a global remit account at the Philippines National Bank ("PNB") in Hong Kong.

L.S. had Saturdays and Sundays off. She spent time with her sister and friends and went to church every Sunday. There is a large Filipino community in Hong Kong.

L.S.'s employment with Ms. Wing ended in June 2007. Ms. Wing said she and her son were going on vacation for three months and L.S. could not stay in the house on her own. Ms. Wing took L.S. to an employment agency and told her to find another job.

L.S. said there were 10 or more other nannies being interviewed for a job opening. She was interviewed by a couple, Mr. Franco Orr and Ms. Nicole Huen. They had two children, Vanessa and Ashley. L.S. had experience with newborns and this skill was what the Orrs were looking for. Mr. Orr said they wanted someone to look after the children while someone else would do household chores. L.S. was offered the job looking after the children.

L.S. signed a contract with Mr. Orr on June 12, 2007, the same day Ms. Wing had taken her to the employment agency. She had to return to the Philippines and receive work authorization documents there before she could return to Hong Kong to work for the Orrs. Ms. Wing paid her ticket back to the Philippines as part of the contract, but L.S. paid to get back to Hong Kong. Mr. Orr was supposed to reimburse her for that, but she never received the money.

L.S. returned to Hong Kong to work for the Orrs on August 14, 2007. She had a two-year contract for $3,480 HKD or about $500 CAD a month. She was to look after the children and be provided suitable accommodation. She received Saturday, Sunday and statutory holidays off or double time in lieu. Someone at the employment agency reviewed the contract with L.S. before she signed it.

The Orr family lived in the Bellagio Towers, one of the tallest condo buildings in Hong Kong. There was a playground in the complex and a shopping mall nearby. L.S. shared a room and bathroom with the other domestic worker. The first one was Lulu from Indonesia. She did all the household chores while L.S. looked after the children. Ms. Huen looked after the children on weekends.

L.S. had two cellphones, one to get texts from her children and the other for making calls in Hong Kong and the Philippines. She was paid in the middle of the month and sent money home to her family through the PNB. On one occasion L.S. had her aunt do the money transfer because she did not have the day off.
The Orrs' third child, Megan, was born on December 8, 2007. When she came home from the hospital L.S. took over her care. Megan slept beside L.S. at night.

Before Megan was born, L.S.'s typical day began around 8:00 a.m. with breakfast for the two older girls, followed by play time and other activities. They went to bed around 8:00 p.m. and L.S.'s day ended around 9:00 p.m. After Megan was born L.S. woke up earlier to care for the baby and sometimes Lulu would watch the older girls for her. L.S. felt very close to the children. She felt it was her way of giving back because she missed her own children. Her favourite was Megan.

The Orrs replaced Lulu with another housekeeper, Virgie, who was also from the Philippines. L.S.'s role stayed the same. Her life was good, her duties relatively light, and she was very happy.

Around the end of December 2007, Mr. Orr told L.S. the family was thinking of living in Canada. He said Ms. Huen was no longer happy in Hong Kong and wanted their children to go to school in Canada. After Mr. Orr returned from a business trip he sat down with L.S. and Ms. Huen and discussed their plans to move to Canada. They offered L.S. the opportunity to join them so she would have a new and better life. She would continue looking after the three children. L.S. wanted to talk to her aunt first. She did not know anybody in Canada.

In January 2008, L.S. said Mr. Orr reiterated his offer to take her to Canada and promised her that her life would change for the better. She would work eight hours a day taking care of the children, and in two years they would help her get permanent residence, so she could have her family join her. Mr. Orr said he would pay her what a nanny would receive in Canada and there would be a second worker to take care of household chores. L.S. had a year and a half left on her Hong Kong contract and Mr. Orr said they would get her a new contract in Canada.

L.S. agreed to move to Canada with the Orrs. Mr. Orr did not mention anything about a visa or a contract to work in Canada, as had been the case with L.S.'s prior jobs in Saudi Arabia, Lebanon, and her first job in Hong Kong. L.S. did not appear to make any effort to find out what was required of her to work legally in Canada.

Once L.S. agreed to move to Canada, Ms. Huen asked her to sit down at the computer. Ms. Huen asked her questions and gave her a document to sign so she could go to Canada with them. Nobody reviewed it with L.S. before she signed it. She did not know the form Ms. Huen was filled out was for a temporary visa. L.S. thought she was moving there permanently.

L.S. went to the Canadian Embassy in Hong Kong with Mr. Orr and Megan. Mr. Orr had her wait with Megan while he brought her a document to fill out. Her English was weak and he filled it out by hand while she answered his questions, although she filled in one page. She identified a document filled out on July 7, 2008, as the one she signed at the Embassy. She identified a receipt dated that same day for $600 HKD which Mr. Orr paid. It was a receipt for a TRV. L.S. did not see a letter from Mr. Orr that was submitted with the application.

L.S. did not read the page in the form Mr. Orr filled out for her, which warned about the consequences of providing false information. She just followed Mr. Orr's instructions. After the forms were filled out Mr. Orr told her to wait for him and he took the form away. Following that they returned home.

Some days later, L.S. returned to the Embassy to pick up her passport and visa. The whole family went with her. They waited outside while L.S. went in with Megan. She got a number from a security guard and went to a window where a woman gave L.S. her passport back. There was a photo of her with the children in it and a folded piece of paper which she did not look at.

