



## **PROVINCIAL BRIEFING DOCUMENT 1: EXECUTIVE SUMMARY**

### **Legal Aid for Abused Immigrant, Refugee, and Non-Status Women**

Since 2002, Legal Aid funding and services have declined dramatically in BC. Many in desperate need of legal advice and representation, including abused immigrant, refugee, and non-status women, cannot access it, even when it may mean removal from Canada or losing custody of their children. Women – including those who do not understand Canada’s legal system or their rights and who lack fluency in English – must represent themselves against husbands or governments who are well-represented by counsel. It is incontrovertible that women, especially marginalized women such as immigrant and refugee women, are being denied access to justice in BC. Lack of adequate Legal Aid representation for immigrant, refugee, and non-status women is not only a matter of fair and equal access to justice but a matter of safety for this at-risk group and their children.

#### **Recommendations**

##### ***Immediate***

1. As part of its *Domestic Violence Action Plan*, the BC Government should ensure that abused women who have legitimate needs for legal representation on serious family or immigration matters and cannot afford to pay for it are able to obtain legal representation through Legal Aid.
2. Given the safety issues faced by these women and their children, Legal Services Society (LSS) should give priority to legal representation for abused immigrant, refugee, and non-status women involved in serious immigration or family law cases.
3. LSS should ensure that abused immigrant, refugee, and non-status women facing removal from Canada who cannot afford counsel to represent them are provided with Legal Aid representation in immigration hearings.
4. LSS should ensure that abused immigrant, refugee, and non-status women engaged in child custody or other serious family law matters who cannot afford counsel to represent them are provided with Legal Aid representation in family law hearings.
5. The BC Government must provide sufficient funds to pay for adequate qualified interpretation services for those who are not fluent in English, for the application and intake process, interviews, and court appearances.

##### ***Medium-term***

6. LSS should ensure that abused immigrant, refugee, and non-status women facing crippling sponsorship debt who cannot afford counsel to represent them in relevant legal proceedings are provided with Legal Aid representation.

## **PROVINCIAL BRIEFING DOCUMENT 1**

### **Legal Aid for Abused Immigrant, Refugee, and Non-Status Women<sup>1</sup>**

**ISSUE: Legal Aid representation for abused immigrant, refugee, and non-status women in serious immigration and family law hearings is essential.**

#### **KEY POINTS**

- Since 2002, Legal Aid funding and services have declined dramatically in BC. Many in desperate need of legal advice and representation, including abused immigrant, refugee, and non-status women, cannot access it, even when it may mean removal from Canada or losing custody of children. Women – including those who do not understand Canada’s legal system or their rights and who lack fluency in English – must represent themselves against husbands or governments who are well-represented by counsel.
- It is incontrovertible that women, especially marginalized women such as immigrant and refugee women – are being denied access to justice in BC. By continuing to seriously underfund Legal Aid, it is arguable that the BC Government is not meeting its obligations under the *Canadian Charter of Rights and Freedoms*, which obligates Canadian governments to address historical disadvantages, or under the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women* or the *United Nations International Covenant on Economic, Social and Cultural Rights*.
- Government should fill gaps in Legal Services Society’s (LSS) budget left by declining revenue from charitable foundations. Fair and equal access to justice is government’s responsibility and should not depend on the financial strength of charitable foundations.
- When a woman receives family law Legal Aid, the amount of lawyers’ time allocated is inadequate, even if her case qualifies for extended family services. Cases involving abused immigrant, refugee, or non-status women are particularly complex, involving not only family issues but also immigration and refugee issues, as well as language challenges. In such cases, both a family law and an immigration law referral are required.
- It is becoming increasingly difficult to obtain Legal Aid representation in immigration and refugee cases. As a result of funding constraints, LSS is introducing stricter merit screening of immigration and refugee applications, which means that some cases that would have been covered before April 1, 2009 are no longer covered. (Legal Services Society, 2009).

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<sup>1</sup> For purposes of this document, immigrant women may include participants in temporary foreign worker programs such as the Seasonal Agricultural Worker Program and the Live-in Caregiver Program.

