The Role of Canadian Immigration Laws and Policies in Relation to Women’s Safety:
A Lawyer’s Compendium

Produced by the Safety of Immigrant Refugee and Non-Status Women Project
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This Resource Guide is a part of The Safety of Immigrant, Refugee, and Non-Status Women Project (IWP). Funding for the project was provided by the Law Foundation of BC. The project aims to improve policy and law reform to increase the safety of immigrant, refugee, and non-status women. It is a partnership between EVA BC, Vancouver & Lower Mainland Multicultural Family Support Services Society (VLMFSS) and MOSAIC.

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Definitions

Definition of Terms
(from Nowhere to Turn? Responding to Partner Violence Against Immigrant and Visible Minority Women, by Dr. Ekuwa Smith, 2004)

1. Immigrant

An immigrant is an individual who has acquired legal status to reside in Canada, including permanent residents, visitors and students. Some are recent immigrants (that is, in Canada for ten years or less), while others have resided in Canada for a long period of time (more than 10 years). The term “immigrant” also has a socially constructed meaning, “common-sense” usage referring to people of colour, people from developing countries, and individuals without official language proficiency. Since some immigrants are Caucasian and are proficient in one of Canada’s official languages, this definition obviously falls short in identifying all immigrants.

For purposes of this project, the term “immigrant” refers to individuals who have immigrated to Canada; they have legal resident status and may be permanent residents, visitors, students or refugees.

2. Refugee

Persons who have fled their country of origin due to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, or membership in a particular social group.

3. Visible minority

The term, as used in this project, is based on the definition used by Statistics Canada, as defined by the Employment Equity Act. It refers to “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.” Under this definition, regulations specify the following groups as visible minorities: Chinese, South Asians, Blacks, Arabs, West Asians, Filipinos, Southeast Asians, Latin Americans, Japanese, Koreans and other groups such as Pacific Islanders (Statistics Canada, 2003). People are usually asked in surveys to self-identify.
4. Non-Status
From Non-status Women in Canada: Fact Sheet (Metropolitan Action Committee on Violence Against Women and Children [METRAC], 2004):

Reasons Why People Don’t Have Status in Canada

Women who come to Canada and marry Canadian citizens or permanent residents but are never sponsored by the spouse, remain in visitor status. When an unsponsored women’s visitor status expires she becomes illegal and has to leave the country.

Many people come into Canada with a temporary resident permit. If they overstay their permit they become non-status. Some people have been in Canada without status for 10, 20 or more years. Some have been here since they were small children and are completely unfamiliar with the country of origin to which they are at risk of being deported.

Many people make a refugee claim which is rejected, but prefer to stay illegally rather than to return to an uncertain future, or even death.

Many women come to Canada legally (sponsored by an employer, spouse or family member), but then find themselves in an abusive relationship with their sponsor. If they leave the relationship before receiving permanent resident status they might become non-status.
Section 1: Introduction
About IWP: Background and History

Introduction

The Safety of Immigrant, Refugee, and Non-Status Women Project (IWP) was a 3-year initiative completed in March 2011. It was a project of the Ending Violence Association of BC (EVA BC), in partnership with Vancouver & Lower Mainland Multicultural Family Support Services Society (VLMFSS) and MOSAIC. The purpose of the project was to address the serious policy gaps and problems that compromise the safety of refugee, immigrant, and non-status women who experience violence. It aimed to improve policy and law reform to increase the safety of immigrant, refugee, and non-status women, and to offer those women an opportunity to provide input to policymakers on the issues that affect them. The IWP was funded by the Law Foundation of BC.

Importance of the Project

As an organization with considerable expertise and nearly twenty years’ experience providing services to anti-violence programs across British Columbia, EVA BC is uniquely positioned to identify and address issues relating to violence affecting women and children.

Statistics show that immigrant, refugee, and non-status women are disproportionately affected by violence. Tracy Porteous, Executive Director of EVA BC, points to the BC Coroner statistics that reveal there have been 153 deaths as a result of domestic violence in the 15 years leading up to 2009. Immigrants and refugees make up 25% of the overall population of the province of British Columbia and yet, in that time frame, they made up 40% of the deaths.

The IWP is an important project for several reasons. It built on and extended EVA BC’s earlier identification of serious problems and gaps in policy and practice affecting marginalized women who experience violence in BC. The ultimate goal of the IWP is to save lives and stop the multi-generational aspects of abuse.

The IWP examined laws, policies and practices in the areas of immigration and settlement, family law, and legal aid from the perspective of women’s safety, a perspective not usually brought to bear on these sectors.

EVA BC sought to approach this issue from a non-partisan perspective, emphasizing that concern about women’s safety should be a focus of all political parties and government ministries. EVA BC’s research identified that women fall through cracks.
between systems, compromising their safety, as a result of problems in cross-sector communication and collaboration. There was consensus among the government representatives interviewed during the project’s evaluation that the IWP was valuable for identifying gaps in law and policy and that the safety of immigrant, refugee and non-status women was an important issue.

The IWP played another important role, empowering immigrant, refugee, and non-status women by providing them with an opportunity to effect change. Tracy Porteous stated that “the project’s involvement of immigrant and refugee women across the province has empowered women from the affected communities and also provides a different level of authenticity of the materials, the solutions and perspectives that we’ve come up with because they’re all based on what people from these communities have said.”

Harjit Kaur, the IWP Program Manager, sees the project as “bringing the voice of women who are truly marginalized to the table, to the bigger whole, to the country, to the provincial level and to the federal level.”

Managing Partner: The Ending Violence Association of British Columbia

The Ending Violence Association of British Columbia (EVA BC) provides support and training to approximately 240 anti-violence programs across BC: Community-Based Victim Services, Stopping the Violence Counselling Programs, Sexual Assault Centres, STV Outreach Programs and Multicultural Outreach Programs. The mandate of EVA BC is to provide support and training to the anti-violence programs under our umbrella. We also undertake research, conduct analysis of policy and legislation, develop and distribute resources and tools, educate the public (including government bodies) on the needs of victims of violence, develop and maintain standards for the provision of service and work to foster the development of relevant cross-sector initiatives across BC.

Prior research

In 2003, EVA BC held a consultation process with organizations providing services to immigrant groups in BC. A roundtable discussion was held with immigrant women of colour working as frontline advocates for immigrant, refugee and visitor women. EVA BC also invited the Philippine Women’s Centre, Vancouver and Lower Mainland Multicultural Family Support Services, MOSAIC, the Prince George Elizabeth Fry Society, Battered Women’s Support Services and a prominent immigration lawyer to provide written submissions on policy issues impeding the safety of immigrant, refugee and visitor women experiencing violence. Written submissions were received from the Vancouver and Lower Mainland Multicultural Family Support Services, the Prince George Elizabeth Fry Society and Battered Women’s Support Services. These findings were incorporated into the source materials for the IWP and were supplemented by further documentary and consultative research.
Section 2: Research
Safety of Immigrant, Refugee, and Non-Status Women

The Immigration Refugee Protection Act, Regulations and CIC Policies: How do they impact women’s Charter rights and women’s safety?
November 2009

Issue: Immigration Policy and Legislative Reform

I. Introduction

1.1 Immigrant Women’s Project (IWP)

This backgrounder is part of our Safety of Immigrant Women Project, which is funded by the Law Foundation in partnership with VLMFSS and MOSAIC. It is the first in a series of backgrounders to identify legal, policy and practice issues, which impact the safety of immigrant, refugee and non-status women. It focuses on the key issue of Immigration Policy and Legislative Reform.

The project has identified six key issues that affect the safety of immigrant, refugee and non-status women who experience domestic violence. The issues fall under the following six headings, which will form the basis of Backgrounders and Briefing Documents to be developed as part of the project:

A. Immigration Policy and Legislative Reform
B. Provision and Distribution of Critical Information
C. Access to Interpreters and Training of Interpreters
D. Cultural Sensitivity Training
E. Coordinated Response to the Provision of Services
F. Access to Services and Justice
The identification of these issues is supported by community consultations as well as academic and legal research:

- Written submissions provided by leading organizations involved in service delivery in 2003. (CCWS, 2003)
- Input provided by immigrant service providers as part of a roundtable discussion in Vancouver in 2006
- Feedback received from participants in focus groups held in Vancouver, Victoria, Kelowna and Prince George from February 2009 to March 2009. The focus groups consisted of representatives from anti-violence and settlement sectors. The nature of problems and risk factors facing immigrant, refugee and non-status women was discussed along with ways to improve services to them.
- Information gathered from a forum conducted in June 2008 on the issue of Improving Responsiveness of Services of Immigrant and Refugee Women Experiencing Violence (Light 2008).
- A literature review: “Safety of Immigrant, Refugee and Non-Status Women” (EVA/Han 2009).
- General research of Immigration laws, regulations and policies.

1.2 The Reasons For This Backgrounder

There is a need to ensure that immigration laws, regulations and policies are applied, first and foremost, with an aim to keep women safe. It is imperative that Canada, being a signatory to international human rights codes and governed by the Canadian Charter of Rights and Freedoms, ensures that any woman abused in Canada be afforded the protection of the Canadian government. The Canadian government needs to ensure that the safety of women is the paramount concern and that women are not re-victimized by the lack of appropriate guidelines or policies or inflexible and/or insensitive laws and policies.

Background

Immigrant women face a set of rules and regulations that set them apart from other women who experience domestic violence. These rules and regulations, which are outlined in The Immigration Refugee Protection Act (the “Immigration Act”) and The Immigration and Refugee Protection Regulations (the “Immigration Regulations”), have the effect of singling out immigrant women and placing them at greater risk of harm.
This is due to the fact that one of the primary objectives of the Immigration Act and Immigration Regulations is to remove those without status and deny admission to those who breach its provisions. The effect is to significantly impede the ability of an immigrant woman to access and obtain justice.

Citizenship and Immigration Canada (“CIC”) is the government entity, which applies the Immigration Act and Immigration Regulations. Apart from this statutory framework CIC has Operations Manuals, which set out in more detail how to apply the laws and regulations. However, for case scenarios that require special attention, CIC has formulated more specific criteria in the form of “guidelines”. Some of these guidelines are found in the Chairperson’s Guidelines (Chairperson for the Immigration and Refugee Board of Canada): for example, Guideline 3 deals with Child Refugee Claimants: Procedural and Evidentiary Issues; Guideline 4 deals with Women Refugee Claimants Fearing Gender-Related Persecution Guidelines; Guideline 8 deals with Procedures with Respect to Vulnerable Persons Appearing Before the Immigration and Refugee Board of Canada. There are currently no such guidelines dealing, specifically, with immigrant women with or without status who experience domestic violence in Canada.

CIC is comprised of three main departments, Citizenship, Immigration and Multiculturalism. Each department has various branches, which tend to operate in a vacuum under their own mandates. For, example, the Canada Border Service Agency (the “CBSA”) is a branch of the Immigration department and its mandate or focus is on the removal of inadmissible people and not on facilitating the entry or stay of people. Even if there are Humanitarian and Compassionate (H & C) grounds to justify the admission of an inadmissible person, the CBSA can and has continued with its removal process. The absence of any clear guidelines or protocol regarding women who experience domestic violence and the tendency of immigration departments and branches to work in a vacuum leaves immigrant woman even more vulnerable and further exposed to re-victimization.