When L.S. left the building Ms. Huen asked if she got the visa. L.S. said she did not know, so Ms. Huen grabbed the passport to look at it. Mr. Orr took them all to a restaurant for a celebration because L.S. could join the family in Canada. L.S.
said she never opened her passport. Mr. Orr took it from Ms. Huen and from that point on L.S. never saw it again. Mr. Orr said he needed her passport to prepare other documents. Previously, she had always kept her visa and passport with her.

L.S. had no idea what kind of visa she had obtained. As far as she knew, she had a two-year contract with Mr. Orr and the visa would let her fulfill it while in Canada. If she had known it was a visitor visa, she said she would never have left Hong Kong.

Between the time L.S. picked up her passport at the Embassy and September 9, 2008, she said the Orr family packed up their condo and shipped their belongings to Canada. L.S. saw a sign outside saying the condo was sold around the beginning of August. She left her cellphones with her sister, because Mr. Orr said she could not use them in Canada and he would buy her a new one.

Mr. Orr handled the check-in at the airport. L.S. simply followed along. She had a seat in economy with Megan, while the rest of the family was in business class. Mr. Orr presented all their passports before they got on the plane. During the flight he gave L.S. a blank form to sign, which he then filled in with the address she would be staying at. He also wrote she would be staying 90 days. Everyone except L.S. and Megan sat in business class.

When they landed in Vancouver, L.S. said Mr. Orr told her to wait to the side while the family lined up on the right. He came and got her and he talked with two Immigration agents. She did not hear or understand anything that was said, except one of the officers asked L.S. if it was true she was there to take care of the baby and she said yes. L.S. does not recall the officer saying anything about how long she could stay in Canada.

Mr. Orr gathered the family's bags together and they went out to meet Ms. Huen's parents and brother, as well as members of Mr. Orr's family. They travelled by car to Ms. Huen's parents' house on Grant Street in Vancouver.

L.S. described the house as quite large, with four bedrooms upstairs. Ms. Huen's parents had the master bedroom. Ms. Huen's brother, Derek, had a bedroom with his own washroom. Mr. Orr and Ms. Huen had a bedroom and the two older girls shared a bedroom. L.S. had a room on the main floor with Megan.

About two weeks after the family arrived in Canada, Ms. Huen told L.S. she was responsible for all the household chores, as well as taking care of the three children. She gave L.S. a schedule of chores. When L.S. asked why Ms. Huen said they could tell her what they wanted to do because they were her employer.

L.S. said her days began earlier than in Hong Kong. She got up at 6:00 a.m., prepared bottles for the two older girls, cleaned up the kitchen, picked up the children's toys and disinfected them,

and mopped the floors. Then she would feed Megan and cook breakfast for the two other girls, clean up the kitchen, watch the girls and then go upstairs with Megan to tidy the bedrooms.

Ms. Huen was studying for her real estate licence and Mr. Orr worked on the computer after he took Vanessa to school, and then sometimes he left the house later.

L.S. said her day continued with similar tasks until bedtime around 10:30 or 11:00. L.S. said her work load was relatively easy in Hong Kong, but in Canada she worked seven days a week and was not allowed to leave the house. She was not paid overtime and Ms. Huen told her if she refused to obey her employers they would have her deported. L.S. never went to church.

Mr. Orr paid L.S. cash, as he did in Hong Kong. She was paid about $500 a month until November 2009, when she received a raise to $700 a month. L.S. stayed and worked under those conditions because Mr. Orr promised her if she worked for two years he would help her secure permanent residency in Canada and she could bring her children. Her family had no other means of support. Her mother was too frail to work and her children lived with her mother.

L.S. said the Orr family moved from the Grant Street house a few months after they arrived because Mr. Orr had a disagreement with his in-laws. The family moved to a townhouse in Richmond. L.S.'s duties continued as before. The move to Richmond was around the first week of December. Then around June or July of 2009 they went back to Grant Street.

In August 2009, L.S.'s contract with Mr. Orr expired. She asked him about it and he said he would increase her salary. Since L.S. was not allowed to leave the house she could not send money to the Philippines, so she said she asked Ms. Huen to help her. She gave Ms. Huen her account number at the PNB to send the salary home. When the Orr family moved to Richmond, Mr. Orr took L.S. to a Western Union office. The clerk said L.S.'s Hong Kong identity card was not valid, so Mr. Orr opened an account for her. Transfers were also sent from a couple of Money Mart stores on Hastings Street in Vancouver. Mr. Orr's account was always used and the money was always sent to Robert Borgia, the nephew of L.S.'s husband.

L.S. described an outing with the family to Richmond Town Centre. The family was going to watch a movie, but L.S. did not have any money, so Mr. Orr told her to wait in the lobby. He gave her Ms. Huen's cellphone, so if Megan started to cry in the theatre L.S. could meet them and take care of her.
L.S. went to the food court and bought fried chicken. She sat down beside an older man, who said his name was Fabian. She told him her story, but kept looking over her shoulder, afraid Mr. Orr would see her talking to someone.

Fabian was Mr. Fabian Krezeski, who gave evidence at the first trial of this matter. He is in poor health and his previous evidence was read in pursuant to s. 715 of the *Criminal Code*. Mr. Krezeski testified at the first trial that he encountered L.S. at a food court at a Richmond mall. He was concerned about her as she seemed very sad and he offered his phone number to her. He also described L.S. as having a peculiar reaction to the appearance of a Chinese family. She ducked behind a table when she saw them, although they did not appear to be doing anything out of the ordinary.

