WARNING

The President of the panel hearing this appeal directs that the following should be attached to the file:

An order restricting publication in this proceeding under ss. 486.4(1), (2), (2.1), (2.2), (3) or (4) or 486.6(1) or (2) of the *Criminal Code* shall continue. These sections of *the Criminal Code* provide:

> 486.4(1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of
>
> (a) any of the following offences;
>
> (i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or
>
> (ii) any offence under this Act, as it read at any time before the day on which this subparagraph comes into force, if the conduct alleged involves a violation of the complainant's sexual integrity and that conduct would be an offence referred to in subparagraph (i) if it occurred on or after that day; or
>
> (iii) REPEALED: S.C. 2014, c. 25, s. 22(2), effective December 6, 2014 (Act, s. 49).
>
> (b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).
>
> (2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall
>
> (a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and
>
> (b) on application made by the victim, the prosecutor or any such witness, make the order.

(2.1) Subject to subsection (2.2), in proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice may make an order directing that any information that could identify the victim shall not be published in any document or broadcast or transmitted in any way.

(2.2) In proceedings in respect of an offence other than an offence referred to in subsection (1), if the victim is under the age of 18 years, the presiding judge or justice shall

> (a) as soon as feasible, inform the victim of their right to make an application for the order; and
>
> (b) on application of the victim or the prosecutor, make the order.

(3) In proceedings in respect of an offence under section 163.1, a judge or justice shall make an order directing that any information that could identify a witness who is under the age of eighteen years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography within the meaning of that section, shall not be published in any document or broadcast or transmitted in any way.

(4) An order made under this section does not apply in respect of the disclosure of information in the course of the administration of justice when it is not the purpose of the disclosure to make the information known in the community. 2005, c. 32, s. 15; 2005, c. 43, s. 8(3)(b); 2010, c. 3, s. 5; 2012, c. 1, s. 29; 2014, c. 25, ss. 22, 48; 2015, c. 13, s. 18.

486.6(1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

(2) For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim, witness or justice system participant whose identity is protected by the order. 2005, c. 32, s. 15.

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Gallone, 2019 ONCA 663
DATE: 20190820
DOCKET: C64738

Hoy A.C.J.O., Hourigan and Paciocco JJ.A.

BETWEEN

Her Majesty the Queen

Appellant

and

Alicia Gallone

Respondent

Vallery Bayly and Christine Bartlett-Hughes, for the appellant

Breana Vandebeek, for the respondent

Heard: June 5, 2019

On appeal from the acquittals entered by Justice David E. Harris of the Superior Court of Justice, sitting with a jury, dated November 30, 2017.

Hoy A.C.J.O.:

[1] The Crown appeals the respondent's acquittal of human trafficking (s. 279.01(1)), procuring a person to offer or provide sexual services for consideration (s. 286.3(1)), and advertising sexual services for consideration (s. 286.4). It submits that the trial judge erred in law by misinterpreting these provisions, that he consequently misdirected the jury, and that the errors might reasonably be thought, in the circumstances of this case to have had a material bearing on the respondent's acquittals.

[2] For the following reasons, I agree that the trial judge misdirected the jury. I would order a new trial.

[3] Because I would order a new trial, I will provide only a brief, broad outline of the events giving rise to the charges. I will then set out the *Criminal Code* provisions in question, review the charge provided to the jury regarding those provisions, and explain how the trial judge erred in his charge.

I. BACKGROUND

[4] The charges arose out of events that occurred over a two-week period in November 2015.

[5] The respondent was 22 years of age and had experienced a difficult upbringing. She began working at a strip club as a dancer. It was her first involvement in the adult entertainment industry. She met the complainant on

November 5, 2015 – the day that the complainant began working as a dancer at the strip club and about a month after the respondent had begun working there.

[6] The complainant was 18 years of age and had never worked at an adult entertainment establishment before. She had been kicked out of her mother's home and was living in an apartment, receiving welfare.

[7] The respondent and the complainant quickly developed a relationship. When the respondent said she needed a place to stay, the complainant let her stay at her apartment. The respondent stayed there over the next two weeks.

[8] The complainant and the respondent were the only two witnesses at trial. Although they described the same general series of events, their evidence diverged about the nature of their relationship and the extent of the respondent's involvement in the sale of the complainant's sexual services.

[9] The series of events was generally as follows. On November 17, advertisements for the complainant's sexual services, featuring sexualized photos, were posted on the website "Backpage". On the same day, a client showed up at the complainant's apartment, but the complainant refused to engage in anal intercourse with him and he left. On November 18, a male acquaintance of the respondent and another man picked up the complainant and the respondent and drove them first to one condo, and then to another. At each condo, the complainant had intercourse with a client.

[10] Early in the morning of November 19, the respondent woke the complainant and told her that one of the clients wanted to see her again. When the client arrived, the complainant went outside, obtained money from the client, returned and gave money to the respondent, and then left with the client. The client returned the complainant to her apartment about a day and a half later.

[11] After the client dropped the complainant off at the apartment, the respondent left. In the respondent's absence, the complainant called her mother, who paid for a cab. When the complainant arrived at her mother's home, she broke down and explained the trouble she had been going through. She did not explain how she had met the respondent. Her mother took her to the police station.

[12] In her evidence at trial, the complainant described several occasions when she said the respondent became angry with her while they were living together. She also testified that it was the respondent who brought up the topic of escorting, and it was the respondent who posted the ads on Backpage and told her a client would be showing up at the apartment. According to the complainant, when she did not get money from that client, the respondent became angry with her, and, the next day, the respondent brought up the topic of escorting again. The complainant testified that she went along with what the respondent suggested because she was scared after the respondent's previous episodes of

anger. She also testified that she gave the money she received from clients to the respondent.