Without being an exhaustive list, the following are some common illustrations of re-victimization occurring in the immigration system:

i. Women without status fear reporting abuse for fear of removal or deportation proceedings. (Fear of Removal/Deportation)

ii. There is no self-petition process or expedited Humanitarian & Compassionate process or expedited work permit process for women without status who have been victims of abuse. (Self-Petition/Expedited process)

iii. Women who are named as dependents in immigration applications and are subsequently abused, are unable to obtain information on the status of the immigration file, thus impeding their ability to access services. In addition, there
is no process or protocol to sever their file to have it assessed on its own merits. (Dependent Applicants)

iv. An abused immigrant woman who was sponsored under the family class and is forced to claim welfare because of fleeing an abusive relationship is ineligible to sponsor under the family class in the future. (Bar to Sponsorship)

v. A woman who has sponsored her spouse and is then abused by her spouse is personally on the hook for any welfare claimed by the offender spouse. (Sponsorship Debt)

vi. There is no coordination between immigration and the civil family system with respect to non-status women who have custody issues involving Canadian-born children, thus compromising the “best interests of the child.” (Lack Of Coordination Between Immigration And The Family Civil System)

The preceding again are just some highlights of the more common or recurring issues facing women with or without status in the immigration system. The absence of clear and identifiable guidelines in which the safety of women is made to be the paramount criteria is in a large part the reason for these recurring instances of re-victimization as well as the inflexibility of certain provisions of the Immigration Act and Immigration Regulations. Below is a more detailed background account of each of the above areas of re-victimization:

(i) Fear of Removal/Deportation

The typical scenario involves a woman with temporary status (visitor’s visa or work visa) or no status, entering a relationship with a Canadian and being sponsored for permanent resident status by the Canadian partner under an inland spousal family class application. In such a scenario, the husband is in complete control of the woman's ability to finalize her status in Canada, leaving the woman very vulnerable to control and abuse by the husband. If the husband sponsor wants to he could, currently, with one letter, sent by fax to CIC, withdraw his application to sponsor his wife or common law partner potentially compromising the woman’s status (EVA/Han 2009, p. 14). The effect is that many temporary or non-status women end up remaining in an abusive relationship rather than reporting the matter to the police for fear that their spouse may withdraw the application and immigration will ask them to leave or deport them.

The B.C. Institute Against Family Violence reported that immigrant women sponsored by their husbands are particularly vulnerable to abuse or intimidation because of fears of having that sponsorship withdrawn (B.C. Institute Spring 2004).

It has been suggested that the sponsorship process be tightened to place more onus on the sponsors and require “good reason” for pulling a sponsorship (EVA/Han 2009, p.14). It is recommended that the process should not be allowed to end if the

breakdown of marriage occurred as a result of domestic violence. (EVA/Han 2009, p. 15).

Most definitely, for those women with absolutely no status and where there is no inland sponsorship in place, they fear coming forward to report such abuse for fear that immigration will discover and deport them. Indeed there are cases known of non-status women who did call for police assistance after being abused and who were then turned over to immigration for having no status and removed from the country. These kinds of actions, which have the effect of re-victimizing women, discourage women from seeking help and place them at ongoing risk. Section 7 of the Canadian Charter of Rights and Freedom states that:

“Everyone has the right to life, liberty and security of the person and the right not to be deprived therefore except in accord with the principles of fundamental justice.”

Policing protocol and immigration laws, regulations and policies that compromise a woman’s Section 7 rights, need to be reformed to ensure compliance with this fundamental constitutional right.

(ii) Self-Petition/Expedited Process

While women without status do have the ability to make an H & C application to stay in the country on their own accord, the commencement of such an application does not prevent removal of the woman. This is because the H & C application is forwarded to the branch of CIC that deals with admission to Canada, and which operates under its own criteria and mandate. In contrast, the CBSA deals with the removal of inadmissible persons. A person without status is subject to the removals process through the CBSA. While the CBSA can exercise its discretion to defer removal pending a decision on an H & C application, there is nothing mandating them to do this and there are many instances where the CBSA has proceeded with the removals process despite there being strong H & C grounds. In addition, H & C applications are fairly detailed and are best completed with the assistance of a lawyer. However, with legal aid cutbacks it is difficult to get approval for such files. Furthermore, these applications can take between 2-3 years to process. In the interim women are left without status, which impacts their ability to access services and to support themselves. This further compromise the woman’s Section 7 rights to life, liberty and security of the person, as women may decide to remain in the abusive relationship or they are forced into a state of “homelessness” (EVA/Han 2009, p.17).

Participants in the focus groups recommended that CIC should consider abuse a ground to guarantee landed status to women. In the alternative, they recommended that CIC should facilitate a self-petition process so that women can continue their applications for immigration without being subject to violence by the original sponsor (EVA/Han 2009 p. 15). Or alternatively, CIC should consider an expedited, “fast track H
& C" application. In order to facilitate a woman’s ability to escape abusive conditions it has been suggested that there also be an expedited work permit process.

(iii) Dependent Applicants

Most women in the refugee system are declared dependents of their husband as the husband has been named as the principal applicant in the refugee claim. The result is that the woman’s ability to gain status is dependent on her husband’s claim. This perpetuates a scenario for further violence (BC Association of Specialized Victim Assistance & Counselling Programs Feb 6, 2008 p.12). There needs to be policy to protect women who, as a result of a relationship breakdown, are taken out of the refugee claim process and left in legal limbo (BC Association of Specialized Victim Assistance & Counselling Programs Feb 6, 2008 p.11). In such circumstances the woman’s refugee claim should be heard on its own merits. If the woman is unable to succeed through the refugee process on her own merits CIC should facilitate a self-petition or expedited H & C process.

Similarly, with women immigrating under the independent class, such as the entrepreneur class, typically the husband is the principal applicant and the woman a dependent. In cases of marriage breakdown due to violence, the woman is once again placed in limbo. In such circumstances there should be protocol to facilitate her immigration on her own merits or on a self-petition or expedited H & C process.

Furthermore, immigrant women who are dependent on their husband’s applications are unable to access information about their immigration file. This impedes a woman’s ability to access critical services and thus to access justice (EVA/Han 2009).

The current lack of process for dependent immigrant women and her inability to find out about her immigration status has the effect of infringing her Section 7 rights to life, liberty and security of the person. There is a need for reforms and protocols to be put in place to ensure that women’s constitutional rights are protected.

(iv) Bar to Sponsorship

Immigrant women who have been sponsored to Canada and then face domestic abuse are placed in a precarious situation if they choose to leave the relationship. While they may claim welfare to support themselves, their receipt of welfare makes them ineligible to sponsor a family member(s) in the future. For example, they are unable to sponsor their parents if they are in receipt of social assistance for a reason other than disability. Any application to sponsor while in receipt of social assistance would be refused. The women do have the ability to appeal such a refusal to the Immigration Appeal Division (the “IAD”), however, this is time consuming and costly. For many immigrant women who are alone in Canada, the inability to sponsor their family from abroad for support makes it difficult for them to move forward. In fact, this hurdle leads to many women staying in or returning to abusive relationships.
Again immigrant, refugee and non-status women’s Section 7 rights of life, liberty and security of the person are compromised by an inflexible set of laws and policies.

\((v)\) Sponsorship Debt

Women acting as sponsors for their spouse to immigrate to Canada, make a commitment to assume financial responsibility for 3 years for that spouse. In fact, they are required to sign off on a contractual undertaking between themselves and the federal government and its provincial assignees to provide such support in order for their sponsorship to be processed. If they fail to provide such support and the sponsoree goes on welfare, the sponsor is liable to repay those monies, the “sponsorship debt.”

It is noteworthy that until 2002, the older forms of undertakings imposed a very lengthy period of financial responsibility, 10 years. This was reduced to 3 years after organizations such as the National Association of Women and the Law (“NAWL) advocated for changes. NAWL provided a written brief to the Standing Committee on Citizenship and Immigration of 2001 backed by a research study funded by the Status of Women Canada which analyzed the impact of spousal sponsorship undertakings on the equality rights of immigrant women, “Sponsorship… For better or for Worse…” National Association of Women and the Law 2001; (EVA/Han 2009)

The NAWL study and research by the Status of Women Canada formed the basis of comments contained in the Regulatory Impact Analysis Statement (RIAS) published in the Canada Gazette Part II, Vol. 136, 2003/06/14. In section XIV of RIAS, it was acknowledged that the length of the spousal sponsorship undertaking was decreased from 10 to 3 years because of concerns that the undertaking of support aggravated family violence. Women were staying in the relationships because of the undertakings given by them.

While improvements were made to reduce the duration of the undertakings between spouses, the current undertakings are far from supportive of women who experience domestic abuse. On the contrary, the current undertakings contain a provision which says that even if the sponsor is abused by the sponsoree, forcing the sponsor to leave the relationship, that if the sponsoree then goes on welfare, the sponsor is still liable for the same. The undertaking does say that the province may suspend collection of the sponsorship debt in circumstances of abuse but goes on to say that the government may resume collection of the sponsorship debt if the circumstances change.

There have been successful attempts by counsel and agencies such as the BC Public Interest Advocacy Centre (“PIAC”) to have the Province of BC cancel the collection of sponsorship debts in situations of abuse, however, those successes pertain to an old form of the undertakings which contained more general wording and did not contain language stating that the governments could collect on the sponsorship debts even if
they arose out of circumstances of abuse. In addition these cancellations of sponsorship debts occurred through settlement negotiations, or on an individual basis, and there is yet no case precedent, which can be consistently applied in other cases.

There is a strong argument that the current undertakings violate a sponsor’s Section 7, constitutional rights to life, liberty and security of the person. In addition, the province’s decision to collect sponsorship debts from abused women appears to be in contravention of s.15 the Canadian Charter of Rights, which deals with “Equality Before the Law and Equal Protection and Benefit of the Law”. Only women who sponsor a foreign national are required to sign an undertaking and subjected to sponsorship debts. All other women in Canada who enter relationships are not subjected to such demands. It is arguable that this constitutes unequal treatment before the law. There may be legal cases launched in the near future to challenge the undertakings as being unconstitutional.

(vi) Lack of Coordination between Civil Family System and Immigration

There is, currently, no link between the civil family law system and immigration. CIC needs to facilitate the ability of an immigrant woman to have every opportunity to attend to court matters pertaining to the custody of her Canadian-born children. CIC needs to ensure its policy and practice adheres to the “best interests of the child” and that its policy does not adversely impact the safety of immigrant women. Removals and deportation proceedings should be put on hold in these situations.

There are case examples of immigrant women being threatened with criminal charges if they leave the country with their children. Yet there is no legal aid offered to women in these situations to address the custody issues. Furthermore, these women are, simultaneously, facing removal proceedings from the CBSA. Again the CBSA tends to operate in a vacuum and is oblivious of or does not have in its mandate the need to ensure that women are able to attend to their family legal matters.

Here the “best interests of the children” is being compromised by a system that is focused on removals. The phrase “best interests of the child” stems from family law jurisprudence and is also referred to by immigration officers in the admissions branch when assessing H & C applications. In fact, the Operations Manual pertaining to H & C applications highlights “Canada’s continuing obligations under the Convention on the Rights of the Child require that the Department consider the best interest of a child directly affected by the application.” However, this concept appears to be disregarded or relegated a minor role by the CBSA branch, which again is focused on removals of inadmissible people. This gap, potentially, places the life, liberty and security of the children at risk as they are left in the care of the father who has already demonstrated violence against the children’s mother. As well the life, liberty and security of the woman is compromised as she may choose to stay in the abusive relationship to avoid all of these consequences.
In a recent case before the Federal Court of Canada, *Sultana and The Minister of Citizenship and Immigration*, Docket No. IMM-420-08, 2009 FC 533, dated May 21, 2009, the court reviewed the concept of the “best interests of the child” in an H & C application and how important it was for an immigration officer to properly consider all of the evidence in that regard.