L.S. said she also talked to the handyman at the Richmond townhouse complex on occasion when she took the garbage out. Mr. Satdev Khokhar was the handyman. He also testified at the first trial and is in poor health, so his evidence was read in pursuant to s. 715. Mr. Khokhar saw L.S. periodically. He knew she was working as a nanny for the Orrs. He thought she seemed sad, although he understood she was worried about her mother. He said that when L.S. went to the playground with the three children their mother was always there. He also testified that on several occasions he did some minor repair work in the Orr family townhouse and when he did, Mr. Orr was present, close to him while he did the work.

Mr. Khokhar did not recall that a key was required to exit the front door to the townhouse or that there was any unusual locking mechanism on the door. It was a rental complex, so the management company wanted uniform locks on the units.

L.S. was asked about applying for an extension of her stay in Canada in March 2009. She denied making the application. She said Mr. Orr once gave her a blank piece of paper and asked her to sign it. The Crown showed L.S. the extension application processed at Vegreville. She said the handwriting on the form was Mr. Orr's and she did not have a Canadian credit or debit card to pay the processing fee.

Sunday, June 14, 2010, was L.S.'s last day with the Orrs. That morning Ms. Huen got angry at L.S. for giving Vanessa a glass of soy milk. Ms. Huen threw the glass of milk in front of L.S. and grabbed the cloth L.S. was using to wipe the counter. Ms. Huen grabbed L.S.'s T-shirt and pushed her into the counter. She yelled in Chinese at L.S. and pushed her index finger at L.S.'s right temple. L.S. was scared and said if Ms. Huen did not stop she would call the police. Megan was crying and Mr. Orr came into the kitchen with Ashley. L.S. called 911.

While L.S. was on the phone with the 911 operator, Ms. Huen threatened to hit her in the face. The operator told L.S. to calm down and get a glass of water. Ms. Huen yelled at L.S. and said she could not have water, then said "You want water?" and L.S. felt water on her hair and back. Mr. Orr and Ms. Huen argued loudly in Chinese and Mr. Orr signalled for L.S. to put the phone down. Ms. Huen's mother took L.S. upstairs and handed her a phone, saying the police wanted to talk to her. L.S. talked on the phone until a police officer appeared and asked her to come out to his police car.
L.S. went out with the police officer and there was a second police officer. They asked for her house keys, but she said she never had keys. She did not want to go back in the house, because she was afraid. The police took her back in to collect her belongings. Ms. Huen provided a plastic garbage bag for L.S.'s clothing and took pictures of the children out of L.S.'s wallet.
The police took L.S. back out to their car and asked for her passport. She said she never had it, but the officer went into the house and came back out with it.

L.S. said she was afraid she would be deported. The police officers took her to the airport, where she talked to someone, then they took her to the police station and then to a Victim Services shelter, as she had nowhere else to go.

Cross-examination of L.S.

L.S. was issued a temporary resident permit after she left Grant Street. It allowed her to remain in Canada for 12 months. She denied knowing she was in Canada illegally before June 14, 2010. L.S. said she had only learned that when the police officers told her of her illegal status in the police car. She denied telling the police officer when she was upstairs in the house that she was afraid to call police because her status has expired.

L.S. had no contact with her husband after 1997 and did not know how to contact him, yet she listed him as her emergency contact on her passport in 2006. She said the agency told her to list someone who knew her and the only person she could think of, apart from her mother, was her estranged husband. L.S. testified she had friends in Manila whose phone numbers had "9-2" in the prefix, but she did not list those friends as emergency contacts, nor did she think to list a sister-in-law or a niece who she contacted from Hong Kong when Mr. Orr was looking for an additional nanny. L.S. did not know that the phone number in her passport was that of her estranged husband or his nephew. Later in cross-examination L.S. said the phone number on her passport was actually the number of the agency that helped her find work in the Middle East, though she could not remember the name of that agency.

L.S. agreed that before leaving for Saudi Arabia the employment agency explained the contract to her and when she arrived in Saudi Arabia her employer and the other nanny helped her understand the Igama, or work permit. Before she went to Lebanon she ensured she had documents to permit her to legally work there as well.

L.S. denied knowing the visa she was issued for Canada was a TRV to accompany the family for a visit. She denied receiving a letter from the Embassy about her visa application. She denied presenting a receipt to the clerk at the Embassy when she picked up her passport, which receipt stated that a single entry temporary visitor visa had been paid for.

Defence counsel pressed L.S. on the issue of who had her passport. Ms. Blok drew L.S.'s attention to a statement she gave on June 22, 2010 to police. In the statement, L.S. said that after the Orr family arrived in Canada they kept her passport, which contradicted her evidence at trial that they took her passport from her in Hong Kong. L.S. said her mind was not clear when she gave the statement and her English was not good. She then agreed there was an interpreter present, but blamed the inconsistency on her emotional condition at the time.
Defence counsel drew L.S.'s attention to another statement she gave about her passport in an application to remain in Canada after she left the Orr family. She filled it out with assistance so she could get a temporary residence. In the form L.S. stated, "Upon my arrival in Canada they immediately put my passport away." L.S. said what she meant was that Mr. Orr took the passport at Immigration when they arrived in Canada.

L.S. said she did not present her passport at the airport in Hong Kong either at check-in or at the Hong Kong Immigration exit point. Mr. Orr handled the passports. L.S. denied meeting with an Immigration officer in Vancouver who told her she could only stay until March 9, 2009.

L.S. said she was not allowed to leave the house on Grant Street. When Mr. Orr and Ms. Huen went out and left her with the children another adult was always in the house and the door was locked. Mr. Orr said she could not touch the lock or it would automatically lock and she could

not leave the house. The door needed a key to lock it and Mr. Orr told her not to touch the left handle or it would automatically lock. There was also something that made a sound every time someone came in or went out.