[13] The respondent testified that it was the complainant's idea to sell her sexual services and that they did the Backpage posting "step-by-step" together, using the respondent's phone and photographs that a male friend of the complainant had taken. The respondent testified that she contacted her male acquaintance when the complainant asked her if she knew anyone who could help the complainant with escorting. The respondent said that the complainant gave all of the money she received from the condo clients to one of the males who brought them to the condos. The respondent testified that she argued with the males about taking money from the complainant. Ultimately, one of the males returned half the money. The next day, when the complainant left the apartment to go with one of the clients again, the respondent testified that the complainant gave her some money to pay her back for the times the respondent had been "paying for everything".

II. HUMAN TRAFFICKING

A. The elements of the offence

[14] The human trafficking offence in s. 279.01 was enacted in November 2005 by Bill C-49, *An Act to amend the Criminal Code (trafficking in persons)*, 1st Sess., 38th Parl., 2005 (assented to 25 November 2005), S.C. 2005, c. 43.

[15] The relevant portions of the offence read as follows:

> 279.01(1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence [.]
>
> (2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

[16] Exploitation is defined in s. 279.04:

> 279.04(1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they fail to provide, or offer to provide, the labour or service.
>
> (2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused
>
> (a) used or threatened to use force or another form of coercion;
>
> (b) used deception; or
>
> (c) abused a position of trust, power or authority.
>
> (3) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

[17] The Crown must establish beyond a reasonable doubt two elements to make out the offence of human trafficking. First, it must prove that the accused did anything that satisfies the conduct requirement set out in s. 279.01(1) in relation to a person. Second, it must prove that the accused intended to do anything that satisfies the conduct requirement, and that the accused acted with the purpose of exploiting or facilitating the exploitation of that person: *R. v. A.A.*, 2015 ONCA 558, 327 C.C.C. (3d) 377, at paras. 79, 82. More will be said about these elements below in the course of my analysis of the trial judge's charge regarding this offence.

B. The trial judge's charge on human trafficking

[18] The human trafficking charge was described on the indictment as follows:

> Alicia GALLONE stands charged:
>
> 1. That she … did unlawfully[1] recruit, conceal or exercise control, direction or influence over the movements of [the complainant] for the purpose of exploiting or facilitating the exploitation of that person, contrary to section 279.01(1) of the Criminal Code of Canada[.]

[19] The trial judge began his charge on this offence by directing the jury on its conduct element, tailored with reference to the manner in which the offence had been described: "So, the first element of the human trafficking offence is

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[1] The parties agreed that this word was surplusage, and the trial judge instructed the jury to disregard it.

expressed in the first group of words … 'Did recruit, conceal, exercise control, direction or influence over movements of [the complainant].'"

[20] He then said:

> [T]hey are slightly different concepts but they should be read together as one on the evidence in this case. It has been suggested to you that you can read them individually and separately. Please do not do that. That is legally incorrect, you should read them together. Individually they may have very different meanings but they have to take their meaning from the context of all being put together. The individual meanings you have to take in account, but then come out with a total meaning that they all contribute to.

[21] He defined those words for the jury as follows:

> So, 'recruit' means to enlist someone, to persuade them to get involved, like [an] army recruitment campaign, for example.
>
> Conceal, means to hide or secret away;
>
> Exercise control over movements of a person. Control refers to invasive behaviour, domination which leaves little choice to the person controlled;
>
> Exercise direction over the movements of a person when rules or behaviors are imposed; and
>
> The exercise of influence over the movements of a person is similar.

[22] After defining the words, he instructed the jury:

> So if you were going to look for a governing concept on the evidence in this case I would have thought it would

> be the requirement of "exercise of control over movement." This sits at the centre of the provision. So that definition again is control refers to invasive behaviour, domination which leaves little choice to the person controlled. And remember it must be control over movement. That is the trafficking nature of the offence.

[23] The trial judge next turned to the "for the purpose" *mens rea* requirement. He explained that it was not sufficient that any actions of the respondent had the effect of exploiting the complainant; rather, "[i]t must be proved that exploitation was the intention and the purpose, ultimately."

[24] At this point in the charge, the trial judge reviewed the definition of exploitation set out in s. 279.04(1) of the *Criminal Code*. He charged the jury that the "[respondent] must 'cause' [the complainant] to provide or offer to provide [labour or a service]… If [the respondent] did not cause [the complainant] to provide [labour or a service] beyond a reasonable doubt, then proof of this count fails."

[25] Turning to the words "could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would threatened" in the definition of exploitation, he instructed the jury:

> In a somewhat indirect way, the requirement is that the conduct of [the respondent] could reasonably be expected to cause a concern for safety in a reasonable person but not to actually have caused there to be fear in the complainant.

[26] Focusing on the "safety" element in the definition of exploitation, he explained as follows:

> In short, did [the respondent] cause there to be a reasonable expectation of fear for safety in [the complainant] if she did not provide sexual services? That is the question.

[27] Before relating the evidence to the elements of the offence of human trafficking as he had explained them, the trial judge summarized his legal directions to the jury:

> Was there an exercise of control over [the complainant's] movements and was she exploited? Those are the questions.
>
> That then, is the first count in terms of what must be proved. It is not easy stuff. Unfortunately, it's quite convoluted. But to wrap it up in one sentence, the Crown must prove that [the respondent] was the motivating cause behind [the complainant] offering and providing sexual services and that it was reasonable to expect that [the complainant's] safety would be threatened if she did not provide the services.

C. Analysis

[28] The trial judge made three errors in this portion of his charge.

i. The conduct element is disjunctive

[29] The trial judge committed the first error by instructing the jury to read all of the specified types of conduct – recruit, conceal, or exercise control, direction or influence over movement – as one, with a single common meaning. In other

words, he adopted a conjunctive interpretation of the conduct requirement. This interpretation is contrary to accepted principles of statutory interpretation.

[30] The modern principle of statutory interpretation is that "the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis, 2014), at p. 7, quoting Elmer A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974), at p. 67; see also *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Hutchinson*, 2014 SCC 19, [2014] S.C.R. 346, at para. 16.