The Court’s decision is consistent with S.3 (1) of the *Immigration Act*, which states that one of the objectives of the *Immigration Act* is to see that “families are reunited in Canada”. Preventing women without status from attending to custody matters pertaining to their children appears to be contrary to this objective. Clearly, a system, which is focused on removing non-status immigrant women and not facilitating their need to participate in critical court proceedings, is in need of reform.

**Summary**

Under the current immigration system in Canada, there is a tendency for immigrant women who experience domestic abuse to be re-victimized by inflexible and/or insensitive laws and policies. These women’s fundamental constitutional rights are being ignored or violated by an immigration system that repeatedly puts more emphasis on the need to remove inadmissible persons than to keep persons safe from harm. It is imperative that *Immigration Laws* and *Immigration Regulations* and policies be applied first and foremost with an aim to keep women safe in Canada.
### Comparison Chart of Policies Concerning Immigrant Women in Four Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
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| **Canada**    | Provided that a woman has permanent resident status, ("landed immigrant" or protected person/refugee) she cannot lose that status or be removed from Canada only because she leaves an abusive relationship. This is true even if her abusive partner is her sponsor. If a woman has not yet received permanent resident status, and she separates from her spouse or partner, she can still pursue her application to remain in Canada. If the application was made under the Spouse or Common-law Partner in Canada class, she will likely have to make a new application on humanitarian and compassionate (H&C) grounds. This can take time and in the interim, the woman may be subject to removal or deportation. An application for permanent resident status on H&C grounds should be as detailed as possible. If a woman has left an abusive situation, her application should set out the history of abuse and include copies of reports from shelters, medical professionals, and the | Under the Violence Against Women Act (VAWA) passed in 1994, the spouses and children of US citizens or lawful permanent residents (LPR) may self-petition to obtain lawful permanent residency. The immigration provisions of VAWA allow certain battered immigrants to file for immigration relief without the abuser's assistance or knowledge, in order to seek safety and independence from the abuser. VAWA provisions relating to immigration are codified in section 204(a) of the Immigration and Nationality Act (INA), the law that governs immigration in the US. The self-petitioning spouse:  
• Must be legally married to the US citizen or lawful permanent resident batterer. A self-petition may be filed if the marriage was terminated by the abusive spouse’s death within the two years prior to filing. A self-petition may also be filed if the marriage to the abusive spouse | Those who enter the UK on the basis of marriage are required to remain in that relationship for two years in order to secure residence and access to state support. Ending the relationship within that period, even if due to violence, limits access to support. There are only limited and discretionary allowances to remain in the UK in cases where proof of domestic violence can be given. Immigration status therefore shapes the level and nature of protection from violence. The requirements to be met by a person who is the victim of domestic violence and who is seeking indefinite leave to remain in the UK are that the applicant is able to produce such evidence as may be required by the Secretary of State to establish that the relationship was cause to permanent break down before the end of that period as a result of domestic violence. In addition, the UK government’s policy focus on human trafficking has primarily viewed women in these circumstances as illegal | Implemented in November 1991, the Family Violence Provisions (FVP) of Australia's migration program allow certain people applying for permanent residence in Australia to continue with their application after the breakdown of their spouse or partner relationship if they, or a member of their family unit, have experienced family violence committed by their spouse, de facto or interdependent partner (who is an Australian citizen or permanent resident). Application of the FVP depends on eligibility criteria and proof of violence. Acceptable evidence may be judicially or non-judicially determined. Acceptable judicially determined claims include:  
• certain court injunctions  
• certain court orders against the spouse or partner made under an Australian state or territory law  
• evidence that a court has convicted the spouse or partner of an act of violence against the visa applicant or their |
Women who do not have permanent resident status, women with temporary status (work, study, or visitor permits), with no immigration status at all, with “inland spousal sponsorship” applications in progress, refugee claimants, and live-in caregivers face a different set of challenges.

Women who do not have permanent resident status and who leave an abusive situation can be at risk of being removed from Canada. If she leaves the relationship, or is thinking about leaving, she must seek legal advice right away.

was terminated, within the two years prior to filing, by divorce related to the abuse.

- Must have been battered in the United States unless the abusive spouse is an employee of the United States government or a member of the uniformed services of the United States.
- Must have been battered or subjected to extreme cruelty during the marriage, or must be the parent of a child who was battered or subjected to extreme cruelty by the US citizen or lawful permanent resident spouse during the marriage.
- The Obama administration just announced in 2009 that foreign women who have been victims of severe domestic beating and sexual abuse could receive asylum status in the United States.

migrants, rather than victims of abuse. The government's under-identification of abuse in the trafficking process and over-hasty deportations compromise the safety and well being of women who have experienced abuse and they remain vulnerable upon return to their countries of origin.

Acceptable non-judicially determined claims include both:

- statutory declaration completed by the spouse or interdependent partner of the person alleged to have committed the family violence which sets out the allegation of family violence and names the person alleged to have committed it
- two statutory declarations, completed by competent people in two different professions, that:
  - set out the evidence on which they have based their opinion that family violence has occurred
  - name the person alleged to have committed it.

| Police, if possible. If the abused woman is required as a witness in a criminal trial, this should also be mentioned. |
|---|---|
| Women who do not have permanent resident status, women with temporary status (work, study, or visitor permits), with no immigration status at all, with “inland spousal sponsorship” applications in progress, refugee claimants, and live-in caregivers face a different set of challenges. |
Safety of Immigrant, Refugee, and Non-Status Women
Annotated Bibliography
By Ju Hui Judy Han
June 9, 2009

1. Research Reports (in chronological order)

Sponsorship... For Better or for Worse: The Impact of Sponsorship on the Equality Rights of Immigrant Women (2001)
(246 pages) Funded by the Status of Women Canada’s Policy Research Fund and the Joint Centre of Excellence for Research on Immigration and Settlement (CERIS) in Toronto. The report criticizes the detrimental effects of the “sponsorship regime,” defined as the constellation of various laws, regulations and guidelines from the federal and provincial governments defining sponsorship, the obligations of sponsored persons and their sponsors.” It discusses misunderstandings of sponsorship, integration barriers, and spousal maltreatment, and concludes that sponsorship “poses the question of the responsibility of the family to ensure the well-being and the socio-economic security of its members in relation to the state.”

The report finds that given “the fact that sponsorship involves the undertaking of responsibility for women by the spouse, the fact that the application for permanent residence may be refused if the spouse withdraws his sponsorship and the fact that the access of sponsored women to social assistance is limited by provincial regulations (and remains so for the entire duration of the sponsorship, even after citizenship has been obtained), mean that the equality rights of women immigrants are being violated. Indeed, our research revealed that the sponsorship regime has a discriminatory effect on immigrant women who are sponsored by their husbands in that it exacerbates their unequal status within the marriage, diminishes their dignity and degree of independence, aggravates existing socio-economic disadvantages and violates their most basic human rights.”
Based on the legal analysis of the impact of sponsorship as well as comments and suggestions from sponsored women themselves, the report criticizes both the Quebec and American models. The Quebec model reduced the sponsorship period from 10 years to 3 years, but did not address issues concerning the withdrawal of sponsorship; the exclusion of sponsored women from undertaking sponsorship agreements and from the sponsorship application process; and the sponsored women’s restricted access to welfare. The American model under which the Violence Against Women Act (VAWA) allows self-petitioning for immigrants who are victims of conjugal violence and in the US out of status but does not apply, however, to all sponsored immigrant women, resulting in not only a problematic hierarchy of “deserving” vs. “undeserving” immigrants but also promoting a policy that remedies the effects of violence only after it has taken place, without calling into question the basic structure of the sponsorship undertaking.

Instead, the report recommends: reducing the duration of the sponsorship undertaking (this change was implemented in 2001 as part of the Immigration and Refugee Protection Act); ensuring that sponsored women have access to social assistance in case of sponsorship breakdown; ensuring protection against withdrawal of sponsorship (or threats to do so) by considering humanitarian grounds over the criteria of financial autonomy; allowing the rescinding of the sponsorship undertaking in cases of conjugal violence so that a sponsored women does not have to maintain contact with the abusive sponsor; and more broadly, respecting the rights of low-income people to family reunification.

Available from [http://publications.gc.ca/pub?id=293775&sl=0](http://publications.gc.ca/pub?id=293775&sl=0)


Status of Women Canada, the BC Centre of Excellence for Women’s Health, and the Vancouver Foundation, funded this report by Yasmin Jiwani. It provides an excellent framework for understanding the experience of racialized immigrant women facing intimate violence and their access to the health care system, outlining the impact of structural forces and the barriers that impede women’s access to formal health care. It shows that physicians are often inadequately prepared to respond to patients who have experienced domestic violence, and that physicians’ response to immigrant women who have been abused tends to be influenced by stereotypes about violence within cultural groups. The report avoids “ethno-specific research,” seeing that it can reify cultures as static entities and be used to reinforce entrenched stereotypes of particular ethnic groups. Recommendations of the report emphasize the need for health care providers to be more educated and aware of the health care impacts of violence.

Available from [http://www.vancouver.sfu.ca/freda/articles/hlth.htm](http://www.vancouver.sfu.ca/freda/articles/hlth.htm)

**Canada’s Failure to Act: Women’s Inequality Deepens (2003)**

(82 pages) The Canadian Feminist Alliance for International Action (FAFIA) submitted this report to the United Nations Committee on the Elimination of
Discrimination Against Women (CEDAW), with financial assistance provided by the Status of Women Canada. The report clearly outlines the many ways in which Canada is violating the rights of women set out by the CEDAW.

In addition to Canada’s failure to effectively address the multiple impacts of racism on Canadian women, the report discusses the entrenched sexist and racist attitudes and treatment of particularly vulnerable groups of women who seek to enter Canada to live and work, many of whom are women of color from developing countries. The impact of immigration and refugee law and policy on these women is outlined in this Report.


(12 pages) This Fact Sheet was created by the Canadian Research Institute for the Advancement of Women (CRIAW), which is based in Ottawa Ontario. The fact sheet clearly states that immigration policy affects women differently, explaining how sponsored immigrant and refugee women, mail-order brides, and domestic live-in caregivers are especially vulnerable to abusive relationships. For example:

Regulations placed on family class (sponsored) immigrants can make it difficult for them to receive social assistance and old age security, as well as limit their access to social housing and job training programs. Not only does this deny immigrant women the services they need, it also means they are forced to rely on men whether they want to or not. This can result in women and children living in abusive situations.

The fact sheet also includes a section on myths & facts (myths including “immigrant and refugee women are in Canada to do the ‘dirty work’ Canadian-born citizens will not do” and “immigrant women are not feminist”) and a suggested list of actions and resources.

Available from http://www.criaw-icref.ca


(55 pages) Guide produced by the BC Institute against Family Violence (BCIFV) with funding from the Anti-Racism and Multiculturalism Program of the BC Ministry of Multiculturalism and Immigration. The guide features more than 10 scenarios of women experiencing violence, such as sponsored fiancée, women with an in-Canada sponsorship application in progress, women applying for convention refugee status, women with children and no permanent resident status, etc. Due to the technical and changing nature of legal information, it is unlikely that this guide from 2003 contains reliable information. To be useful, a guide like this would have to be updated constantly. The scenarios are nonetheless helpful in demonstrating how people interact with policies, illustrating how actual policies affect real life situations.
Nowhere to Turn? Responding to Partner Violence against Immigrant and Visible Minority Women (2004)

(68 pages) Report produced by the Canadian Council on Social Development (CCSD) and submitted to the Department of Justice, Sectoral Involvement in Departmental Policy Development. It is based on focus groups with frontline workers from community organizations in seven cities (Vancouver, Calgary, Winnipeg, Toronto, Ottawa, Montreal and Halifax). This report highlights the social, cultural and systemic barriers that hinder immigrant and visible minority women from seeking and obtaining the supports they need. Key findings include the need for comprehensive, coordinated and culturally appropriate strategies to reach out to immigrant and visible minority women in Canada who are abused by their husbands or partners. It emphasizes the importance of providing information on Canadian laws, rights and services to immigrants in their own language, providing culturally sensitive services, improving and coordinating access to crisis programs and longer-term interventions, stabilizing funding for immigrant settlement and ethno-cultural service agencies, and engaging in education and equity strategies to reduce discrimination, stereotyping and marginalization of immigrant and visible minority communities to prevent partner abuse.