In Richmond L.S. said the locking system was the same. A key was required to open the front door, but the garage door was somehow permanently locked. L.S. said she never really tried to go out in Richmond, but once she tried to push the door and could not open it. She claims to have found out later that the Orrs put a padlock on the exterior to prevent her from leaving. L.S. said once she was in the house alone with Megan and wanted to take the trash out. She tried to leave the house but could not.

L.S. was shown a photograph of the inside of the door at Grant Street. She said it looked different than it did when she lived there. She reiterated that Mr. Orr told her not to touch it or it would lock automatically and they would not be able to leave the house. She said there was a similar lock in Hong Kong, but then said it was on the main door of the condo tower, not in the apartment itself.

L.S. maintained that she relied on Ms. Huen and Mr. Orr to transfer money for her to the Philippines. She denied going to a branch of the PNB in Vancouver with her passport and opening a new account there to send money home. L.S. said she was not allowed out of the house, so she could not do her own banking. Any time she went out of the house it was with the family and her activities were restricted.

Defence counsel suggested to L.S. that the first time she told anyone that Ms. Huen helped her send money was in an interview with Detective King shortly before this second trial. L.S. agreed that Detective King showed her a document and told her the defence had alleged at the first trial that L.S. had opened her own account at the PNB in Vancouver. L.S. then told Detective King she had asked Ms. Huen to make the transfers for her at the PNB; she did not do them herself.

L.S. agreed that the Orrs bought her birthday cakes, but she said it was because the children requested cake so they could blow out the candles. She said there was no other celebration or food, just the cake. Defence counsel showed L.S. a photograph of her with Ms. Huen and the children with a cake in the foreground. L.S. insisted it was Vanessa's birthday cake, in spite of the fact that the icing on the cake appears to clearly spell out the first few letters of L.S.'s first name. She said they never had a cake at the Grant Street house with her name on it.

L.S. denied any knowledge of her visa extension refusal in June 2009. She denied borrowing money from Mr. Orr after the visa extension was refused. She said the money she sent back to the Philippines came from her salary.

Defence counsel maintained L.S.'s evidence about not being able to call home to the Philippines was not credible. In the phone records from the Grant Street house dozens of calls were placed to the Philippines between September 5, 2008, and December 6, 2008, which was around the time the Orr family relocated to Richmond. The calls to the Philippines resumed in August 2009, about a month or so after the Orr family moved back to the Grant Street house. After June 11,

2010 until the end of September 2010, no other calls were made from the Grant Street house to the Philippines.

L.S. testified at this trial that when she called the Philippines she would call a store in the village and the person would get her mother to come to the store. In her June 30, 2010, statement L.S. said she would call her family using a cellphone, but in cross-examination said what she meant was she would call the cellphone inside the store. Defence counsel drew L.S.'s attention to her evidence from the first trial where she said when she called the Philippines she would always call her eldest child.

L.S. said the 9-2 area code on the phone records from Grant Street was only for Manila and she did not recognize the phone number in the phone records. She said whenever she called her friends in Manila most of their numbers would start with 9-2, so that is why she thought it was a Manila number. Defence counsel pointed out that the number L.S. listed for her husband along with an address in San Jose, which was hours north of Manila, started with a 9-2 area code. L.S. said it was the phone number for the agency she used to find work in the Middle East.

Police Attendance at Grant Street on June 14, 2010

Constable Craig Lapthorne and Constable Robin Shook are members of the Vancouver Police Department. They attended a 911 call from Grant Street in Vancouver at 8:31 a.m. on Sunday, June 14, 2010. They knocked on the front door and after about 45 seconds Mr. Orr opened the door and said, "She shouldn't have called." Constable Lapthorne said they needed to speak to the person who called and he entered the house with Constable Shook.

Constable Lapthorne stayed downstairs and spoke with Mr. Orr and his wife, while Constable Shook went upstairs to speak with the nanny, who they understood made the 911 call. Constable Lapthorne said Constable Shook came back downstairs and asked Mr. Orr, "Where is her passport?" Constable Lapthorne could not recall the exact words that were spoken, but Mr. Orr went over to a desk in the living room and pulled out a plastic folder and passport, which he gave to Constable Shook.

Constable Lapthorne said Mr. Orr was originally quite agitated, then he calmed down, but he became agitated again when the passport was produced. Mr. Orr said the only reason they believed the nanny was because she was crying. He encouraged his wife to cry and he began to cry himself. He made a remark that the officer's boss, Jim Chu, would understand. Constable Lapthorne said Mr. Orr calmed down after Constable Shook went back upstairs.

Constable Shook came back downstairs with L.S. The two officers went outside with her to discuss what to do. They decided to take her to Immigration at the airport, since her status in the country was in question. They went back into the house with L.S. so she could pack her things. Ms. Huen produced grocery bags and examined the clothing L.S. was packing.

Constable Lapthorne did not make notes at the scene, other than names and birth dates. Later, he created an occurrence report with Constable Shook as they drove to the airport. He does not know who contributed what content to the report. He noticed nothing unusual about the locks on the front door or a keypad.