[31] In addition to this modern principle of statutory interpretation, the presumption against tautology is relevant. That presumption of statutory interpretation instructs "that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain": *Sullivan*, at p. 211, citing *Attorney General of Quebec v. Carrières Ste-Thérèse Ltée*, [1985] 1 S.C.R. 831, at p. 838. Instead, "[e]very word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose": *Sullivan*, at p. 211. Thus, "[e]very part of a provision or set of provisions should be given meaning if possible", and courts should avoid, "as much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant": *Hutchinson*, at para. 16; *Sullivan*, at p. 211.

[32] Subsection 279.01(1) captures "[e]very person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation" (emphasis added).

[33] On a plain reading of s. 279.01(1), it is clear from the use of the word "or" throughout the part of the provision describing the conduct caught by it that the *actus reus* is disjunctive – not, as the trial judge interpreted it, conjunctive. Thus, the conduct requirement is made out if the accused engaged in any one of the specific types of conduct set out in the first part of the provision – *i.e.* recruits, transports, transfers, receives, holds, conceals or harbours. It is also made out if the accused's conduct satisfies one of the acts in the second part – *i.e.* exercises control, direction or influence over the movements of a person. For example, the *actus reus* would be made out if the accused recruited the complainant. It would also be made out if the accused exercised influence over the movements of the complainant.

[34] There is nothing in the offence provision, the other provisions concerning human trafficking or the *Criminal Code* as a whole that indicates that the use of the word "or" in this provision should be given anything other than its ordinary and grammatical meaning – *i.e.* one requiring that the various conduct caught by the provision be read disjunctively rather than conjunctively.

[35] Moreover, a disjunctive interpretation is consistent with the object of the human trafficking provisions, which is "to criminalize a wide range of intentional conduct that has, as its purpose, the exploitation of vulnerable persons": *A.A.*, at para. 88 (emphasis added). A disjunctive reading of the various conduct caught by s. 279.01(1) supports the achievement of this object by capturing various and diverse types of offending conduct, including some which are "preliminary or preparatory conduct, such as recruitment": *A.A.*, at para. 88. A conjunctive interpretation, melding the meanings of all of the different conduct into one single meaning capable of capturing only one single type of conduct, would hinder the objective of the provision.

[36] A disjunctive interpretation also ensures that each one of the listed types of conduct in s. 279.01 has its own meaning. By contrast, the conjunctive interpretation employed by the trial judge contravenes the presumption against tautology because it renders Parliament's listing of various different conduct redundant.

[37] In sum, a disjunctive interpretation of s. 279.01(1) accords with the grammatical and ordinary sense of the words used in the provision as well as the object of the human trafficking provisions. It is also supported by the presumption against tautology.

[38] The trial judge's conjunctive interpretation is also contrary to existing jurisprudence.

[39] For instance, the Court of Appeal of Quebec ascribed a disjunctive interpretation to the conduct requirement in s. 279.01(1) in *R. c. Urizar*, 2013 QCCA 46, [2013] R.J.Q. 43, at para. 72:

> L'infraction peut être commise de différentes façons. Il peut s'agir d'un geste isolé ou de gestes coordonnés pourvu que ces gestes soient posés en vue d'exploiter ou de faciliter l'exploitation de la personne. Ainsi, celui qui recrute ou héberge pourra être accusé de la traite des personnes à la condition qu'il ait su que le geste posé l'avait été en vue d'exploiter ou de faciliter l'exploitation d'une personne.[2]

[40] Similarly, in *A.A.*, at para. 80, this court endorsed a disjunctive interpretation of the conduct requirement in the offence of trafficking a person under 18, which is identical to the human trafficking offence except that it applies when the victim is under 18 years of age: "The *conduct* requirement may be established in several different ways including exercising control, direction or influence over the movements of another person" (italics in original, underlining added).

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[2] Unofficial English Translation (Q.C.C.A.):

> An offence may be committed in different ways. It may be an isolated act or it may be coordinated acts, as long as the act or acts are committed for the purpose of exploiting a person or facilitating their exploitation. Thus, someone who recruits or harbours may be charged with trafficking in persons if they knew that the act was committed for the purpose of exploiting a person or facilitating their exploitation.

[41] The effect of the trial judge's erroneous conjunctive interpretation was to elevate the conduct element of the offence beyond what the Crown was required to prove. As the Crown put it in its factum, "[t]he Crown is not required to prove that the accused exercised near-total control over the complainant." For example, it would be sufficient to make out the *actus reus* of the offence if the accused recruited the complainant. Recruiting a person within the meaning of the provision can happen with or without the exercise of control over the person. The jury was instructed incorrectly on this important point of law.

ii. "Influence" is less coercive than "direction"

[42] Second, the trial judge erred by directing the jury that "[t]he exercise of influence over the movements of a person is similar" to "[e]xercise direction over the movements of a person", which he had defined as "when rules or behaviors are imposed." He provided the jury with no other instruction regarding the meaning of exercising influence.

[43] Like the error above, this instruction runs counter to accepted principles of statutory interpretation. It fails to accord with the ordinary meaning of these words, because the word "direction" ordinarily means something different than the word "influence". It offends the presumption against tautology, because it renders Parliament's use of the word "influence" superfluous. Finally, it fails to accord with legislative intent, because it narrows the reach of the offence

provision rather than supporting its application to a wide range of intentional conduct.

[44] The trial judge's interpretation of "direction" and "influence" is also inconsistent with existing jurisprudence.