- Another high need group for Legal Aid representation is women who face sponsorship debt as a result of leaving an abusive spouse whom they have sponsored and whose spouse subsequently collects social assistance within the sponsorship period. Sponsorship debt may deter women from leaving an abusive relationship and may impact their ability to gain financial independence, thus putting them and their children at risk.
- The barriers and risks faced by abused immigrant, refugee, and non-status women should establish this group as among the highest priorities for receiving Legal Aid to assist them in their legal struggles to gain permanent status in Canada, to be relieved of sponsorship debt, to retain custody of their children, and to address other serious family law matters.
- It is particularly crucial that Legal Aid be provided to abused non-status women facing removal from Canada, especially while a child custody matter is still before the courts. Project focus group participants consistently reported that immigrant, refugee and non-status women do not have adequate access to legal aid and are therefore effectively denied legal representation to assist them in addressing complex issues and systems. There is a need for more lawyers prepared to do legal aid work particularly in rural areas.
- There is a lack of clear understanding around intersections of immigration law and family court
- It is important that LSS recognizes the particular complexity of these cases and the fact that abused immigrant, refugee, and non-status women may be engaged in two separate but related legal battles: one to remain in Canada and one to retain custody of her children. Such circumstances may require two lawyers, one experienced in immigration matters and the other in family law matters. In such cases, Legal Aid policy and tariffs should accommodate the need for these two lawyers to coordinate with each other.
- Funding for and availability of language interpreters is often insufficient to cover actual costs of interpreters for interviews with the result that women do not have access to interpretation services.
- In response to the Lee/Park Coroner's Report recommendation that all victims and abusers should be provided with universally available advocacy services, the Government's *Domestic Violence Action Plan* cites the availability of Legal Aid services throughout BC. Such a claim is highly misleading. Serious underfunding of Legal Aid over many years has made its availability increasingly difficult or impossible to obtain for many victims of domestic violence, including immigrant, refugee, and non-status women.
- There is a need for different approaches to the delivery of Legal Aid services that may help make these services more accessible to immigrant, refugee, and non-status women.

## **THE CONTEXT**

- Cuts to BC Government funding to LSS began in 2002, with accompanying significant reductions in Legal Aid services. In addition, Notary Foundation grants have decreased significantly over the past few years and projections are that the Law Foundation grant will also decline over the next two years. Core government funding for LSS has fallen from

\$88.3M in 2001/2002 to \$66.5M in 2010/2011. Total budget figures have declined from \$101.5M in 2001/2002 to \$71.4M in 2010/2011. These decreases have occurred in spite of significantly rising costs and significant increases in demands for Legal Aid services.

- Recent murders and serious injury of immigrant women and their families as a result of domestic violence have gained public attention and are of grave concern to police, government, and the community. Lack of legal assistance to help abused immigrant, refugee, and non-status women and their children to live safely in Canada, independent of their abusive husbands, will force these women and their children to remain in abusive situations or to return to unsafe situations in their country of origin. Thus lack of Legal Aid not only denies justice to these women but puts them and their children at great risk.
- Any government action or lack of action that puts women and their children at risk is arguably contrary to Canada's *Charter of Rights and Freedoms, Section 7 - Life, liberty, and security of person*.
- Abused immigrant, refugee, and non-status women face multiple barriers to accessing justice. These may include: the isolating, damaging dynamics of abuse; the fact that these women may have only temporary or no status in Canada; language barriers; cultural pressures from extended family and other community members to stay with an abusive spouse and to not disclose the abuse to authorities; potential loss of sponsorship if they leave an abusive spouse who was in the process of sponsoring them; poverty resulting from leaving an abusive spouse and from being unable to work in Canada; sponsorship debt; continuing risks to the safety of themselves and their children; and lack of awareness of rights, options, and available services in Canada.
- Cuts to LSS family law services impact women significantly more than men, as women are the primary users of family law Legal Aid and most female Legal Aid applicants are applying for family law services. This gender disparity in the effects of the cuts is inconsistent with the Provincial Government's stated commitments to women's empowerment, a holistic approach to women's health, and the elimination of violence against women. It can also be argued that any government action or inaction that supports this gender disparity is contrary to the *Canadian Charter of Rights and Freedoms, Section 15 – Equality Rights*.
- The United Nations Committee on the Elimination of Discrimination Against Women in its concluding observations on Canada in November 2008 wrote:

The Committee is concerned at reports that financial support for civil legal aid has diminished and that access to it has become increasingly restricted, in particular in British Columbia, consequently denying low-income women access to legal representation and legal services. (United Nations Committee on the Elimination of Discrimination against Women, 2008, p. 5).

Since that time, nothing substantial has been done to alleviate this serious situation. On the contrary, further Legal Aid reductions have been made since that time, including the closure of the family law clinic in Vancouver.