Constable Shook testified he went upstairs. L.S. was in a bedroom with an older female who was comforting her. L.S. was visibly upset and her shirt was wet. She was not fluent in English, but they could communicate. Constable Shook was trying to determine L.S.'s status and needed to confirm her identity. He went downstairs and asked Mr. Orr for her passport. Mr. Orr got angry and started to yell. Constable Shook tried to calm him down, but Mr. Orr said "this is how Chinese people talk" and got louder and louder. Mr. Orr said they only believed her because she was crying and encouraged his wife to cry. Constable Shook reiterated that they needed to see the passport. Mr. Orr immediately calmed down and got the passport out of a desk drawer. Constable Shook believes he said it was an offence to withhold someone's passport and that is when Mr. Orr retrieved it.

Constable Shook asked Mr. Orr why he had the passport and he responded with words to the effect that you needed to watch Filipino nannies, employers would pay their way, but they would leave without doing the job, and he needed to tell his employees if they were not doing a good job. Constable Shook did not make a note of those comments at the time, but included them in his occurrence report, which he composed later.

Constable Shook asked Mr. Orr if he had a copy of the work contract. Mr. Orr said he might be able to get one from Hong Kong. He also stated that part of the contract was a return air ticket for L.S., which he said he would be willing to buy.

Constable Shook went outside with L.S. and asked her what she wanted to do. She said she wanted to go home to her family in the Philippines. They went back into the house to pack up her belongings. He asked Ms. Huen for a suitcase but was provided with two plastic bags. Ms. Huen watched the packing. The officers took L.S. to Immigration at the airport, then to the police station. They contacted Victim Services for her, as she had nowhere else to stay.

On cross-examination Constable Shook said he prepared a police statement on July 5, 2010, and a police narrative, or occurrence report, on June 14, 2010. The latter was written on the way to the airport. He had no notes of discussions in the Grant Street house.

Constable Shook agreed that L.S. told him she came to Canada on a work permit that had expired, or words to the effect that she was in Canada illegally, and if police checked her she would be arrested.

After that conversation he went downstairs to get L.S.'s passport from Mr. Orr. Mr. Orr then kicked up a fuss and made the remark about having to keep passports from Filipino nannies. Constable Shook agreed the occurrence report lists this as happening after the passport was retrieved, but he thinks it is out of order in the report. Constable Shook took no contemporaneous notes at the scene.

Cathay Pacific Evidence

Irene Tang testified as a representative for Cathay Pacific Airlines. She interpreted the flight manifest for Cathay Pacific flight CP836 departing Hong Kong for Vancouver on September 10, 2008. Because of the time change, the flight arrived in Vancouver late on September 9, 2008.

The manifest indicated that Ms. Huen and Vanessa had seats in business class, while Mr. Orr sat with L.S., Ashley and Megan in economy class. The upgrade to business class was done at the airport using points.

Children under two years of age travel at 10% of the adult fare, if an adult carries them. Children between two and twelve are eligible for a discounted fare of 75% of the adult rate.

Ms. Tang testified the tickets for Mr. Orr and L.S. were purchased on July 24, 2008. They were round trip tickets with a departure date of September 10, 2008, and a return date of March 2, 2009. The tickets were valid for nine months after the start of the trip. A change to the itinerary would cost $1,000 HKD. The tickets for Ms. Huen and Vanessa were one-way tickets.

At some point the return date on L.S.'s ticket was changed from March 2, 2009, to June 10, 2009. Ms. Tang could not say when that was done, but it would have required payment of the $1,000 HKD itinerary change fee.

Cathay Pacific agents are responsible for checking people's passports to determine whether the person requires a visa for the travel. If there is a visa the agent will check for a return ticket. The airline is held responsible if a traveller flies without proper documentation. Passports are checked a second time at boarding. The agents check the passport against the person. Furthermore, Ms. Tang said there is a requirement in Hong Kong that travellers go through Immigration after the check-in, which is yet another passport checkpoint.

The Sale of the Bellagio Towers Condominium

The Crown tendered a document concerning the ownership of the Orr condominium in the Bellagio Towers. The document was obtained via the Internet on May 19, 2016, from the Hong Kong government Lands Registry website. Ms. Lohrasb, a legal assistant to the Crown, deposed that she ordered a historical and current search of the land register for the unit that Mr. Orr and his wife occupied. It is the address used by Mr. Orr on various documents before the court.

The document from the land register shows that Mr. Orr and Ms. Huen purchased the condominium in March 2006, and were registered as owners in December 2006. On August 1, 2008, an agreement for sale to a third party was entered into and that sale agreement was registered on August 19.

The defence objected to the document as hearsay. I admitted it under the threshold test in *R. v. Khelawon*, 2006 SCC 57 (S.C.C.). I am satisfied, having heard further evidence, that the document is admissible at the second stage of *Khelawon* as reliable evidence that Mr. Orr and Ms. Huen sold their condominium in August 2008. The document does not provide information about possession or transfer of money from buyer to seller, but it is some evidence that the Orr residence in Hong Kong was sold around the time L.S. said the family was packing up for a move back to Canada.

The Defence Case

Mrs. Pauline Huen

Mr. Orr's mother-in-law, Pauline Huen, visited Hong Kong around the time of Megan's birth and met L.S. When Mr. Orr, Ms. Huen and the children came back to Canada L.S. accompanied them. Mrs. Huen was at the airport when they arrived. She understood they had come to visit to check things out and expected them to stay a few months. She also understood Mr. Orr was not doing well financially.

Ms. Huen said her daughter and family stayed with her at the Grant Street house for a few months, then moved to a townhouse in Richmond. While they stayed at Grant Street, Mr. Orr cooked for his family, including for L.S. Mrs. Huen cooked for herself, her husband and son. Mrs. Huen kept her bedroom and her son's bedroom tidy and she took care of cleaning the kitchen. Ms. Huen and her husband had a bedroom upstairs, as did all three girls. L.S. slept downstairs.