[45] I note that the trial judge appears to have adopted the definitions of "control" and "direction" in *Perreault c. R.*, [1997] R.J.Q. 4 (Q.C.C.A.), at p. 6, but not its definition of "influence" as something less coercive than "direction":

> L'élément *contrôle* réfère à un comportement envahissant, à une emprise laissant peu de choix à la personne contrôlée. Ce comportement inclut par conséquent des actes de direction et d'influence. Il y a exercice de *direction* sur les mouvements d'une personne lorsque des règles ou des comportements sont imposés. L'exercice de direction n'exclut pas que la personne dirigée dispose de latitude ou d'une marge d'initiative. L'exercice d'*influence* inclut des comportements moins contraignants. Sera considérée comme une influence, toute action exercée sur une personne en vue d'aider, encourager ou forcer à s'adonner à la prostitution. [Emphasis in original.] [3]

[3] Unofficial English Translation (Q.C.C.A.), as quoted in *Urizar,* at para. 75:

> The element of control refers to invasive conduct, a power that leaves the controlled person with little choice. This conduct therefore includes acts of direction and influence. Direction is exercised over the movements of a person when rules or behaviours are imposed. The exercise of direction does not preclude the possibility that the directed person has latitude or a measure of discretion. The exercise of influence includes less constraining conduct. Any action exercised over a person for the purpose of aiding, abetting or compelling that person to engage in prostitution would be considered an influence.

[46] I agree with the Court of Appeal of Quebec that "exercises influence" entails something less coercive than "exercises direction", and I agree with the Crown that the trial judge erred by not communicating this to the jury. "Less" is different from "similar".

[47] Consistent with *Perreault*, I would define "exercises influence" over the movements of a person for the purposes of s. 279.01(1) as something less coercive than "exercises direction". Exercising influence over a person's movements means doing anything to affect the person's movements. Influence can be exerted while still allowing scope for the person's free will to operate. This would include anything done to induce, alter, sway, or affect the will of the complainant.[4] Thus, if exercising control is like giving an order that the person has little choice but to obey, and exercising direction is like imposing a rule that the person should follow, then exercising influence is like proposing an idea and persuading the person to adopt it.

[48] I also agree with the Court of Appeal of Quebec's comment in *Urizar*, at para. 74, that "exercises control, direction or influence over the movements of a person" generally suggests a situation that results from a series of acts rather than an isolated act:

[4] Bryan A. Garner, ed., *Black's Law Dictionary*, 11th ed. (Toronto: Thompson Reuters, 2019), *sub verbo* "influence".

> Le second segment de l'article suggère un état des choses qui découle d'une série d'agissements plutôt que d'un acte isolé: exerce un contrôle, une direction ou une influence sur les mouvements d'une personne.[5]

[49] The Court of Appeal of Quebec continued, at para. 74:

> Ces derniers termes évoquent la notion d'emprise, de mainmise, d'ascendant sur la personne et sur ses mouvements.[6]

[50] In my view, the essence of what the Court of Appeal of Quebec adds here is that all these residual terms – "exercises control, direction or influence" – evoke a scenario in which a person, by virtue of her or his relationship with the complainant, has some power – whether physical, psychological, moral or otherwise – over the complainant and his or her movements. As stated in *A Handbook for Criminal Justice Practitioners on Trafficking in Persons*, (Ottawa: Department of Justice, 2015), which was developed by the Federal/Provincial/Territorial Working Group on Trafficking in Persons, these residual terms characterize "the nature of conduct in terms of the relationship between the accused and the victim in relation to the victim's mobility": at p. 20. In other words, by virtue of the relationship between the accused and the complainant, the accused was in a position or had the ability to control, direct, or

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[5] Unofficial English Translation (Q.C.C.A.): "The second part of the section suggests a situation that results from a series of acts rather than an isolated act: exercises control, direction or influence over the movements of a person."

[6] Unofficial English Translation (Q.C.C.A.): "These latter terms evoke power, control, or dominance over the person and their movements."

influence the movements of the complainant. However, as already stated, the terms “control”, “direct” and “influence” involve different degrees of coercion: see *Urizar*, at para. 76 (“[L]’infraction peut être commise par des agissements qui, à degré variable, forment une contrainte sur les mouvements d’une personne en vue de l’exploiter ou de faciliter son exploitation”[7] [emphasis added]).

[51] The jury ought to have been instructed on how exercising influence was different from exercising direction, and, especially, that it involved a lesser degree of coercion with respect to the complainant’s movements. The trial judge erred in not doing so, and further erred in essentially equating these two modes of committing this offence.

[52] In my view, each of the two errors discussed above requires a new trial, because they “might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the acquittal”: *R. v. Graveline*, 2006 SCC 16; [2006] 1 S.C.R. 609, at para. 14. In essence, these errors had the effect of requiring the Crown to prove more than the offence provision demanded for a finding of guilt.

[7] Unofficial English Translation (Q.C.C.A.): “[T]he offence may be committed by actions which serve, to varying degrees, to limit the movements of a person for the purpose of exploiting them or facilitating their exploitation” (emphasis added).

iii. Actual exploitation is not required

[53] Since a retrial is required, guidance is appropriate. Therefore, it is prudent to point out an additional error even though it was not raised by the Crown and I am not relying upon it to resolve this appeal. That error relates to the exploitation issue. Specifically, although the trial judge correctly charged the jury that the Crown must prove what the respondent did was "for the deliberate purpose of exploiting" the complainant, and that "[t]he focus is on the accused's actions and what effect they might be anticipated to have as opposed to what effect they actually had on the alleged victim", he subsequently stated that the Crown was required to prove that the respondent actually exploited the complainant. Specifically, he instructed the jury: "In short, did [the respondent] cause there to be a reasonable expectation of fear for safety in [the complainant] if she did not provide sexual services? That is the question" (emphasis added). He also instructed the jury: "Was there an exercise of control over [the complainant's] movements and was she exploited?" Those are the questions" (emphasis added).

[54] These latter instructions are incorrect, because a finding of actual exploitation is not an essential element of the offence. The Crown need only prove that the accused intentionally engaged in any of the conduct described in s. 279.01(1) with the purpose of exploiting the complainant or facilitating her or his exploitation: *A.A.*, at paras. 84-86. No exploitation need actually occur or be

facilitated by the accused's conduct. The focus of this element is on the accused's state of mind – *i.e.* his or her purpose in engaging in the prohibited conduct – and not on the actual consequences of his or her conduct for the complainant: *A.A.*, at para. 86. As Watt J.A. observed in *A.A.*, at para. 87, where exploitation, as defined in s. 279.04, arises from the facts, "inferring that the accused's purpose was to exploit the victim will usually be a relatively straightforward task."