Available from http://www.ccsd.ca/pubs/pubcat/nw.htm

The Profile of Absolute and Relative Homelessness (2005)

(160 pages) Prepared by MOSAIC for the National Secretariat on Homelessness. While this report primarily addresses homelessness among immigrants and refugees in Greater Vancouver, it also provides important information in understanding how immigrant and refugee women’s safety is affected by housing concerns. Immigrant and refugee women may have distinctive reasons for needing sheltering housing, such as language barriers, and a lack of social networks and other resources which prevent them from finding housing. In particular, the report states that non-status women “do not qualify for shelters and as such may move from transition house to transition house until they eventually have nowhere to stay, and end up on the streets or in exploitative relationships. Some refugee claimants have been sent into the shelter system by a faith-based service representative at the Vancouver airport.”

The report draws four major conclusions. First, “the extent of relative and absolute homelessness among immigrants, refugees, and refugee claimants is less than would be expected given the income levels of these groups.” Secondly, “the social networks operating among immigrant, refugee, and refugee claimant communities appear to mitigate against the worst forms of homelessness”—so much so that they are actually “underrepresented in the population using homeless shelters.” Thirdly, the report found that “refugee claimants, given the combination of their uncertain legal status, lack of language facility, and lack of familiarity with Canadian society, are the most likely of all newcomers to ‘fall between the cracks’ of both ethno-cultural communities and the welfare and housing provisions of the state.” Fourthly,
the report emphasizes the phrase “hidden homelessness,” pointing out that “immigrants, refugees, and refugee claimants appear to be particularly susceptible to relative homelessness, so their difficulties in the housing market are essentially invisible.” Lastly, the report argues that homelessness is a “spectrum of conditions, rather than a single absolute state,” and that there also needs to be a spectrum of policy responses to address homelessness.


Women's Civil and Political Rights in Canada (2005)

(55 pages) Report by the Canadian Feminist Alliance for International Action (FAFIA), funded and supported by a grant from the Social Sciences and Humanities Research Council and the Centre for Feminist Legal Studies at the University of British Columbia. It was submitted to the United Nations Human Rights Committee on the occasion of its review of Canada’s 5th report on compliance with the International Covenant on Civil and Political Rights. The report calls on Canada to account for its breaches of international human rights obligations and its failure to credit and respect international human rights bodies by responding constructively and actively to their recommendations. In particular, the report focuses on women’s poverty and the persistent systematic discrimination faced by aboriginal women.

In the Violence Against Women section (page 36), the report cites the Canadian Research Institute for the Advancement of Women (CRIAW) Fact Sheet on Violence Against Women and Girls (2002), Nowhere to Turn? (2004), publications by the Chinese Family Services of Ontario, Status of Women Canada, and other researchers in stating the following:

Women who face multiple forms of discrimination, such as Aboriginal women, women of colour, immigrant women, lesbians, disabled women, young girls and older women, are at a higher risk of violence. Further, these women have a more difficult time accessing services. For example, “less than two-thirds of shelters for abused women report being accessible to women with disabilities.” Also, there is a complex set of issues, attitudes, barriers and gaps in service that make immigrant and racialized women uniquely vulnerable when faced by domestic violence. Only 57 percent of Canadian shelters offered services that are sensitive to cultural differences. Further, women who have difficulty speaking the official language where they live face enormous barriers in accessing services and dealing with the justice system.

It also cites the report Sponsorship—for Better or for Worse: the Impact of Sponsorship on the Equality Rights of Immigrant Women in pointing out that the immigration policy enforces and worsens the already vulnerable position of these sponsored women by increasing their dependence on their spouse.
When services and the justice system fail, women find it even more difficult to escape abuse.\(^1\)

Available from


This analysis is an extension of the ongoing work on immigrant issues. The Community Coordination for Women's Safety, a project of Ending Violence Association of BC in consultation with agencies and individuals regarding policies affecting immigrant, refugee and visitor women who experience violence produced in a list of recommendations and principles of effective response including:

Responders should take a holistic approach to understanding the complexities of women’s lives, taking as many factors as possible into account. They should recognize the impacts of, and links between, immigration, violence, poverty, racism and custody issues.

Available from http://www.endingviolence.org


(97 pages) Produced by Statistics Canada. Federal/Provincial/Territorial (F/P/T) Status of Women Ministers joined Statistics Canada to compile this collection of statistical indicators on five major aspects of women’s experiences of violence: prevalence and severity, impact, risk factors, institutional and community-based responses, and victims' use of services. This report updates the information contained in the 2002 publication *Assessing Violence Against Women: A Statistical Profile* and includes new information in a number of areas including new data examining the situation for Aboriginal women and residents of the territories, making a contribution toward the goal of providing improved data for policy making.

This report adds important new information that was not available in the 2002 report, including data on criminal harassment, sentencing of spousal violence perpetrators, availability and use of victim services, and detailed information for Aboriginal women.

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and women in the territories. However, sections on visible minority and immigrant women still rely on data from Statistics Canada, General Social Survey (GSS), 1999 and 2004. Since the GSS is conducted only in English and French, their figures may grossly under-represent the actual rates of spousal violence against non-English or French-speaking visible minority and immigrant women who may not have been able to participate in the survey. Therefore, the GSS findings that visible minority and immigrant women report lower levels of spousal violence than non-immigrant women should be considered unreliable. The report concludes by highlighting gaps that remain in the data required to paint a more complete picture of the nature, extent and impacts of violence against women. For example, it calls for more detailed data for visible minority, immigrant, Aboriginal and Northern women; sexual assault victimization; perpetrators of violence; attitudes and perceptions of violence among Canadians; the economic costs of violence; and other forms of violence, such as trafficking in persons.

Available from

Non-Status Women in Canada: Fact Sheet and Brochure (2006)

(2 pages each) Fact sheet and brochure created in 2006 by the Rights of Non-Status Women Network (RNSWN), an organized network of agencies and community members in Toronto. They use statistics for women with legal status in Canada since there are no specific statistics on violence against non-status women, even though they face particular vulnerabilities.

People who live without legal status are forced to live underground and work under the table in order to avoid being noticed by the authorities and consequently deported. For this reason, it is impossible to provide an accurate statistic. Estimates range anywhere from 20,000 to 200,000 individuals, but many believe that the numbers are a lot higher.

Specific reasons are listed as to why non-status women are at a high risk of experiencing violence, including the very limited access to information, counselling, and other social services. Listed are three policy recommendations: 1) Regularization of all non-status people in Canada; 2) No asking about immigration status or reporting to Immigration Canada by Police and other service providers. A “Don’t Ask, Don’t Tell” policy pertaining to immigration status, making city services available to all city residents without discrimination on the basis of immigration status; and 3) Changes to immigration law to protect immigrant women from abusive sponsors and employers.

Available from http://www.cleonet.ca/resources/891

Family Violence in Canada: A Statistical Profile (2006)

(78 pages) This is the ninth annual Family Violence in Canada: A Statistical Profile report produced by the Canadian Centre for Justice Statistics under the Federal Family Violence Initiative. This annual report provides “the most current data on the
nature and extent of family violence in Canada, as well as trends over time, as part of the ongoing initiative to inform policy makers and the public about family violence issues.” Similar reports include the 2004 Immigrants and Victimizations report which argued that immigrants actually had a lower rate of violent crime victimization in 2004.

The report utilized data from the incident-based Uniform Crime Reporting (UCR2) survey which collected detailed information on individual criminal incidents reported to police, the 2004 General Social Survey on Victimization (GSS) which was based on telephone interviews with an admittedly limited sample of the Canadian population, the Homicide survey which collected police-reported data on homicide incidents since 1961, and the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS) which tracked child maltreatment investigations conducted in a representative sample of 63 Child Welfare Service areas across Canada in 2003.

The report contains some notable statistical analysis such as provincial variations in spousal homicide (page 53) showing, for instance, that spousal homicide rates in the three Territories were considerably higher than the provinces between 1995 and 2004. It also found that common-law and separated spouses were at greatest risk of spousal homicide, and that young persons were at highest risk of spousal homicide. The report, however, relies heavily on GSS data and thus contains no mention of immigration status, race, or non-English language speaking populations in understanding dynamics of family violence.

Available from


(14 pages) Prepared by the Community Coordination for Women’s Safety (CCWS), a program of the BC Association of Specialized Victim Assistance and Counselling Programs (now known as Ending Violence Association of BC), this document reports on in-depth consultation with six agencies regarding policies affecting immigrant, refugee and visitor women who experience violence. It provides a detailed list of recommendations, categorized by the governmental bodies that would be responsible for making the proposed changes, followed by a series of principles for effective response, also gathered from the consultation.

Included under recommendations for Immigration Canada, for instance, are items pertaining to gender inequity in immigration requirements, dependency on an abusive sponsor for immigration status, lack of connection between immigration and family law, refugee protection system gaps, families coming to Canada in the entrepreneurial category, sponsorship debt, visa waiver and relationship abuse. Other examples include recommendations for the BC Ministry of Attorney General to take measures to protect victim/witnesses, and recommendations for the Ministry of Employment and Income Assistance to ensure that women with permanent resident status know that they have the right to access social assistance.
Specialized Support for Women Who Are Victims of Violence (2007)

(3 pages, briefing document) Prepared by the BC Association of Specialized Victim Assistance and Counselling Programs (now known as Ending Violence Association of BC), the document is part of a series of 16 briefing notes titled “Critical Elements of an Effective Response to Violence Against Women”. It summarizes key points and identifies significant gaps concerning current specialized support services for women who are victims of domestic or sexual violence. Among others, the document identifies three pressing gaps in services for women who are victims of violence:

- Specialized counselling services for women who are under 18 and are victims of sexual assault or dating violence;
- Services, including outreach, for marginalized, and therefore, particularly vulnerable, women such as aboriginal women, immigrant women and women with disabilities, including interpreter services to help women access appropriate victim support services;
- Specialized hospital-based responses to domestic violence and sexual assault in partnership with community-based programs.

Other briefing notes in the series include: high-risk information-sharing protocol; barriers to women’s participation in the criminal justice process; addressing gaps in services for marginalized women; effective enforcement of protection orders; specialized justice processes for domestic and sexual violence; coordination of responses to violence against women; provincial justice policies on violence against women and children; treatment for assaultive men; addressing sexual assault; third party reporting in cases of sexual assault; legal aid and related family law services for abused women; training on violence against women; and prevention of violence against women.

Available from http://endingviolence.org/node/275

Understandings of Spousal Sponsorship in South Asian International Arranged Marriages (2007)

(7 pages, policy brief) Research study conducted by Professor Noorfarah Merali at the University of Alberta with funding support from the Prairie Metropolis Centre of Excellence for Research on Immigration, Integration & Diversity and others. This policy brief points out that South Asians from India, Pakistan, and the surrounding areas of Bangladesh, Nepal and Sri Lanka represent the second largest and fastest growing visible minority group in Canada, and focuses on misunderstandings and vulnerabilities resulting from the cultural practice of arranged marriage involving male Canadian citizens or permanent residents who sponsor family-chosen brides from their home countries. Research found that while English proficient South Asian women were generally aware of resources available to them, non-English proficient women facing abuse and manipulation were completely reliant on third-party interpretations of the nature of sponsorship, often resulting in miscommunication and
misperception about the sponsored person’s rights, limitations, and residency status. The women’s lack of awareness of their rights and status reveal a particular vulnerability to various types of human rights violations.