Mrs. Huen said the locks on the front and back door were regular ones and you did not need a key to unlock the door from the inside. There was an alarm system, but it was not connected because Mrs. Huen did not think it was a necessary expense.

Mrs. Huen worked five days a week as a homecare worker. When she was home she claims not to have seen L.S. do housework or cook. She thought her daughter and son-in-law were very good to L.S.

There was a landline telephone in the Grant Street house. The service provider was AIC. Mrs. Huen was shown a number of phone bills associated with the telephone at Grant Street. Many of the phone calls begin with the prefix 6392. Assuming that 9-2 was an area code for the Philippines, Mrs. Huen said did not know anyone in the Philippines, nor did she think her husband or son did.
On cross-examination Mrs. Huen said she was aware Mr. Orr had worked as an immigration consultant in the past. She agreed the house had a surveillance camera outside the front door connected to a TV monitor in the kitchen. There were also bars on the windows at the back of the house.

Mrs. Huen conceded that she testified at the first trial that her son-in-law and daughter wanted to come back to Canada and stay for a while, perhaps a year. She maintained she let L.S. use the telephone to call the Philippines and charge it to the home phone, even though she was keen on saving money by not having the alarm system monitored. Mrs. Huen said she did it out of friendship. There was a Filipino family living in the basement suite, but they were not permitted to use the telephone or access the main part of the house. Mrs. Huen recalled the police coming to the house in response to L.S.'s 911 call and she said she gave L.S. a hug goodbye.

The Western Union Evidence
Man Fai Mak ran a store in Richmond that provided Western Union money transfer services. Mr. Mak met Mr. Orr when he came in with his maid or nanny. The woman could not set up a Western Union account, though Mr. Mak could not recall why.

Mr. Orr opened an account and told Mr. Mak the woman had his permission to use the account to send money. He recalled the woman coming back to his store several times to transfer money.

Mr. Orr accompanied her if the amount being transferred was over $1,000, but Mr. Mak could not recall whether anyone came into the store with the woman on the other occasions. She used Mr. Orr's membership card to make transfers.

The PNB Representative

Mr. Asuncion works for the PNB Remittance Company Canada, Surrey Branch. He has worked for the PNB since 2006. The PNB Remittance Company sends money to the Philippines. In 2008, a person attending the PNB in Canada for the first time to send money to the Philippines would have to fill out a form and provide identification. That information would be recorded in an application form.

Mr. Asuncion obtained the computer version of the application form for L.S. The written version is kept for five years and was not available for trial. The account for L.S. was created on October 22, 2008, at the Vancouver branch of the PNB. It recorded L.S.'s passport number as her identification. Mr. Asuncion also obtained a summary of remittances from the account. Rhea X.L. Velasco is the beneficiary or owner of the account who received the money in the Philippines.

Mr. Asuncion said if someone had a PNB account somewhere else in the world the first time they made a remittance from Canada they would still have to go through the procedure of showing their identification and registering. They could not make a transaction using an account number without identification. Once an account was open in Canada subsequent transactions could be done by someone other than the person registered to the account, but if there was any doubt the PNB would check with the remitter.

Mr. Asuncion said often the remitter comes with a relative or friend and "okays" them to remit on their behalf. No forms would be required unless there was a change of beneficiary. L.S.'s transactions took place at the Vancouver branch of the PNB on Broadway. There was no change of beneficiary on file.

Mr. Asuncion said if more than $1,000 was being sent, identification would have to be shown. He agreed that on L.S.'s remittance record there were two transfers on one day of slightly over $500 each. Each transfer required a commission. Since the aggregate daily amount being sent was over $1,000, the teller would have to ask for identification or call the account holder.

Credibility and Reliability

L.S.'s evidence provides the fundamental underpinnings of the Crown's case. L.S. testified at the preliminary hearing in this matter and at the first trial before a jury. She also gave numerous statements to police, some close in time to when she left the Orr family and some later in time, including one given to Detective King in May 2016, about six weeks before this trial commenced. It is natural for there to be some inconsistencies when a witness gives as many accounts of what occurred as L.S. has, but if there are significant inconsistencies or shifting versions of events it would be unsafe to convict Mr. Orr, absent corroboration of L.S.'s evidence. Defence counsel vigorously challenged L.S.'s credibility and reliability over several days of cross-examination. In accordance with the rule in *Browne v. Dunn* [(1893), 6 R. 67 (U.K. H.L.)] and in anticipation of calling certain defence evidence, Ms. Blok put a variety of assertions to

L.S., but for the most part did not call evidence to substantiate them. As I assess L.S.'s evidence, I do so mindful of the fact that those unproven assertions are not evidence before me.

Upon reviewing the evidence of L.S., I identified several areas where her evidence was either internally inconsistent or inconsistent with evidence from other sources. L.S. also gave shifting versions of events when confronted with some of these inconsistencies.
130 First, L.S.'s evidence about how she ended up coming to Canada, thinking she had a proper work visa, turns entirely on an acceptance of her evidence that contrary to past practice, she took no steps of her own to ensure her documents were valid. She testified she took steps to ensure she was legally entitled to work in Saudi Arabia and Lebanon, yet she completely abdicated any personal responsibility for inquiring into the process by which she would work in Canada. L.S. simply followed Mr. Orr's lead.

L.S. did not look at the receipt she had to present to pick up her passport and visa at the Canadian Embassy in Hong Kong. If she had, she would have known she was not getting a work visa, but a short-term visa. She did not look at her passport after she picked it up at the Embassy to see what kind of a document she had been issued.