[55] In *Urizar*, the Court of Appeal of Quebec came to the same conclusion about the purpose element, stating, at para. 69:

> Les actes mentionnés au premier alinéa de l'article 279.01 C.cr. ne constituent des actes criminels que dans la mesure où ils sont poses en vue d'exploiter ou de faciliter l'exploitation de la personne, peu importe qu'une exploitation réelle s'ensuive. [Emphasis added.][8]

III. PROCURING

A. The elements of the offence

[56] In 2014, Parliament enacted Bill C-36*, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v. Bedford and to make consequential amendments to other Acts*, 2nd Sess., 41st Parl., 2014 (assented to 6 November 2014), S.C. 2014, c. 25, in

[8] Unofficial English Translation (Q.C.C.A.): "The acts mentioned in the first paragraph of section 279.01 *Cr. C.* constitute criminal offences only if they are committed for the purpose of exploiting or facilitating the exploitation of a person, regardless of whether or not exploitation actually ensues" (emphasis added).

response to the Supreme Court's decision in *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, declaring three *Criminal Code* offences addressing prostitution-related conduct unconstitutional. I say more about Bill C-36 below, in relation to the offence in s. 286.4 of advertising sexual services for consideration. Bill C-36 also modernized and reformulated the prior procuring offence in s. 212(1), by enacting s. 286.3(1).

[57] The new procuring offence set out in s. 286.3(1) reads as follows:

> Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

[58] Subsection 286.1(1) provides in relevant part:

> Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of [a hybrid offence].[9]

[59] As can be seen from the wording of s. 286.3(1), there are two modes of committing the *actus reus* of the procuring offence :

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[9] Penalty provisions omitted.

1. The accused “procures a person to offer or provide sexual services for consideration”; or

2. The accused “recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person.”

[60] The *actus reus* of the offence of procuring can be established by proof of conduct satisfying either of these modes.

[61] Dealing with the first mode, “procure” means “to cause, or to induce, or to have a persuasive effect upon the conduct that is alleged.” This definition was adopted by the Supreme Court in *R. v. Deutsch*, [1986] 2 S.C.R. 2, at pp. 26-27, in considering the procuring offence then in effect. This court subsequently applied this definition to the former procuring offence in s. 212(1)(d): *R. v. Barrow* (2001), 54 O.R. (3d) 417 (C.A.), at para. 37, leave to appeal refused, [2001] S.C.C.A. No. 431; *R. v. Bennett* (2004), 184 C.C.C. (3d) 290 (Ont. C.A.), at para. 53. And lower courts have applied this definition from *Deutsch* to the new procuring offence: *Alexander*, at para. 51; *R. v. Evans*, 2017 ONSC 4028, at para. 137. I agree that this is the correct definition to use for the term “procure” in s. 286.3(1).

[62] The second mode of committing the *actus reus* of procuring shares language with the human trafficking offence in s. 279.01(1). With the exception of the words “transports”, “transfers” and “receives”, which are included in the human trafficking offence but not the procurement offence, Parliament used the same words and phrasing. As I will explain below, like the human trafficking offence, the second mode of the *actus reus* for the procuring offence is satisfied by proof that the accused committed any one of the specified types of conduct – *i.e.* recruits, holds, conceals, harbours, or exercises control, direction or influence over movement.

[63] To prove *mens rea* for the first mode of the procuring offence, the Crown must prove that the accused intended to procure a person to offer or provide sexual services for consideration. To prove *mens rea* for the second mode, the Crown must prove that the accused intended to do anything that satisfies the *actus reus* for this mode in relation to a person who offers or provides sexual services for consideration, and that the accused acted with the purpose of facilitating an offence under s. 286.1(1) (the purchasing sexual services offence). More will be said about these elements below in the course of my analysis of the trial judge’s charge regarding this offence.

B. The trial judge’s charge on procuring

[64] The procuring charge was described on the indictment as follows:

> Alicia GALLONE further stands charged:
>
> 2. That she … did for the purpose of facilitating an offence under subsection 286.1(1) procure, recruits, holds, conceals or harbours [the complainant] a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of [the complainant], contrary to section 286.3(1) of the Criminal Code of Canada[.]

[65] The trial judge charged the jury as follows with respect to this offence:

> The procuring first part of this definition, "procures, recruits, conceals or harbours," means to cause, induce or have persuasive effect. This requires the accused's active encouragement and involvement in the prostitution of another.
>
> The second way the offence can be proved is found in the second clause I referred to which is, "exercise control, direction or influence over the movements of a person," for the purpose of facilitating prostitution. You will recognize this language from the human trafficking charge, count number one. The same definition applies here. Here it is again.
>
> These words express slightly different concepts, but again, they must be read together as one. Recruit, means to enlist someone, to persuade them to get involved, like an army recruitment campaign. Conceal, means to hide or secret away. Exercise control over movements of a person; control refers to invasive behaviour, domination which leaves little choice to the person controlled. Exercise direction over the movement of a person, when rules or behaviours are imposed. The exercise of influence over the movements of a person is similar.
>
> If you were going to look for a governing concept I would have thought it would be the requirement of

> "exercise of control over movement". This sits at the centre of the provision. So that definition again is; control refers to invasive behaviour, domination which leaves little choice to the person controlled. And remember, it must be control over movement. That is the trafficking nature of the offence. The word "trafficking" used to be associated mainly with drugs. Trafficking in that context refers to movement.
>
> So in summary, there are two modes of committing the offence in this count: one is the procuring mode which requires causing or inducing the prostitution; the other is the requirement of an element of control over the prostitute.
>
> Lastly, you must find in order for the Crown to have proved its case that [the complainant] was a person "who offers or provides sexual services for consideration."
>
> …
>
> So summing up on this count, the key issue here is whether [the complainant] chose prostitution on her own or whether she was pushed into it by [the respondent]. By which I mean, putting it in the legal language, whether there was procurement or control.