In its policy recommendations, the report highlights the need for first language translation of the sponsorship application form and sponsorship guide for non-English proficient women so they can fully understand the content before signing it. Citing the World Health Organization (2003) document on “rights-based education” as a critical vehicle for reducing the vulnerability of disadvantaged groups to exploitation or abuse, the report also highlights the need for a “rights-based orientation” for sponsored women to explain the conditions of sponsorship and the women’s rights in relation to their residency status and existing protections against violence. It also advocates for the establishment of a spousal allowance so that sponsored persons can independently access and draw on a specific proportion of the sponsor’s monthly or annual income to guarantee adequate material subsistence. In the least, the report suggests introducing a government initiated monitoring process to ensure provision for a sponsored woman’s basic needs and sustenance. It recommends as a safety net that all sponsored women be connected to an immigration or settlement agency for at least a single visit upon their arrival in Canada.

Available from http://pcerii.metropolis.net/frameset_e.html


(106 pages) Prepared for the Justice Institute of British Columbia, this report is based on in-depth interviews with 75 immigrant and refugee women who were victims of violence in their intimate relationships. The goal was to: (1) determine what service delivery factors they found to be empowering and disempowering; and (2) develop recommendations based on the findings to more effectively facilitate their empowerment. Research was carried out in collaboration with 3 community partners: Vancouver and Lower Mainland Multicultural Family Support Services Society, the Prince George Elizabeth Fry Society, and MOSAIC.

The report concludes that two primary themes emerged from the interviews. The first theme is the importance of addressing the multiplicity of needs including language barriers, lack of information and access, sponsorship and immigration barriers, material needs, and social isolation. The second theme is the importance of a “comprehensive, caring service” including “proactive intervention; advocacy and accompaniment; broadening of traditional professional roles and mandates; and sensitivity to women’s cultural and immigration realities.” Recommendations reflect these two themes. One such recommendation calls for “further research to determine the actual impact that current legislation, policy, procedures, practices, and programs relating to immigration and sponsorship have on the material needs and well-being of abused immigrant women.”

Available from http://www.jibc.ca

(97 pages) The Critical Components Project Team prepared this report, with funding from the Ministry of Public Safety and Solicitor General, BC Association of Specialized Victim Assistance and Counseling Programs (now known as Ending Violence Association of BC), and Victoria Women’s Transition House Society. It outlines a “framework for a comprehensive approach to domestic violence that best meets the diverse needs of communities in British Columbia,” and identified 8 critical components based on research and evaluation of coordinated approaches to service delivery for victims and offenders.

These 8 critical components of a “framework for an effective, specialized response to domestic violence” include effective, inclusive approaches to:

1. Managing risk and victim safety – including a comprehensive, coordinated approach to risk and safety assessment and victim safety planning
2. Offender accountability – including appropriate and consistent sentencing, consistent enforcement of protection orders, and accessible treatment for abusers
3. Specialized victim support – including comprehensive, proactive, and timely support with outreach and access for marginalized groups
4. Information-sharing – including consistent, timely information-sharing between agencies and with the victim, with particular emphasis on high-risk cases
5. Coordination – including coordination and collaboration at all levels among all relevant sectors, senior level leadership, and resources to adequately support a coordinated approach
6. Domestic violence policy – including adherence to a comprehensive justice system policy that applies to all justice system components and requires a consistent and informed approach to charging, prosecution, and offender accountability
7. Use of specialized expertise – including specialized approaches such as dedicated justice system personnel and dedicated court time, adequately funded specialized training, and if they are considered an option, a carefully considered and principled approach to domestic violence courts
8. Monitoring and evaluation – including monitoring and evaluation as an integral part of all the foregoing critical components and a systematic, comprehensive approach to collection, analysis, and publication of statistics across all justice system components.

The report also discusses the fact that a woman’s reluctance or fear of proceeding through the criminal justice system is often referred to as the most persistent challenge in cases of domestic violence. Pointing out that women who are fearful of proceeding are described as “reluctant”, “uncooperative” or “hostile” witnesses, the report explains how women’s fears may be rational reactions based on the realities of their lives and what they know about the justice system. It states that the inability or unwillingness of a victim to cooperate with a criminal prosecution should be
recognized as a potential safety concern and a preoccupation with victim “cooperation” detracts from the basic need to ensure the victim is safe.

Available from [http://www.endingviolence.org/node/659](http://www.endingviolence.org/node/659) PDF

**Cross-sector Forum and Consultation: Improving Responsiveness of Services for Immigrant and Refugee Women Experiencing Violence (2008)**

(110 pages) Prepared by Linda Light. This report presents the results of a cross-sector forum and consultation to improve responsiveness of services for immigrant and refugee women experiencing violence. Held in June 2008 in the BC Lower Mainland, 192 participants, primarily from victim services/anti-violence and Settlement/ELSA (English Language Services for Adults) agencies attended the 2-day session, organized, in part, in response to the Justice Institute report, *Empowerment of Immigrant and Refugee Women Who Are Victims of Violence in Their Intimate Relationships* (2007).

There were seven primary needs that emerged from this consultation:

- **Better collaboration, networking, and information-sharing** within and between sectors, with a particular emphasis on bringing the Settlement/ELSA sector into a coordinated, collaborative response to violence against women.

- **Better training** on a range of topics, with a particular focus on issues related to violence against women for the Settlement/ELSA sector and immigrant and refugee issues for the anti-violence/Victim Services sector, and on cultural sensitivity training for all those working with immigrant and refugee women who are victims of violence.

- **More services and written resources for women in a range of languages**, including counselling services and education/prevention initiatives. More and better interpretation services for immigrant and refugee women, including interpreters who are trained and qualified, especially on violence against women issues, available on a 24/7 basis.

- **Expanded services for women, children, and men**, especially outreach services. An expanded mandate for Settlement/ELSA workers to enable them to deal with disclosures of violence as “first responders”, services that are over-loaded and long wait-lists.

- **Paid violence against women coordinators** in local communities to provide leadership and facilitate a coordinated, cross-sector response to violence against women, including immigrant and refugee women.

- **Better working conditions for service providers**, including better and more equitable wages in order to keep people in their jobs and address inequities between agencies.

- **Policy and legislative changes** to better serve immigrants, refugees, and non-status women.
In particular, the consultation identified language barriers as a priority issue, and recommended that a province-wide cross-ministry initiative be developed to address the need for more services, service providers, written materials, and other resources in abused immigrant and refugee women’s first language, and for a comprehensive, effective interpreter system when services cannot be offered in a woman’s first language. A strategy to address language issues for immigrant and refugee women who are victims of violence should be considered a priority health and safety issue.

The report also recommends establishing a cross-ministry initiative to review policy and legislation that directly impacts immigrant, refugee, and non-status women who are victims of violence and to develop concrete strategies to address identified problem areas on a priority basis.


(384 pages) This is a comprehensive document on international and regional law and policy relating to human trafficking. The Protection Policy and Legal Advice Section (PPLAS), in the Division of International Protection Services (DIPS) of the United Nations High Commissioner for Refugees (UNHCR), produced the document.

According to this report, the American Convention on Human Rights (1969) ["Pact of San Jose"] is the foundational human rights document for the Organization of American States (OAS). Article 6 of the *Convention* specifically mentions “slave trade and traffic in women” in its categorical prohibition on slavery. Article 22(7) provides for the right to asylum and Article 22(8) codifies the principle of *non-refoulement*. The *Convention* has been ratified by all OAS states except the US, Canada and the Anglo-Caribbean states.

Similarly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994) ["Convention of Belém do Pará"] provides a robust regime for protecting the right of women to be free from violence within both the public and private spheres. Article 2(b) specifically lists “trafficking in persons” as a form of violence against women regardless of whether it involves the knowledge or acquiescence of state agents. Every member of the Organization of American States except the United States and Canada has ratified the *Convention*.

Source: [http://www.unhcr.org/publ/PUBL/4986fd6b2.pdf](http://www.unhcr.org/publ/PUBL/4986fd6b2.pdf)

**Sexual Assault in Canada 2004 and 2007 (released in December 2008)**

(20 pages) As part of the Canadian Centre for Justice Statistics Profile Series, this report primarily draw on results from the 1999 and 2004 General Social Survey (GSS) on victimization and police-reported data derived from the aggregate Uniform Crime Reporting Survey, and the incident-based Uniform Crime Reporting Survey (UCR2). Like other GSS-derived profiles, this report contains little to no data analysis pertaining to immigrant and refugee women with limited proficiency in English or French. It concludes from victimization data that most incidents of sexual assault are not formally reported, with less than 1 in 10 coming to the attention of
police, and instead turning to informal sources (typically friends) for support. The rate of sexual victimization for females was about 5 times the rate for males, those accused of sexual assaults were most often male, and the victim and accused were known to each other in the majority of cases.

Also available are Household Income and Victimization in Canada, 2004 (released 2009), Sexual Assault in Canada 2004 and 2007 (released 2008), Immigrants and Victimization 2004 (released 2008), Hate Crime in Canada 2006 (released 2008), Sexual Orientation and Victimization 2004 (released 2008), Visible Minorities and Victimization 2004 (released 2008), etc.


2. CIC and Other Guides (in chronological order)


(101 pages) This is a guide produced by the Ontario Region Settlement Directorate of Citizenship and Immigration Canada, designed to provide basic orientation information for government-assisted refugees arriving in Canada under the Resettlement Assistance Program. Sections include explanations of available programs, housing, health, education, employment, community services, and other aspects of living in Canada. It contains only a brief mention of violence under “family problems” (page 58): “You can find emergency numbers for help with family violence or sexual assault on the first and second pages in the white pages of your telephone book.”

Also see the other CIC guides, Newcomer’s Introduction to Canada (2006) and Welcome to Canada: What You Should know (2007), and compare to Community Airport Newcomers Network’s (CANN) Information for Newcomers (2008) and British Columbia Newcomers’ Guide to Resources and Services (2009).


CIC: Newcomer’s Introduction to Canada (2006)

(46 pages) This is a booklet provided by the Ministry of Public Works and Government Services Canada. It explains what to expect in the first few days and weeks, how to find a place to live, how to get a Social Insurance Number and a healthcare card, find a job, and what services are available from the immigrant-serving organizations across Canada. Offered are some “useful” information about Canada’s geography and history, government and Canadian “way of life,” and instructions on how to become a Canadian citizen.

A section titled “Women’s rights” states: “In Canada, women have the same legal status, rights and opportunities as men. Most Canadian men respect women as equals—socially, in the workplace and in the home. Violence against women is against the law. Women who are abused can seek help for themselves and their
children in local shelters. They are also entitled to legal protection to keep them safe” (38). This is the only section addressing violence against women.


(54 pages) Provided by the CIC, the booklet contains useful settlement information for newcomers as well odd bits and pieces of information such as “Canada is a very large country, and it can be expensive to make calls from one city to another” (5). It has a page with information about children’s rights, women’s rights, and domestic violence. The guide is written in clear and simple language, but it has no illustrations or graphics, making it text-heavy and hard to follow.