L.S. said Ms. Huen took her passport from her outside the Embassy, then Mr. Orr took it and she did not see it again. Mr. Orr presented her passport at the Hong Kong airport and the Vancouver airport. She did not handle it herself. Nobody discussed the terms of the visa with her.

L.S. said different things at different times about when she last saw her passport. It was either taken from her after she obtained it from the Embassy, after she cleared Immigration at the Vancouver airport, or after she arrived at the Grant Street house.

A second area where I had difficulty with L.S.'s evidence pertained to the emergency contact number in her passport. L.S. gave a variety of accounts of whose phone number she thought it was. She seemed to be intent upon giving an answer, even if it was an inconsistent one, rather than simply saying she did not know.

Third, L.S.'s evidence about what happened at the airports in Hong Kong and Vancouver defies reason and logic. I agree with defence counsel that L.S.'s evidence appeared designed to minimize the possibility she would have been in contact with anyone who would have reviewed the terms of her travel visa with her.

To the contrary, Ms. Tang said Cathay Pacific representatives carefully check travel documents as the carrier is held responsible if people do not have the correct documents. Passport visas and return tickets are checked at the check-in desk. Passports are checked again when travellers board the plane. Ms. Tang also said that in her experience people leaving Hong Kong go through exit Immigration.

If L.S.'s evidence is to be believed, it was as if she passed through a major international airport without anyone seeing her or speaking with her directly because Mr. Orr had her travel documents.

When L.S. arrived in Vancouver she had a similar experience to the one in the Hong Kong airport. Nobody asked her anything, except whether she was there to look after the baby. Nobody confirmed with her that she had a temporary visa and she did not ask to look at her passport or do anything to confirm her status.

Fourth, L.S.'s evidence about the locks on the doors of the Grant Street house and the Richmond townhouse is simply bizarre. She describes some kind of mechanism on the inside of the door at Grant Street that, if triggered, would automatically lock the door. She said at first there was something similar on the door at the Richmond townhouse, but ultimately resiled from that and said a key was required to get out the front door. L.S. said she never really tried to go out the front door of the Richmond townhouse, except once. She was unable to push the door open, and claimed to later learn that a padlock had been placed on the exterior of the door when she was in the house with Megan.

L.S.'s evidence about the locks on the townhouse in Richmond was contradicted by Mr. Khokhar, the handyman. He said there was no key required to exit the door. There was a master key and the townhouse complex management did not tolerate tenants tampering with locks or changing them. L.S.'s evidence about the padlock was simply unbelievable.

Fifth, L.S. 's evidence was that life with the Orr family in Hong Kong was good, but once they travelled to Canada she had no days off, she was not allowed to go to church, or do her own banking, and she had to work from early morning to late at night, doing everything for everyone in the house. It was as if someone flipped a switch on her life.

While this trial is not about L.S.'s happiness or working conditions, I found L.S. went to extremes to deny that anything good happened to her in Canada. One example, albeit a minor one, concerns whether the Orr family bought her a cake on her birthday. L.S. grudgingly agreed that they bought her a cake, but she said it was only because the girls wanted to blow out candles.

When she was shown a photograph of herself, Ms. Huen and the girls in the Grant Street house with a cake, which clearly had the letters of L.S. 's first name on it, she said it was Vanessa's birthday cake. They never had a cake for her in that house with her name on it.

L.S. also maintained she was not allowed to do her own bank transfers from Canada to the Philippines. She went with Mr. Orr to Western Union in Richmond or she asked Ms. Huen to go to the PNB for her. She adamantly denied going to the PNB to open an account but I find, based on the evidence of the PNB representative, Mr. Asuncion, that L.S. must have gone at least once to the PNB to provide the information to open an account to send money from Canada.

I also find that Mr. Orr arranged for L.S. to use his Western Union account at Mr. Mak's store in Richmond, although Mr. Mak was not sure if L.S. ever came in alone. That said, it would make no sense for Mr. Orr to arrange for L.S. to be able to use his account to send money if she was never allowed out to do it herself.

In light of the foregoing, which is not an exhaustive catalogue of all the inconsistencies or illogical aspects of L.S. 's evidence, I am of the view that L.S. 's evidence requires corroboration before it can be relied upon to base a conviction on any of the counts.

The Offences on the Indictment

Count 1

The offence in Count 1 is commonly referred to as human trafficking. Section 118 of the *IRPA* states:

> 118 (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.
>
> (2) For the purpose of ss (1) organize with respect to persons includes their recruitment or transportation and after their entry into Canada the receipt or harbouring of those persons.

The Crown submits Mr. Orr brought L.S. to Canada by means of fraud, deception or coercion. He promised her higher wages, better hours, status and sponsorship of her children, which constituted fraud and deception. The Crown submits Mr. Orr took advantage of L.S.'s situation. His offer of a better life in Canada was appealing to her and constituted a form of coercion. L.S. expected a better situation in Canada, but it did not happen. There was no evidence she was actually given days off or was able to go out on her own. She was isolated in the Orr home. She was a form of cheap labour. She had nowhere to go for help and could not extract herself from the situation.

The Crown said L.S. is not a sophisticated person and that her evidence as a whole is credible and makes sense. The inconsistencies in the Crown's submission are not a cause for concern.

As is manifest from my earlier comments on the credibility and reliability of L.S., I do not share the Crown's view that L.S.'s evidence is generally credible and makes sense, or that the inconsistencies in her evidence are not a cause of concern. This is a case where corroboration is required to prove the count beyond a reasonable doubt.