C. Analysis

[66] The trial judge made the same two errors in his charge on procuring as he did in his charge on human trafficking.

[67] First, he instructed the jury to treat all of the different and distinct types of conduct captured by the second mode of the *actus reus* for the procuring offence (recruiting, holding, concealing, or harbouring a person, or exercising control, direction or influence over the movements of a person) "as one" – namely, that

the accused must have had an element of control over the movements of the complainant. He defined control restrictively as “invasive behaviour, domination which leaves little choice to the person controlled.”

[68] As noted above, with the exception of the words “transports”, “transfers” and “receives”, Parliament used the same words and phrasing to describe the second mode of the *actus reus* for procuring under s. 286.3(1) as it did to describe the *actus reus* for the offence of trafficking in persons under s. 279.01(1).

[69] As with the human trafficking offence, a disjunctive interpretation of the words used to describe the second mode of the *actus reus* for procuring accords with the grammatical and ordinary sense of the words used in the provision, particularly with the use of the word “or”, and with the presumption against tautology.

[70] It also accords with legislative intent. The preamble to Bill C-36 indicates that one of Parliament’s objectives in enacting these new offences was “to continue to denounce and prohibit the procurement of persons for the purpose of prostitution”. While in the circumstances little weight needs to be placed on other indicators of legislative intent, the extrinsic evidence of Parliamentary intent that is available is persuasive, offering more particularity. Specifically, the Technical Paper produced by the Department of Justice on the new prostitution-related

offences, which was tabled before the parliamentary committees tasked with reviewing the proposed new offence provisions, notes that "[c]onsistent with [this objective], Bill C-36 prohibits comprehensively all conduct related to procuring others for the purpose of prostitution": *Technical Paper – Bill C-36*, at p. 8 (emphasis added). A broad interpretation that reads the prohibited conduct disjunctively rather than conjunctively supports this legislative intent.

[71] Thus, I conclude that the different types of prohibited conduct set out in the second mode of s. 286.3(1) should be read disjunctively, and the trial judge erred in instructing the jury otherwise.

[72] Second, as he did in relation to the offence of human trafficking, the trial judge erred by failing to provide the jury with any instruction regarding the meaning of exercising influence except to say that "[t]he exercise of influence over the movements of a person is similar" to "[e]xercise direction over the movements of a person", which he had defined as "when rules or behaviors are imposed." As explained above, conflating "influence" with "direction" runs counter to the ordinary meaning of these words and the presumption against tautology. It also fails to accord with legislative intent, because it narrows the reach of the offence provision and renders it less comprehensive.

[73] As they did in relation to the offence of human trafficking, each of these two errors in the trial judge's instruction on procuring require a new trial, because

they “might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the acquittal”: *Graveline*, at para. 14. In essence, these errors had the effect of requiring the Crown to prove more than the offence provision demanded for a finding of guilt.

[74] Before leaving this section of my analysis, I wish to briefly address one other issue with the charge on procuring identified by the Crown. I will also address an issue with respect to the wording of the indictment.

[75] First, the Crown argues that, although the trial judge correctly defined “procure” as “cause, induce or have persuasive effect”, in summing up on this count, he erred by essentially equating “procure” with being “pushed” into prostitution. In the context of the charge as a whole, I am not persuaded that this attempt to summarize the concept of procure in simpler language was an error that might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the acquittal, particularly when the trial judge provided the jury with the correct definition earlier in his charge. However, it is preferable to use the explanation of “procure” from *Deutsch* rather than search for other ways of explaining this concept.

[76] Next, I note that the wording of this count in the indictment essentially merged the first mode of committing the *actus reus* of the offence into the second by putting the term “procure” next to “recruits, holds, conceals or harbours”, and

the trial judge repeated this wording in his charge. In future, it would be preferable if the first mode were kept distinct from the second, particularly because, as set out above, they contain different elements. For example, the first mode does not require that the procured person be a person who offers or provides sexual services for consideration. However, as the trial judge commented, in this case, this particular element was not really in dispute.

IV. ADVERTISING SEXUAL SERVICES

A. The elements of the offence

[77] When Parliament enacted s. 286.4 in 2014, pursuant to Bill C-36, it created an entirely new offence prohibiting the advertising of an offer to provide sexual services for consideration. Section 286.4 provides:

> Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of [a hybrid offence].[10]

[78] The *actus reus* of this offence is made out if the accused advertised an offer to provide sexual services for consideration. The *mens rea* is made out if: (i) the accused intended to advertise the offer; and (ii) the accused knew that the offer was one to provide sexual services for consideration.

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[10] Penalty provisions omitted.

[79] At the same time, Parliament provided immunity, under s. 286.5, to a person from prosecution under s. 286.4 in respect of the advertisement of his or her own services:

> 286.5 (1) No person shall be prosecuted for
>
> (a) an offence under section 286.2 if the benefit is derived from the provision of their own sexual services; or
>
> (b) an offence under section 286.4 in relation to the advertisement of their own sexual services.
>
> (2) No person shall be prosecuted for aiding, abetting, conspiring or attempting to commit an offence under any of sections 286.1 to 286.4 or being an accessory after the fact or counselling a person to be a party to such an offence, if the offence relates to the offering or provision of their own sexual services.

B. The trial judge's charge on advertising sexual services

[80] With respect to the advertising offence, the respondent was charged as follows:

> Alicia GALLONE further stands charged:
>
> 3. That she … did for the purpose of facilitating an offence under subsection 286.1(1) knowingly advertise an offer to provide sexual services for consideration, contrary to section 286.4 of the Criminal Code of Canada.

[81] The trial judge directed the jury as follows:

It is vital to recognize under this count that Section 286.5 of the *Criminal Code*, which you do not have, declares that no person can be prosecuted for this offence if they are advertising their own sexual services.