**CANN Information for Newcomers (2008)**

(44 pages) Funded by CIC and services provided by S.U.C.C.E.S.S. (multi-service non-profit organization in BC). Upon arrival at the airport all newcomers destined to the Lower Mainland are supposed to receive this publication provided by CANN (Community Airport Newcomers Network), a federally funded new immigrant reception program. This booklet contains information on landing procedures at the airport, what to expect upon arrival, initial settlement procedures, etc. It contains fairly detailed information on abuse and violence in 4 different sections. Under “Other Specialized Counseling Services,” it states:

**What is Abuse?**

You have been abused when another person hurts you or treats you badly. The abuse can be physical, sexual, emotional, psychological or financial. You are a victim of domestic violence if your partner or someone close to you:

* physically abuses you
* threatens or hurts you
* constantly criticizes you
* forces unwanted sex
* controls who you see, where you go, what you do, how you spend your money.”

In the following pages, the booklet lists Counseling Services for Newcomers and Special Services for Women (39-40), Crisis Help Lines (41), and Transition Houses/Emergency Shelters (41-42), stating:

If you and/or your children are in a violent or abusive situation, you can stay in a transition house. A transition house is a safe place where you can stay while you decide what to do next. A transition house has professional staff who can provide counselling, emotional support and information. Aside from being a shelter, a transition house can also provide you with food, clothing and free medical care. If you are in need of an emergency shelter or a transition house, contact an immigrant settlement organization or a crisis line.
The section “Counseling Services for Newcomers and Special Services for Women,” informs newcomers that if they’re “having problems adjusting to life in Canada or experiencing violence or distress,” they should call someone from the long list including the Battered Women’s Support Services, MOSAIC, SUCCESS Services in Chinese, Vancouver Rape Relief & Women’s Shelter, etc. The agencies list covers Abbotsford, Burnaby, Maple Ridge, Mission, North Vancouver, New Westminster, Richmond, Surrey/Delta, and Vancouver. Only the English and French versions are available online, but other languages may be available at the airport.


(10 pages) This brief guide by MOSAIC (multi-service non-profit organization in BC) explains what an H&C application is, what risks are involved in an H&C application, and how to go about applying for H&C. Not much gender-specific information on violence is provided, except on one page that is included under the list of hardships that must be proven: “If you are a woman, the difficulties you face in your home country.” Produced by the MOSAIC Public Legal Education Project for Newcomers, with financial support of Legal Services Society of British Columbia and The Law Foundation of British Columbia.

Available from [http://www.mosaicbc.com](http://www.mosaicbc.com)

**British Columbia Newcomers’ Guide to Resources and Services (2009)**

(119 pages) Book produced by the Immigrant Integration Branch of the Ministry of Advanced Education and Labour Market Development and written using the Canadian Language Benchmark 4 (CLB 4) level to meet the needs of non-English speaking newcomers. Advisory committee members included representatives from MOSAIC, Inter-Cultural Association of Greater Victoria, Abbotsford & Chilliwack Community Services, SUCCESS, and Immigrant & Multicultural Services Society of Prince George.

It will be made available in ten other languages in the fall/winter of 2009—Arabic, Chinese Simplified, Chinese Traditional, Farsi (Persian), French, Korean, Punjabi, Russian, Spanish and Vietnamese.

Available from [http://www.welcomebc.ca/en/service_providers/resources.html](http://www.welcomebc.ca/en/service_providers/resources.html)

**3. Academic Journal Articles (alphabetical by author’s name)**


This study examines the relationship between cultural belief and the utilization of services among Arab immigrant women. All participants in the study reported at least one act of partner abuse resulting in a consultation with various formal
services. Significant correlations were found between the holding of traditional attitudes toward gender in general, and wife battering in particular, by the women and the utilization of formal mental, social, and legal services. The article also discusses policy implications and the impacts of the anti-Arab political climate after the 9/11 attacks. The article points out that the Arab American community is among those most misunderstood, misrepresented, and negatively perceived by mainstream American society. This not only affects the ability of Arab immigrants to cope with their marital, sociocultural and political challenges, but can also lead to prejudices, biases, and faulty assumptions on the part of service providers. It calls for immediate reforms in intervention policy and practice.

Adames, Sandra Bibiana, and Rebecca Campbell. "Immigrant Latinas' Conceptualizations of Intimate Partner Violence." Violence Against Women 11, no. 10 (2005): 1341-64. PDF

Findings revealed that the immigrant Latinas were aware of the poor quality of intimate relationships in their community, were knowledgeable about intimate partner violence, and understood that intimate partner violence is an extensive problem in the immigrant Latino community. The authors advise that in our attempts to address intimate partner violence, “we must be particularly mindful of immigrant experiences such as linguistic competency, documentation, shifts in power, acculturation and biculturalism, and accessibility to resources,” and that intervention efforts focus broadly on the environmental elements that engender violence, such as community-level strategies.


This study investigates the relationship between South Asian immigrant women’s patriarchal beliefs and their perceptions of spousal abuse, based on 20-minute telephone surveys administered in English, Urdu, or Hindi with 47 women in the Greater Toronto area in Canada. Overall, 24% of interviewees experienced physical abuse perpetrated by their partners during the past 5 years, which is 3 times higher than the prevalence rate reported by the Statistics Canada General Social Survey 1999. Rather than attribute the source of violence to patriarchy, the researchers carefully argue that women’s patriarchal beliefs influence their own perceptions of women’s victimization at the hands of intimate partners. In short, the study findings emphasize the pivotal role of awareness and education about patriarchy in the empowerment of women.

American Civil Liberties Union. Domestic Violence: Protective Orders and the Role of Police Enforcement 2007

A brief questions and answers format document outlining key issues in the US around what protection is available, what happens if a protective order is violated, why police enforcement of protective orders is important, and what victims of violence can do to keep themselves safe.

This article by a criminologist at the University of Ontario Institute of Technology presents a comprehensive discussion of Islamic interpretations of wife beating, exploring 4 schools with varying Islamic perspectives on the issue. Using a feminist Islam framework, it questions how “Islam” or “religion” is used to justify wife beating to the police, in courts, and in other arenas. The review of the range of Islamic interpretations provides an invaluable educational tool for advocates, attorneys, and service providers working with immigrant Muslim women in the United States.


The paper demonstrates the gendered nature of permanent, temporary and illegal migration to Canada and the United States, highlights a few consequences for immigrant women, and indicates tools of intervention that include gender based analysis, special programs, NGO activities, along with government agreements and policies. It asks how the norms, social relationships and hierarchies associated with being female or male affects the potential for migration and the experiences of migration for women and men. It also explores how gender inequalities in destination countries affect the immigrant experiences, and how migration benefits or disadvantages women and men in different ways. Addressing these questions, the author provides insight into the gendered nature of migration, the experiences of migrant women in all aspects of migration including return, the inequalities and opportunities that await them in their destination countries, and the nodes of policy interventions at domestic, bilateral and/or multinational levels.


Based on a representative sample of 7,115 women, the article suggests that immigrant women from developing countries have the highest prevalence of violence. The analyses demonstrate that several variables operate differently in the production of violence against immigrant women from developed and developing nations. However, the key difference in explaining the higher prevalence of violence among those from developing countries is the sexually proprietary behavior exhibited by their partners. The results show that sexual jealousy interacts with high female education and low male education levels in the prediction of violence among immigrant women from developing countries.

Beginning with the assertion that Canada has a history of regional polarity on indicators of social disorder, this study investigates the question of whether Quebec possesses a different culture of male partner violence against women, in comparison to the rest of Canada. Using a large-scale representative sample of Canadian women, researchers conclude that Quebec has a lower prevalence of violence than the rest of Canada and that men in Quebec who hold patriarchal attitudes will be more likely to be violent than those who do not. Discussion of immigrant women takes place in the context of how immigrants to Quebec are more likely to speak French than immigrants to the rest of Canada are to speak English. The authors imply that the higher prevalence of violence among immigrant women in other parts of Canada have something to do with the higher likelihood that the men from Hong Kong, China and India hold more extreme patriarchal attitudes.


The report presents findings that offer a preliminary analysis of the intersection and interaction between official legislatively enshrined discourses, judicial rulings, and the understanding and knowledge of criminal justice professionals and sex trade worker advocates. It sketches the official discourses surrounding organized crime and human trafficking, as reflected in United Nations and Canadian state documents, situating them within the context of social and economic inequity, and framing them in terms of a criminal justice tactic—greater criminalization and cross-national collaboration by police and other authorities. It also analyzes the Canadian judicial discourse to ascertain how the courts respond to cases involving irregular migrant women in the sex trade.


This book focuses on the experiences of Vietnamese immigrant women who are battered and interfacing with the US criminal justice system, and assesses how useful and problematic this system is for increasing the safety of women. The intersection of race, class, gender, and immigrant status are seen as influencing the experiences of violence against immigrant women. In particular, Bui describes how policies of mandatory arrest and prosecution result in the imprisonment of battered women who defend themselves against their batterer, as well as women who do not. The book discusses how immigrant women are often forced to contend with abusive partners who are more familiar with the US justice system than the women themselves. Biases within the courts and inadequate court services for abused women can result in women pleading guilty even when they are not. A major concern for non-citizen immigrant women is the possibility of a criminal conviction and its effect on their immigrant case. Bui concludes the book with a call for changes.
in criminal justice policies and practices, though she provides no specific policy recommendations.


Examining domestic violence in Vietnamese American families, the authors suggest that Vietnamese American women’s experiences of family violence could be affected by the interaction between economic situations, Vietnamese traditional culture, and immigration status. The husband’s patriarchal beliefs and dominant positions in the family and conflicts about changing norms and values between husbands and wives were found to relate to spousal abuse. Importantly, the study goes beyond a culturalist justification of violence in suggesting that class, culture, gender and immigration status simultaneously affect women’s experience of violence by their husbands. Although immigrant Vietnamese women’s economic contributions could not reduce their husbands’ dominant positions and violence, it found that economic hardship could in fact prevent women from leaving an abusive relationship.


Funded by the National Secretariat on Homelessness, this research was conducted by members of MOSAIC (Sherman Chan as the Principal Investigator) and the Geography Department at the University of British Columbia. The various parts of this project converged on the point that the housing situation of newcomers to Greater Vancouver is heavily influenced by the social capital of existing ethnocultural communities. As a result, the extent of relative and absolute homelessness among immigrants, refugees, and refugee claimants is less than would be expected given the income levels of these groups. While many individuals and families are living in crowded, substandard conditions, the research finds that the social networks appear to mitigate against the worst forms of homelessness, and that immigrant, refugee, and refugee claimant communities are actually underrepresented in the population using homeless shelters. In particular, they report that overcrowding living situations often lead to tensions among family members and can increase the likelihood of domestic violence.

Available from

Immigrant women’s fears about crime involves understanding what their issues are, how and why they differ from other women, and what they see as potential solutions. Beginning with a discussion of a number of attacks by strangers against women in Vancouver, this paper studies racialized immigrant women (16 Chinese and 17 South Asian) in the Greater Vancouver Regional District and how they express their concerns about crime in the context of their specific gender, race and class location. Providing insight into the different understandings and strategies around what it means to be safe and practice safety in public, the author (professor in anthropology and sociology at Simon Fraser University) discusses women’s fears, anxieties and vulnerabilities and the strategies they employ to avoid criminal victimization. Though the article does not focus on intimate partner violence, it is useful in considering immigrant women’s relationship with the criminal justice system, especially the police, and the women’s reluctance to report crimes to the police because of fear of retaliation or deportation.