There is some evidence which corroborates L.S.'s account that the Orr family was moving to Canada rather than visiting. Their condo in the Bellagio Towers was sold, although I cannot discern when title passed to the new owners. The tickets for Ms. Huen and Vanessa, the oldest child, were one-way tickets. As well, Ms. Huen's mother agreed that at the first trial she testified she thought the family was coming to stay for perhaps a year.

On the other hand, both L.S. and Mr. Orr had return tickets from Hong Kong to Vancouver. While L.S.'s ticket was purchased on July 24 and could not have been the return ticket produced to the visa office in support of her TRV, the existence of return tickets for her and for Mr. Orr cast doubt on the Crown's assertion that Mr. Orr intended to relocate to Vancouver or that L.S. was induced to attend Canada with the family on fraudulent or deceptive means.

Given my general concerns about the credibility and reliability of L.S. outlined above, I cannot be satisfied beyond a reasonable doubt of Mr. Orr's guilt on Count 1.

Count 2

Count 2 concerns employing a foreign national without authorization. The relevant section of the *IRPA* provides that every person commits an offence who employs a foreign national in a capacity to which the foreign national is not authorized under this *Act* to be employed.

For the purposes of (1)(c), a person who fails to exercise due diligence to determine whether employment is authorized under this *Act* is deemed to know that it is not authorized.

The offence is one of strict liability. In the seminal judgment concerning strict liability offences and due diligence, *R. v. Sault Ste. Marie (City)*, [1978] 2 S.C.R. 1299 (S.C.C.), Dickson J., as he then was, said for the court:

> In this doctrine it is not up to the prosecution to prove negligence. Instead, it is open to the defendant to prove that all due care has been taken. This burden falls upon the defendant as he is the only one who will generally have the means of proof. This would not seem unfair as the alternative is absolute liability which denies an accused any defence whatsoever. While the prosecution must prove beyond a reasonable doubt that the defendant committed the prohibited act, the defendant must only establish on the balance of probabilities that he has a defence of reasonable care.

There is significant corroboration for L.S.'s account that she was employed by Mr. Orr until the day she called 911. L.S. continued to remit money to the Philippines until about a month before the 911 call. There is no evidence she had any source of income other than what she received from Mr. Orr and she did not have any documentation which would allow her to work legally in Canada. As of June 11, 2009, L.S. was illegally in Canada.

In addition, there is evidence of the two police officers who attended the Grant Street house in response to the 911 call. While neither took contemporaneous notes, I am satisfied that their observations of Mr. Orr 's words and actions amount to an admission on his part that L.S. was in his employ.

Mr. Orr put up a fuss when Constable Shook asked for L.S.'s passport. I find he did so because he knew the police would find out L.S. was illegally in Canada, living and working in his house, and he hoped to distract or dissuade them from pursuing the passport issue.

In addition, I am satisfied beyond a reasonable doubt of Mr. Orr's statements to the effect that one had to be vigilant about Filipino nannies, because employers would pay their way but they would leave without doing the job, and that he needed the passport so he could tell his employee they were not doing a good job. Constable Shook did not record Mr. Orr's words verbatim, but I am satisfied he later recorded the gist of Mr. Orr's remarks.

Mr. Orr did not advance a defence of due diligence.

I am satisfied beyond a reasonable doubt, based on the evidence on L.S., as corroborated by the records of her remittances and the observations of the police officers, that Mr. Orr employed L.S., a foreign national, without authorization.

Count 3

163 The final count on the indictment concerns misrepresentation. Section 127(a) of the *IRPA* states:

> No person shall knowingly
> (a) directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act . . .

The Crown submits that Mr. Orr's letter dated June 25, 2008, is the substance of the misrepresentation charge. In that letter, Mr. Orr states that his family was travelling to Vancouver and would return to Hong Kong and they wanted L.S. to accompany them to look after the children.

In those circumstances the visa Mr. Orr sought for L.S. was much less complicated to obtain. He did not need to obtain a LMO or a work visa for her. To the contrary, L.S. said the family was moving and she was accompanying them to finish her contract. They packed up and sold their condo.

The Crown also points out that Mr. Orr purchased a return ticket for himself and L.S. on July 24, which must have been a different ticket than the one that was submitted for the visa approval. Ms. Huen's mother thought they were moving back more or less permanently. Ms. Huen enrolled in a real estate course when the family arrived in Canada and Vanessa started school. The Crown maintains the family was moving back to Canada on a permanent basis, just as L.S. said they were, and Mr. Orr's letter was misleading and the elements of misrepresentation are made out.

The date range in Count 3 is between June 24 and July 4, 2008. The letter containing the alleged misrepresentation was dated June 25, 2008. Events that occurred after that date range are not necessarily of assistance in determining Mr. Orr's intentions and assertions when he wrote the letter.

Proof of this count turns on the evidence of L.S. which, in my view, on this count lacks the corroboration that would satisfy me of his guilt beyond a reasonable doubt.

While I suspect that Mr. Orr may not have been entirely candid when he wrote the letter, I am not satisfied beyond a reasonable doubt of his guilt on this count.

Mr. Orr, would you please stand?

Mr. Orr, on Count 1 of the indictment, human trafficking, I find you not guilty. On Count 2, employing a foreign national without authorization, I find you guilty. On Count 3, misrepresenting or withholding material facts I find you not guilty.

We will adjourn to fix a date for sentencing.

Order accordingly.

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