So this count deals with the two Backpage ads, obviously. Were those, to a significant extent, put together and posted by [the complainant] or was [the respondent] the prime mover? [The complainant] said she was forced essentially to produce these. [The respondent] testified to the contrary, that she helped by lending her phone camera to the photographer and helped [the complainant] pick what she wore in the pictures, but this was all at the request of [the complainant].

The key question here for you again will be who was the prime mover in deciding to produce and then publish the ad? Advertising sexual service is a crime unless you are advertising your own sexual services. The *Criminal Code*, like in the procuring section, makes the seller exempt from prosecution.

So if [the complainant] wanted to advertise her own sexual services and [the respondent] merely helped in the way she testified in her evidence, there is no crime. That goes for anyone who helped realize [the complainant's] intention. Those advertising their services are entitled to have people to help them do that without the helpers becoming criminal accomplices. Otherwise, the photographer, the typesetter, the person supplying the clothing, anyone advising on any technical aspect and the Backpage company itself would all be criminalized.

If on the other hand you are convinced beyond a reasonable doubt that it was [the respondent] who was behind the posting of the ad and it was her doing more or less, unilaterally, and it was not [the complainant's] choice, then [the respondent] is guilty of this offence.

C. The parties' positions

[82] The Crown argues that that the trial judge erred in law by directing the jury that the immunity provision in s. 286.5 extends to anyone who knowingly assists a seller in advertising his or her own sexual services. The Crown submits that the immunity provision only applies to sellers of their own sexual services.

[83] In response, the respondent argues that the trial judge correctly directed the jury that the immunity provision in s. 286.5 extends to anyone who knowingly assists a seller in advertising his or her own sexual services. She submits that if the seller can lawfully advertise his or her own sexual services, then assisting the seller to do something lawful cannot amount to an offence. Moreover, she argues, as the trial judge recognized in his charge, the Crown's interpretation would criminalize a very broad range of conduct in circumstances where there may be no exploitation whatsoever of the seller by the person assisting with advertising the seller's sexual services.

D. Analysis

[84] I agree with the respondent that the Crown's interpretation of ss. 286.4 and 286.5 criminalizes a very broad range of conduct in circumstances where there may be no exploitative relationship between the seller and the person assisting him or her with advertising. However, the respondent did not challenge the constitutionality of the prohibition on advertising.

[85] In my view, as a matter of statutory interpretation, the Crown's interpretation of the reach of the immunity provision in s. 286.5 vis-à-vis the offence of advertising in s. 286.4, as currently drafted, is correct.

[86] First, considering the grammatical and ordinary sense of the words used in s. 286.5 to describe the reach of the immunity provision in relation to the offence set out in s. 286.4, it is clear that immunity only extends to those persons who are involved in advertising their own sexual services. In relevant part, s. 286.5(1) provides:

> No person shall be prosecuted for … (b) an offence under section 286.4 in relation to the advertisement of their own sexual services. [Emphasis added.]

[87] Subsection 286.5(2) provides:

> No person shall be prosecuted for aiding, abetting, conspiring or attempting to commit an offence under any of sections 286.1 to 286.4 or being an accessory after the fact or counselling a person to be a party to such an offence, if the offence relates to the offering or provision of their own sexual services. [Emphasis added.]

[88] There is no ambiguity in the wording employed here. Immunity applies to: (i) those who knowingly advertise their own sexual services; and (ii) those who aid or abet the advertising of their own sexual services, conspire or attempt to conspire to advertise their own sexual services, act as an accessory after the fact to the advertisement of their own sexual services, and counsel a person to be a party to the advertisement of their own sexual services.

[89] There is no suggestion in the wording that immunity also extends to those who are involved in advertising the sexual services of others.

[90] The restriction of immunity from prosecution for advertising sexual services only to those involved in advertising their own sexual services also accords with legislative intent.

[91] Given the clarity of s. 286.5, little weight needs to be placed on other indicators of legislative intent. Nevertheless, the available extrinsic evidence of Parliamentary intent is both clear and reliable. This evidence confirms what is evident from the content of the legislation, namely, that, as stated in *Technical Paper*, at p. 3, the new prostitution offences enacted by Parliament represent a fundamental shift from the previous view of prostitution as a nuisance toward the conceptualization of prostitution as a form of sexual exploitation. This shift is reflected in the language used in the preamble to Bill C-36, which refers to "the exploitation that is inherent in prostitution". It is also reflected in Parliament's choice to place the new prostitution offences in Part VIII of the *Criminal Code*, "Offences against the Person". Previously, the prostitution-related offences were in Part VII, "Disorderly Houses, Gaming and Betting": *Technical Paper*, at p. 3.

[92] As stated in the aforementioned Department of Justice Technical Paper that was tabled before the parliamentary committees that reviewed the new offence provisions, the overall objective of the new offences "is to reduce the

demand for prostitution with a view to discouraging entry into it, deterring participation in it and ultimately abolishing it to the greatest extent possible": *Technical Paper*, at p. 3. The prohibition on advertising in s. 286.4 is central to Bill C-36's objective of reducing the demand for sexual services. At the second reading debate on Bill C-36, then Minister of Justice and Attorney General of Canada, the Honourable Peter MacKay, stated that Bill C-36 proposes two entirely new offences: purchasing sexual services and advertising the sale of sexual services. He explained that both are aimed at the goal of reducing the demand for prostitution:

> The purchasing offence targets the demand for prostitution, thereby making prostitution an illegal activity, and to complement this offence, the advertising offence targets the promotion of this exploitative activity, thereby furthering the legislation's overall objective of reducing the demand for sexual services: *House of Commons Debates,* 41st Parl., 2nd Sess., No. 101 (11 June 2014), at p. 6653 (Hon. Peter MacKay). [Emphasis added.]

