

PROVINCIAL BRIEFING DOCUMENT 5: EXECUTIVE SUMMARY

Protection of Children of Abused Immigrant, Refugee, and Non-Status Women

The safety of children of abused immigrant, refugee, and non-status women should be accorded the highest priority. Lack of coordination and appropriate risk related information-sharing among provincial and federal authorities and community agencies responsible for meeting the needs of children and their mothers may leave the children of abused immigrant, refugee, and non-status women at risk. While there is a legal obligation for Citizenship and Immigration Canada (CIC) to consider the best interests of a child, the best interests of a child may not be able to be properly assessed without input from provincial authorities. A situation in which a woman is removed from Canada while a custody case is in progress, leaving her Canadian-born children in the care of a father who has been violent towards their mother, is not in the best interests of the child. It may also put the mother at risk as she may choose to stay in the abusive relationship rather than risk having to leave her children. A child whose mother is at risk of violence is also at risk. There is a need for Legal Aid to be available in cases involving abused immigrant, refugee, or non-status women. Cases such as those involving potential removal from Canada and those involving child custody issues are complex, with potentially very serious results for both women and their children.

Recommendations

Immediate

1. As part of the BC Government's *Domestic Violence Action Plan*, the Ministry of Children and Family Development (MCFD) should ensure that its *Best Practice Approaches: Child Protection and Violence Against Women* guidelines adequately and specifically address the safety of children of abused immigrant, refugee, and non-status women.
2. As part of its *Domestic Violence Action Plan*, the BC Government should ensure that its selected standard risk assessment tool and its advanced risk assessment training adequately and specifically address the safety of children of abused immigrant, refugee, and non-status women.
3. All those who are working in the area of child protection, family justice, criminal justice, victim services, settlement services, Legal Aid, social assistance, health care, education, and housing should be adequately trained in the particular vulnerabilities of children whose mothers are abused and who are immigrants, refugees, or without status in Canada. Such training should include not only specific risk factors in these circumstances, but also the importance of effective cross-sector coordination and information-sharing in order to ensure the safety of these children. (ongoing)

Medium-term

4. Where there are unresolved custody matters regarding Canadian-born children, the Ministry of Attorney General and MCFD should coordinate and share necessary risk related information with CIC, including Canada Border Services Agency, to ensure that, in the interests of children's safety, non-status women are not removed from Canada.



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Protection of Children of Abused Immigrant, Refugee, and Non-Status Women

ISSUE: The safety of children of abused immigrant, refugee, and non-status women should be accorded the highest priority.

KEY POINTS

- Lack of coordination among the criminal and family justice systems, the child protection system, police, settlement services, social assistance, health services, the education system, housing services, legal advocacy services, the federal immigration system, and community-based agencies, may leave the children of abused immigrant, refugee, and non-status women at risk. The need for coordination relates to policies and practices, including the sharing of information that is key to keeping children safe.
- While there is a legal obligation for Citizenship and Immigration Canada (CIC) to consider the best interests of a child, the best interests of a child may not be able to be properly assessed without input from provincial authorities such as the Ministry of Children and Family Development (MCFD), the Ministry of Attorney General, or the Ministry of Public Safety and Solicitor General (MPSSG).
- Lack of coordination between CIC and provincial child protection authorities or the criminal or family justice system may result in a lack of information-sharing about the risks facing Canadian-born children if their mother is removed from Canada. A situation in which a woman is removed from Canada while a custody case is in progress, leaving her Canadian-born children in the care of a father who has been violent towards their mother, is not in the best interests of the child. It may also put the mother at risk as she may choose to stay in the abusive relationship rather than risk having to leave her children. A child whose mother is at risk of violence is also at risk.
- There is a need for Legal Aid to be available in cases involving abused immigrant, refugee, or non-status women. Cases such as those involving potential removal from Canada and those involving child custody issues are complex, with potentially very serious results for both women and their children. Yet Legal Aid is increasingly difficult or impossible to access in these situations.
- Lack of adequate training on domestic violence, its effects on children, its particular complexities and risks for immigrant, refugee, and non-status women and their children, and the particular needs arising out of these circumstances, may increase risk for children.