Available from [http://mbc.metropolis.net/Virtual%20Library/2008/WP08-10.pdf](http://mbc.metropolis.net/Virtual%20Library/2008/WP08-10.pdf) PDF


This article responds to a criticism of a crime-centered approach to domestic violence, namely that we are seeing a “massive over-reliance on criminal strategies by advocates for battered women.” The critics have been particularly critical of the most prominent policy feature of this focus, mandatory arrest and no-drop prosecution, pointing out for example that immigrant women and particularly undocumented women face the possibility of deportation with the attendant risks of economic deprivation, separation from children, etc. especially since conviction for domestic violence is a deportable offense in the US. While accepting the merits of many of these arguments, the author argues that alternative interventions to the current crime focus “must not lose sight of one significant benefit of that focus: the potential for emphasizing that domestic violence is morally wrong.”


The author, a US House Representative, provides an overview of the history of congressional involvement with the Violence Against Women Act (VAWA) provisions to protect immigrant victims of domestic violence and other forms of violence against women. He outlines the reasoning behind, and purpose of, the most recent enhancements in legal protections for immigrant victims of domestic violence, sexual assault, trafficking, and foreign fiancés and spouses that were included in the reauthorized VAWA 2005, also describing the bipartisan work that resulted in the newest piece of legislation.

This article describes the findings of research into judicial decision-making in Ontario courts in cases of intimate violence against women. Judges are condemning the violence, issuing relatively harsh sentences, and arguing that the intimate context of the violence is an aggravating factor. The analysis also reveals that judges often rely on stereotypes and traditional notions of marriage, family, and femininity. As records of decisions, the documents suggest a high level of understanding that wife abuse is a crime, but as judicial discourse, they reveal how the justice system regulates intimate relationships and how traditional ideologies persist despite the harsh sentences.


The authors discuss the subgroup variations in the documents of trends in spousal homicide, and identify factors that may be associated with the reported declines. Using Statistics Canada data, the authors suggest that shifts in relative employment and divorce rates appear to be associated with declining rates for women, whereas shifts in men’s education and divorce rates appear to be associated with declining rates of spousal homicide for men. Their findings complicate the “exposure reduction” framework, which is premised on the well-documented finding that chronic and persistent violence in intimate relationships often precedes intimate partner homicide, and that mechanisms that help abused partners exit from violent relationships or inhibit the development of such relationships in the first place may reduce the rate of lethal victimization. With respect to legislative and policy changes, the authors write that many Canadian jurisdictions have adopted zero-tolerance and/or no-drop policies during the past 20 years, and that these policies require the police to charge in cases of spousal violence where there are reasonable and probable grounds, also requiring that cases be prosecuted when there is a reasonable likelihood of conviction.

They also write: “[S]ome jurisdictions now have specialized domestic violence courts. A specialized criminal justice system response was first developed in Winnipeg, Manitoba, in 1990. Similar programs in Ontario, Alberta, and the Yukon have been implemented more recently. The principle aim of these courts is to expedite the processing of domestic violence cases to ensure the safety of the victim, introduce early intervention for first-time offenders, allow for effective investigation and prosecution of these cases, and ensure accountability of the offender. Most of these courts have specialized prosecutorial units; specially designated courtrooms and dockets for intake, screening, and trials; and special units in the probation office to deliver court-mandated treatment programs. Legislative changes, specialized courts, training of criminal justice personnel, and increasing resource availability may have contributed to declining spousal homicide
rates of both women and men, although at this point direct causal relationships are difficult to establish" (302).


This working paper provides an analysis of how trafficked women, under certain circumstances may be eligible for refugee status and discusses how national anti-trafficking legislation may not be sufficient to address their protection needs.


The author suggests that the backlash against gender-sensitive responses to women’s victimization, offending, and imprisonment is inseparable from contemporary reaction against feminism and other progressive movements. Discussing the backlash against the American Violence Against Women Act (VAWA), the article points out that the “fathers’ rights” movement discourses call for the reassertion of patriarchy and objects to women’s authority, and tend to be particularly preoccupied with issues related to battering and violence policy. Rather than seeing the backlash as a fringe movement, the article points to the implications for the relationship between masculinity and violence, which are increasingly important in an era of federally funded fatherhood and marriage promotion initiatives.


This study examined recent US state statutes and found that more recent laws provided greater access to victims and expanded their eligible populations to include categories that were excluded in earlier legislation (i.e. dating partners, sexual partners, and same-sex partners). Protective orders increased slightly in duration and there was more access to them outside of normal working hours. Compared with earlier legislation, they found newer laws also more likely to authorize judges to design remedies that address financial matters. Penalties for violations remained relatively stable, although states were increasingly willing to use enhanced sanctions for repeat offenders. States continued to use mandatory arrest to enforce orders, and legislators incorporated many aspects of new federal legislation into state statutes. They conclude that the past decade witnessed quite a few important changes in protective order legislation, but that there is insufficient research and evidence on how these laws have been implemented. While legislators in most states are convinced that protective orders are an important enforcement tool, there continues to be a need for policy analysis that would allow lawmakers to determine what types of reforms are most effective.

This report examines how women from immigrant, refugee, and indigenous populations are involved with and treated by Child Protective Services (CPS) in the US. The goal is to share the voices of immigrant, refugee and indigenous women who are survivors of intimate partner abuse and have been involved with CPS. It discusses the policies, practices and interventions that will more effectively address the physical, emotional and spiritual health of individuals, families, and communities. From the outset, the report states that Latino, African American, Asian, Pacific Islander and other non-Caucasian women experience partner abuse at higher rates, and are negatively impacted by their inability to escape abuse or seek appropriate rehabilitative and support services. They encounter negative consequences including homelessness, joblessness, incarceration, drug and alcohol abuse, and physical and emotional injuries. Immigrant and refugee women are thought to be particularly vulnerable populations due to their lack of access to services, poverty, and fears related to maintaining or attaining citizenship status (especially critical in the US).


This study addresses the abuse experiences of immigrant women married or engaged to US servicemen and the response of military social service and legal systems. It explores the intersectionality of immigration status and military spouse or intimate partner status. The findings indicate that the immigration circumstances and status interact with the military context to compound the abuse, further marginalize victims/survivors, and weaken the military social service and legal system's response. The study concludes that in light of the larger number of intimate partnerships formed between American military personnel stationed abroad and foreign-born women, the abuse potential inherent in such relationships warrants special attention by the military.


This report by the Canadian Feminist Alliance for International Action (FAFIA) was funded and supported by a grant from the Social Sciences and Humanities Research Council and the Centre for Feminist Legal Studies at the University of
British Columbia. It was submitted to the United Nations Human Rights Committee on the occasion of its review of Canada’s 5th report on compliance with the *International Covenant on Civil and Political Rights*. The report calls on Canada to account for its breaches of international human rights obligations and its failure to credit and respect international human rights bodies by responding constructively and actively to their recommendations. In particular, the report focuses on women’s poverty and the persistent systematic discrimination faced by aboriginal women.

In the Violence Against Women section (page 36), the report cites the CRIAW Fact Sheet on Violence Against Women and Girls (2002), Nowhere to Turn? (2004), as well as publications by the Chinese Family Services of Ontario, Status of Women Canada, and other researchers in stating as follows:

Women who face multiple forms of discrimination, such as Aboriginal women, women of colour, immigrant women, lesbians, disabled women, young girls and older women, face a higher risk of violence. These women have a more difficult time accessing services. For example, “less than two-thirds of shelters for abused women report being accessible to women with disabilities.” Also, there is a complex set of issues, attitudes, barriers and gaps in service that make immigrant and racialized women uniquely vulnerable when faced by domestic violence. Only 57 percent of Canadian shelters offered services that are sensitive to cultural differences. Women who have difficulty speaking the official language where they live face enormous barriers in accessing services and dealing with the justice system. When services and the justice system fail, women find it even more difficult to escape abuse.

It also cites the report *Sponsorship—for Better or for Worse: the Impact of Sponsorship on the Equality Rights of Immigrant Women*, pointing out that the immigration policy enforces and worsens the already vulnerable position of sponsored women by increasing their dependence on their spouse.


The authors discuss the over-representation of immigrants among the population considered at-risk, and the issue of hidden homelessness. Their findings indicate that spatial concentrations of recent immigrants at-risk of homelessness are found in inner suburban locations, that the vast majority of immigrants in these at-risk areas are recent arrivals, and that recent immigrants are disproportionately excluded from at-risk estimates because they are significantly over-represented among households that have shelter costs that exceed their incomes. Although not directly related to the issue of safety of immigrant and refugee women, the issues of violence, continuum of homelessness (Chan 2005) and hidden homelessness are deeply inter-related.

In the US, the passage of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996—known as the 1996 welfare law—resulted in a significant decline in the number of legal immigrants receiving Medicaid coverage and greatly widened the gap in overall health insurance coverage between low-income US citizens and immigrants. This report provides an overview of health coverage challenges facing immigrants, the federal rules regarding immigrants’ eligibility for healthcare, and state efforts to provide replacement coverage for immigrants who are ineligible. It also reviews actions states can take to encourage enrollment of eligible immigrants in public health coverage and to improve immigrants’ access to care. The discussion is obviously specific to the US context, and quite different in the Canadian context of health care, but it is still an important study demonstrating the critical need for access. It also discusses the eligibility of victims of domestic violence in the process of seeking permanent legal residency status.


This is one of the first studies to report on Latina women’s experiences with sexual and psychological, as well as physical, intimate partner violence, and one of the few studies to include women who are migrant-seasonal workers. Studying the experiences of intimate partner violence in 292 Latina women classified as US born, immigrant, or migrant-seasonal workers, it found high lifetime rates of violence and high rates of violence in the preceding years. The authors also found that particularly among the immigrant women, concerns about legal status and the repercussions of reporting violence may contribute to underreporting of the rates of intimate partner violence.


This article explores a hidden yet pervasive form of violence that marks the lives of young women from racialized immigrant communities in western Canada. It argues for an intersectional analysis that takes into consideration their heightened vulnerability to systemic and institutional forms of violence, and describes intersectionality as a kind of walking a tightrope between the violence of racism and the pressures to conform from within their communities. Challenging previous culturalist explanations, the article suggests that racism constitutes a significant form of structural violence.

It suggests that racism constitutes a significant form of structural violence experienced by racialized immigrant girls and young women, and challenges previous culturalist explanations that perceive violence to be an “inherent feature of
the racialized culture and a sign of its failure to adapt and/or assimilate to the dominant, Western context” (850). Jiwani argues that the culturalist argument “tends to locate the cause and type of violence, along with the response to the violence, within a primordial interpretation of culture and cultural identity,” and that within this framework, immigrant women are “considered to be high risk because of their location at the intersection of two cultures” (851). She quotes Sherene Razack’s suggestion that “culture talk is a double-edged sword” (1994), cautioning against “singling out particular cultural communities and suggesting that they have a proclivity to violence.” (852).


Statistics Canada. Federal/Provincial/Territorial (F/P/T) Status of Women Ministers joined Statistics Canada to compile this collection of statistical indicators on five major aspects of women’s experiences of violence: prevalence and severity, impact, risk factors, institutional and community-based responses, and victims’ use of services. This report updates the information contained in the 2002 publication Assessing Violence Against Women: A Statistical Profile and includes new information in a number of areas. It contains new data examining the situation for Aboriginal women and residents of the territories, making a contribution toward the goal of providing improved data for policy making.