[93] However, in line with this conceptualization of prostitution as exploitation rather than nuisance, the new legislative scheme "treats those who sell their own sexual services as victims who need support and assistance, rather than blame and punishment": *Technical Paper*, at p. 9. The immunity provision in s. 286.5, as it applies to the prohibition on advertising in s. 286.4, supports this objective by shielding those who sell their own sexual services from prosecution should they advertise their own services (whether as a principal, party, conspirator, etc.).

[94] As its language makes clear, the immunity provision does not "legalize" the advertising of one's own sexual services. It simply exempts those who do advertise their own sexual services from prosecution. The advertising is still unlawful. As Donald Piragoff, Senior Assistant Deputy Minister, Policy Sector, Department of Justice, stated during questioning before the Standing Senate Committee on Legal and Constitutional Affairs on September 11, 2014 regarding the meaning of the immunity provision generally:

> If you look at the language used in the section [*i.e.* s. 286.5]… it says no person shall be prosecuted. It doesn't say no person commits an offence or no person is criminally liable. It says no person shall be prosecuted in the following circumstances. It's an immunity from prosecution. That doesn't mean that the person is not involved in illegal activity. *Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs*, 41-2, No. 15 (11 September 2014) at p. 15:36 (Hon. Donald Piragoff).

[95] Additionally, the liability of persons who assist sellers with advertising their own sexual services was the subject of specific comment in the parliamentary debates. For instance, Ms. Emily Symons (Chair, Prostitutes of Ottawa-Gatineau Work Educate & Resist) noted on July 8, 2014 that the law would "criminalize sex workers advertising their friends": *House of Commons Standing Committee on Justice and Human Rights*, 41st Parl., 2nd Sess., No. 35 (8 July 2014), at p. 4. Mr. Josh Paterson (Executive Director, British Columbia Civil Liberties Association) raised the same issue on July 9, 2014, stating that "it could make

criminals out of any sex workers who work collectively and advertise collectively, because they would then be participating in advertising someone else's services, not just their own": *House of Commons Standing Committee on Justice and Human Rights*, 41st Parl., 2nd Sess., No. 40 (9 July 2014), at p. 8. And, on November 4, 2014, in the debates before the Senate, the Hon. George Baker noted that in addition to the person who advertises the sexual services, "[t]he person who promotes or assists in providing those services will be prosecuted": *Senate Debates,* 41st Parl., 2nd Sess., No. 92 (4 November 2014), at p. 2379.

[96] Further, Bill C-36 also enacted ss. 286.2(1) and (2), which criminalize receiving a financial or other material benefit, knowing that it was obtained by or derived from prostitution. In enacting Bill C-36, Parliament carefully crafted exceptions to the offences in ss. 286.2(1) and (2) to ensure that criminal liability would not result where there was not an exploitative relationship. For example, s. 286.2(4) provides that ss. 286.2(1) and (2) do not apply to a person who receives a benefit in certain circumstances, including:

> (c) in consideration for a service or good that they offer, on the same terms and conditions, to the general public; or
>
> (d) in consideration for a service or good that they do not offer to the general public but that they offered or provided to the person from whose sexual services the benefit is derived, if they did not counsel or encourage

> that person to provide sexual services and the benefit is proportionate to the value of the service or good.[11]

These exceptions have not been extended to the advertising offences. During the House Committee hearings, there was some suggestion that these exceptions might also apply to the advertising offence: see *e.g. House of Commons Standing Committee on Justice and Human Rights*, 41st Parl., 2nd Sess., No. 33 (7 July 2014), at p. 18 (Hon. Bob Dechert); No. 37 (8 July 2014), at p. 12 (Hon. Robert Goguen) and p. 16 (Hon. Bob Dechert).

[97] To clarify any confusion, the Minister of Justice testified before the Standing Senate Committee on Legal and Constitutional Affairs on September 11, 2014 as follows:

> To clarify the scope of this offence, because there has been some confusion in this regard, a person who advertises the sexual services of other persons would commit the offence and the person who knowingly assists other persons in advertising sexual services for sale would be a party to the offence.
>
> However, the person who advertises their own sexual services could not be prosecuted for this offence because Bill C-36 treats the person as a victim of sexual exploitation. So the new law will target those who purchase the bodies and the lives of other human beings. This approach is consistent with the bill's objective of reducing the demand for prostitution while treating those subjected to it as victims who need assistance, not punishment: *Standing Senate*

[11] Section 286.4(5) then provides that s. 286.4(4) does not apply in various circumstances that involve exploitative relationships.

> *Committee on Legal and Constitutional Affairs*, 41st Parl., 2nd Sess., No. 15 (11 September 2014), at p. 15:14 (Hon. Peter MacKay).

[98] The fact that Parliament could have, but did not, craft any internal exceptions to the advertising offence like those it inserted into the material benefit offences supports the view that Parliament intended to treat the prohibition on advertising, which furthers the bill's objective of reducing the demand for sexual services, differently from the provision of other goods and services, such that it would capture those who assist sellers in advertising their sexual services even if there were no exploitative relationship between them.

[99] In sum, as a matter of statutory interpretation, I am of the view that the immunity provision applies only to those who advertise their own sexual services and not to those who assist them. This interpretation accords with the grammatical and ordinary sense of the wording used in the immunity provision as well as legislative intent. The trial judge erred in instructing the jury otherwise on this point.

[100] This error might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the acquittal because it foreclosed the jury from considering an alternative route to liability that was available on the evidence.

V. DISPOSITION

[101] I agree with the Crown that the trial judge's erroneous instructions might reasonably be thought, in the concrete reality of the case at hand, to have had a material bearing on the respondent's acquittals. They foreclosed the jury from considering some of the most obvious routes to liability by imposing the requirement for near-total control over the complainant's movements on the human trafficking and procurement offences and improperly extended immunity for the advertising offence to the respondent.

[102] Accordingly, I would allow the appeal and order a new trial.

Released: "AH" "AUG 20 2019"

"Alexandra Hoy A.C.J.O."
"I agree C.W. Hourigan J.A."
"I agree D.M. Paciocco J.A."