- The UN Committee on Economic, Social and Cultural Rights has stated that governments have a duty to provide for the economic, social and cultural rights of men and women equally, including establishing:
  - ...appropriate venues for redress such as courts and tribunals or administrative mechanisms that are accessible to all on the basis of equality, including the poorest and most disadvantaged and marginalized men and women. (United Nations Committee on Economic, Social and Cultural Rights, 2005)

## **RECOMMENDATIONS**

In the interests of safety for abused immigrant, refugee, and non-status women and their children:

### **Provincial Government**

1. The BC Government must fulfill its obligations under Canada's *Charter of Rights and Freedoms*, the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, and the *United Nations International Covenant on Economic, Social and Cultural Rights* by providing adequate funds to Legal Services Society (LSS) to ensure that those who have legitimate needs for legal representation on serious family or immigration matters and cannot afford to pay for it are able to obtain legal representation through Legal Aid.
2. The BC Government must provide sufficient funds to pay for adequate qualified interpretation services for those who are not fluent in English, for the application and intake process, interviews, and court appearances. Project focus group participants reported that current LSS allowable hourly rates for interpreters are not adequate to cover the actual cost of interpreter services with the result that in practice, women do not have access to these services.
3. The BC Government should provide funds to make up any decreased LSS revenue resulting from declining charitable foundation contributions.
4. As part of its *Domestic Violence Action Plan*, the BC Government should ensure that abused women who have legitimate needs for legal representation on serious family or immigration matters and cannot afford to pay for it are able to obtain legal representation through Legal Aid.

### **Legal Services Society**

5. Given the safety issues faced by these women and their children, LSS should give priority to legal representation for abused immigrant, refugee, and non-status women involved in serious immigration or family law cases.
6. LSS should ensure that abused immigrant, refugee and non-status women facing removal from Canada who cannot afford counsel to represent them are provided with Legal Aid representation in immigration hearings. If a woman is detained due to her non-status or other inadmissibility ground (s), she is provided with duty counsel while in detention but not

necessarily for the subsequent mandatory 7 day and 30 day reviews. Outside of detention, women facing removal hearings receive no automatic provision for legal aid. The only way for non-status women to obtain some kind of status is to file a Humanitarian and Compassionate application. There is limited and at times no funding for a lawyer to file an H&C application.

7. LSS should ensure that abused immigrant, refugee, and non-status women facing crippling sponsorship debt who cannot afford counsel to represent them in relevant legal proceedings are provided with Legal Aid representation. LSS should ensure that abused immigrant, refugee, and non-status women facing removal from Canada who cannot afford counsel to represent them are provided with Legal Aid representation in immigration hearings.
8. LSS should ensure that abused immigrant, refugee, and non-status women engaged in child custody or other serious family law matters who cannot afford counsel to represent them are provided with Legal Aid representation in family law hearings. The amount of lawyers' time allotted by LSS is inadequate.
9. LSS should ensure that abused immigrant, refugee, and non-status women who are receiving Legal Aid services for complex custody or other serious family law matters have continued access to extended family services.
10. In complex cases involving both immigration and family law matters, immigrant, refugee, and non-status women should be provided with both a family law referral and an immigration law referral.
11. LSS should accommodate the need for coordination between immigration lawyers and family law lawyers in cases involving abused immigrant, refugee, or non-status women who are engaged in both immigration matters and family law matters, by allocating more lawyers' time to these cases or allowing for the appointment of two legal counsel: one to deal with family law matters and one to deal with immigration matters.
12. LSS should coordinate with Citizenship and Immigration Canada, including the Canada Border Services Agency, to ensure that Legal Aid is provided to eligible abused non-status women facing removal from Canada while a custody matter is still unresolved and that women are not removed while a custody matter is still before the courts.
13. LSS should explore different models or approaches to the delivery of Legal Aid services to help make them more accessible to immigrant, refugee, and non-status women.

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This document is one of a series of eight provincial and six federal Briefing Documents produced by the Ending Violence Association's Community Coordination for Women's Safety Program as part of its Safety for Immigrant, Refugee, and Non-Status Women Project.

The provincial Briefing Documents in this series include:

- *Legal Aid for Abused Immigrant, Refugee, and Non-Status Women*
- *Collection of Sponsorship Debt Accrued by Abused Immigrant Women*
- *Family Justice Issues for Abused Immigrant, Refugee, and Non-Status Women*
- *Criminal Justice System Issues for Abused Immigrant, Refugee, and Non-Status Women*
- *Child Protection Issues for Abused Immigrant, Refugee, and Non-Status Women*
- *Health Care Services for Abused Immigrant, Refugee, and Non-Status Women*
- *Coordination of Responses to Abused Immigrant, Refugee, and Non-Status Women in BC*
- *Training on Violence Against Immigrant, Refugee, and Non-Status Women*

The federal Briefing Documents in this series include:

- *Needs of Women Without Status as a Result of Leaving an Abusive Spouse*
- *Gender Bias in Immigration Criteria*
- *Citizenship and Immigration Canada Guidelines for Cases Involving Victims of Domestic or Sexual Violence*
- *Sponsorship Debt for Abused Women*
- *Coordination of Responses to Immigrant, Refugee, and Non-Status Women who are Victims of Violence*
- *Training of Immigration Officials on Violence Against Women*