THE CONTEXT

- Two ministries with specific responsibility for the protection of children in BC are Ministry of Children and Family Development (MCFD) and the Ministry of Attorney General (MAG). MCFD is responsible for the safety of children who may be ‘at risk’ or ‘in need of protection’. The MAG, through the family justice system, is responsible for ensuring the safety and best interests of children who are the subject of custody disputes and, through the criminal justice system, for protecting the public from criminal victimization.
- In the CIC Operations Manual *IP 5* section 5.14 *Children – Best interests of a child*, there is a statutory obligation¹ to take into account the best interests of a child who is directly affected by a decision under this section, codifying “departmental practice into legislation, eliminating any doubt that the interests of a child will be taken into account” (p. 20).
- In a recent case before the Federal Court of Canada, *Sultana and Others v. Minister of Citizenship and Immigration*, 2009, the court reviewed the concept of “best interests of the child” in a Humanitarian and Compassionate (H&C) application and stated how important it was for an immigration officer to properly consider all of the evidence in that regard.
- In response to a recommendation in the Coroner’s Report on the deaths of the Lee/Park family, the BC Government’s *Domestic Violence Action Plan* includes the development of an advanced course for professionals involved in domestic violence response, including child protection personnel. This advanced course will involve training on a selected standard risk assessment tool.
- In response to a recommendation in the report of the Representative for Children and Youth on the murder of Christian Lee, the BC Government’s *Domestic Violence Action Plan* includes updating MCFD’s 2006 *Best Practices Approaches: Child Protection and Violence Against Women* guidelines. According to the Action Plan, these updated guidelines will be included in the above-noted advanced training.
- Over the past decade, Legal Aid funding and therefore Legal Aid services have declined dramatically. It is becoming increasingly difficult to obtain Legal Aid representation in family law and in immigration and refugee cases.
- When a woman receives family law Legal Aid, the amount of lawyers’ time allocated for family law cases is inadequate, even if her case qualifies for extended family services. Cases involving abused immigrant, refugee, or non-status women are particularly complex and time-consuming, involving not only family issues but also immigration and refugee issues, as well as challenges regarding language interpretation. In such cases, there should be both a family law referral and an immigration law referral.
- As a result of funding constraints, Legal Services Society is introducing stricter merit screening of immigration and refugee Legal Aid applications, which means that some cases

¹ This authority comes from s.25 of the *Immigration and Refugee Protection Act* which states: “The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister’s own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent residence status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.”

that would have been covered before April 1, 2009 are no longer covered. (Legal Services Society, 2009).

RECOMMENDATIONS

1. The Ministries of Children and Family Development/, Attorney General, Public Safety and Solicitor General, Advanced Education and Labour Market Development, Housing and Social Development, Health Services, and Education, police, Legal Services Society, BC Housing, and community-based agencies should work with Citizenship and Immigration Canada (CIC) to develop strategies to guide coordination of policies, practices, and appropriate risk related information-sharing to ensure that the safety and best interests of children of abused immigrant, refugee, and non-status mothers are considered as priorities in decisions that affect their mother's status in Canada.
2. Where there are unresolved custody matters regarding Canadian-born children, the MAG and MCFD should coordinate and share necessary risk related information with CIC, including Canada Border Services Agency, to ensure that, in the interests of children's safety, non-status women are not removed from Canada.
3. All those who are working in the area of child protection, family justice, criminal justice, victim services, settlement services, Legal Aid, social assistance, health care, education, and housing should be adequately trained in the particular vulnerabilities of children whose mothers are abused and who are immigrants, refugees, or without status in Canada. Such training should include not only specific risk factors in these circumstances, but also the importance of effective cross-sector coordination and information-sharing in order to ensure the safety of these children.
4. As part of the BC Government's *Domestic Violence Action Plan*, MCFD should ensure that its *Best Practice Approaches: Child Protection and Violence Against Women* guidelines adequately and specifically addresses the safety of children of abused immigrant, refugee, and non-status women.
5. As part of its *Domestic Violence Action Plan*, the BC Government should ensure that its selected standard risk assessment tool and its advanced risk assessment training adequately and specifically addresses the safety of children of abused immigrant, refugee, and non-status women.
6. As part of its *Domestic Violence Action Plan*, the BC Government should ensure that abused immigrant, refugee, and non-status women who have legitimate needs for legal representation on cases that could impact the safety of their children, including child custody cases and cases which could result in a woman's removal from Canada, and cannot afford to pay for it are able to obtain legal representation through Legal Aid.

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LEGAL CASE CITED

Sultana and Others v. Minister of Citizenship and Immigration, 2009 FC 533

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.