This report adds important new information that was not available for the 2002 report, including data on criminal harassment, sentencing of spousal violence perpetrators, availability and use of victim services, and detailed information for Aboriginal women and women in the territories. However, sections on visible minority and immigrant women still rely on data from Statistics Canada, General Social Survey (GSS), 1999 and 2004. Since the GSS is conducted only in English and French, their figures may grossly under-represent the actual rates of spousal violence against non-English or French-speaking, visible minority and immigrant women who may not have been able to participate in the survey. Therefore, the GSS findings indicating that visible minority and immigrant women report lower levels of spousal violence than non-immigrant women should be considered unreliable. The report concludes by highlighting gaps that remain in the data but are required to paint a more complete picture of the nature, extent and impacts of violence against women. For example, it calls for more detailed data for visible minority, immigrant, Aboriginal and Northern women; sexual assault victimization; perpetrators of violence; attitudes and perceptions of violence among Canadians; the economic costs of violence; and other forms of violence, such as trafficking in persons.


This review of the family literature on domestic violence highlights two broad themes. The first is the importance of distinctions among types or contexts of violence, such as theoretical and practical understanding of the nature of partner violence and the contexts for developing more sensitive and comprehensive theories. The second concerns the interplay of violence, power and control in relationships. It is not a very comprehensive literature review and it does not centrally discuss race, ethnicity, and immigration, but it does mention that immigrant and refugee status creates special difficulties for women trying to escape abusive relationships, and that immigrant women experiencing violence in their homes are often restricted by language barriers, fears of deportation, lack of transportation, fear of loss of child custody, and cultural taboos.


The Community Engagement Continuum is conceptualized as a way to categorize a range of community based approaches in the anti-violence movement and to clarify the goals of engagement. The level to which the strategies used lead to increases in the community’s capacity to transform relations of power defines the four points of the continuum - community outreach and education, community mobilization, community organizing, and community accountability. It documents in detail seven Asian and Pacific Islander anti-violence programs in the US: the Door Knocking Campaign of Stand Against Violence Effectively (SAVE) program of the Cambodian Association of America in Long Beach, California; the Community Needs Assessment of Shimtuh, a program of the Korean Community Center of the East Bay in Oakland, California; the Natural Helper Program of Asian & Pacific Islander Women & Family Safety Center in Seattle, Washington; the Youth Empowerment as Domestic Violence Reduction program of Freedom, Inc. in Madison, Wisconsin; Public Shaming/Naming of Sakhi for South Asian Women (New York); Breaking the Silence Project of Raksha in Atlanta, Georgia; and Pacific Islander Men’s Program in Oahu, Hawai‘i. It is notable that none of these cases work on policy change although the report was designed to influence public policy.


This study explores how the cultural context of intimate partner violence affects accessibility to mainstream services for Haitian immigrant women in the US. Findings indicated that the nature and context of violence in the Haitian immigrant community contribute to Haitian women’s reluctance to seek services as well as their overall vulnerability to intimate partner violence, and that mainstream services are largely inaccessible to Haitian women. The article is especially important for
assessing the safety of undocumented immigrant women - according to the National Immigration, Refugee, and Citizenship Forum in 1999, at least 50% of Haitians living in the US were undocumented, and undocumented women must contend with disintegration of extended family networks, lack of English-speaking ability, illiteracy, isolation, economic insecurity, legal vulnerability, and lack of knowledge about services.


Prepared for the Justice Institute of British Columbia, this report is based on in-depth interviews with 75 immigrant and refugee women who were victims of violence in their intimate relationships. The goal was to: (1) determine what service delivery factors they found to be empowering and disempowering; and (2) develop recommendations based on the findings to more effectively facilitate their empowerment. The report concludes that two primary themes emerged from the interviews. The first theme is the importance of addressing the multiplicity of needs including language barriers, lack of information and access, sponsorship and immigration barriers, material needs, and social isolation. The second theme is the importance of a “comprehensive, caring service” including “proactive intervention; advocacy and accompaniment; broadening of traditional professional roles and mandates; and sensitivity to women’s cultural and immigration realities.” Recommendations reflect these two themes. One such recommendation calls for “further research to determine the actual impact that current legislation, policy, procedures, practices, and programs relating to immigration and sponsorship have on the material needs and well-being of abused immigrant women.”

Available from http://www.jibc.ca PDF


Building on research in three rural counties and one urban county in the US, this article discusses the problems with the implementation of protective orders. It finds that very important differences exists across jurisdictions: that there are more and specific barriers to obtaining and enforcing protective orders for women from rural areas, that victimization experiences of women seeking protective orders differ for rural and urban women, and that there are differences in protective order stipulations, violations, and perceived effectiveness of protective orders among rural and urban women. Although the article does not concern Canada, and does not consider immigrant and refugee women or race or ethnicity as also affecting the urban-rural disparity, the article nonetheless underscores the need for a more coordinated training for criminal justice and law enforcement personnel to improve the consistency and responsiveness of protective order processes for rural women. I have not found a similar article that addresses urban-rural disparity in protective order processes in Canada.

This article suggests that the multiple oppressions faced by women of color, women with disabilities, older women, lesbians, and immigrant women must and can be incorporated into traditional feminist theory on domestic violence and a more comprehensive and complex conceptualization of power and control in intimate relationships.


This study identifies risk factors for Vietnamese American women's abuse. Intensive interviews with 129 Vietnamese women immigrants in a northeastern metropolitan area provided data to examine risk factors for sexual, physical, and verbal abuse. Patriarchal gender arrangements in the family, arguments about fulfilling gender and family roles, and partner's threat that divorce would compromise the participant's immigration status put women at risk for each type of abuse. Importantly, the study discusses implications for practice and policy, stating that the current law providing abused immigrants with an opportunity to remain in the US (i.e. VAWA) is laudable, but that the threat of divorce and the related jeopardy to immigration status is still relevant to keeping women in abusive relationships. It concludes that there is a great need for legal education and access.


The authors find that the unregulated nature of the international marriage broker industry endangers women by denying them information necessary to make informed choices with respect to their intended US-based citizen spouses. This article provides an overview of the international marriage broker industry and how the industry’s marketing of marriage potentially endangers many women recruits, and offers an update and analysis of new provisions under US immigration law that strengthen protection available for women who immigrate as fiancées and spouses of US citizens. It discusses the VAWA 2005 provisions that arm foreign national women with a path to legal status without the abusive spouse.


The Canadian federal policy provides a framework for the immigration and health experiences of immigrant women. The official immigration category under which a
migrant is admitted determines to what degree her right to remain in the country (immigration status) is precarious. Women immigrants fall primarily into the more dependent categories and they experience barriers to access to health services arising from this precarious status. Federal immigration and health policies create direct barriers to health through regulation of immigrants’ access to services as well as unintended secondary barriers. These direct and secondary policy barriers intersect with each other and with socio-cultural barriers arising from the migrant’s socio-economic and ethno-cultural background to undermine equitable access to health for immigrant women living in Canada.


Advocates face huge challenges in addressing the issue of intimate partner abuse in a socioculturally sensitive manner.


Providing a review of legal, medical, and social science research literature, the article finds that the existing research demonstrates that immigrant women’s cultures, contexts, and legal status (a) increase vulnerability for abuse, (b) are used by abusers to control and abuse immigrant women, and (c) create barriers to women seeking and receiving help. The article cites a community-based survey with South Asian immigrant women in Boston which reported that 40.8% of the women experienced physical abuse at the hands of their current partners, a rate that was much higher than in the general population.


While a number of excellent UNHCR handbooks, manuals and guidelines address the issue of trafficking; the author argues that the majority of them contains little reference to trafficking as it relates to persons of concern. It states that there is a need to update the publications to reflect trafficking as a protection concern within the organization and to provide guidance to staff and others on how to address the issue. The report concludes that prevention and protection work, as related to trafficking and persons of concern should be given the necessary priority by UNHCR field offices. Particularly helpful are sections discussing the Canadian context.


This article critically analyzes how the criminal justice system centrally situates itself in an intervention program intended to protect victims of domestic abuse and stalking. The author argues that current tendencies toward criminalization in
domestic violence interventions can have an unintended violent impact for victims who are either excluded from the program or are forced into a criminal justice regime that might not be in their primary interest. Women who can actively navigate the use of the criminal justice system, however, do seem to receive the protection they need.


This report was updated in 2006 and is no longer available. See instead Holly Johnson, "Measuring Violence against Women: Statistical Trends 2006."


Based on interviews of a total of 63 victims and 28 police officers, the authors identify “three dimensions of empowerment along which police responses varied: integrated team versus isolated united functioning, deserving versus undeserving victim perspective, and proactive versus pro-forma responses. Police attitudes, situational factors, and victim characteristics influenced the extent to which responses were experienced as empowering or disempowering by victims.” The article complements the 2007 report, *Empowerment of Immigrant and Refugee Women Who Are Victims of Violence in Their Intimate Relationships*, and adds the perspective that the police acts not only as “gate keepers” to the criminal justice system but also as a potential social support for domestic violence victims, significantly impacting victim safety and service utilization.


Written by a researcher from the University of Ottawa, the article criticizes feminist therapy for failing to acknowledge the diversity between immigrant and racially visible women who have been abused. The authors examine both the effectiveness of feminist therapy and its limitations, describing the reality of domestic violence among these women and how their needs differ from women in the dominant culture. Strategies for a more inclusive form of feminist therapy are offered as alternatives.


This article is based on exploratory research on the cultural constraints that Indian immigrant women face in accessing the benefits of Canadian policies for women experiencing domestic abuse. Findings from Ontario expose the pressures of cultural, social, and family ties that prevent these women from getting necessary support.
help for domestic violence, and are compared to the context of domestic violence and the women’s movement in India. The article points out that women bear the “double pressure of abuse and threat of deportation when the police are involved,” and “fear racism and racial discrimination from the police and others” (869). The article also points out that the majority (80%) of the beneficiaries of subsidized housing by the Canada Mortgage and Housing Corporation (CMHC) are Canadian born, and that many Indian women interviewed do not think positively about shelters and subsidized housing.


This report was produced by the Canadian Council on Social Development (CCSD), submitted to the Department of Justice, Sectoral Involvement in Departmental Policy Development, and was based on focus groups with frontline workers from community organizations in seven cities (Vancouver, Calgary, Winnipeg, Toronto, Ottawa, Montreal and Halifax). This report highlights the importance of social, cultural and systemic barriers that hinder immigrant and visible minority women from seeking and obtaining the supports they need. Key findings include the need for comprehensive, coordinated and culturally appropriate strategies to reach out to immigrant and visible minority women in Canada who are abused by their husbands or partners. It emphasizes the importance of providing information on Canadian laws, rights and services to immigrants in their own language, providing culturally sensitive services, improving and coordinating access to crisis programs and longer-term interventions, stabilizing funding for immigrant settlement and ethno-cultural service agencies, and engaging in education and equity strategies to reduce discrimination, stereotyping and marginalization of immigrant and visible minority communities to prevent partner abuse.

Available from http://www.ccsd.ca/pubs/pubcat/nw.htm PDF


This article provides a comprehensive review of the emerging domestic violence literature using a race, class, gender, sexual orientation intersectional analysis and structural framework fostered by women of color and their allies to understand the experiences and contexts of domestic violence for marginalized women in US society. It lays out a series of challenges that an intersectional analysis grounded in a structural framework provides for understanding the role of culture in domestic violence and points to major contributions of such an approach to feminist methods and practices in working with women experiencing violence on the margins of society.

Funded by the Status of Women Canada’s Policy Research Fund and the Joint Centre of Excellence for Research on Immigration and Settlement (CERIS) in Toronto. The report criticizes the detrimental effects of the “sponsorship regime,” a constellation of various laws, regulations and guidelines from the federal and provincial governments defining sponsorship, the obligations of sponsored persons and their sponsors.” It discusses misunderstandings of sponsorship, integration barriers, and spousal maltreatment, and concludes that sponsorship “poses the question of the responsibility of the family to ensure the well-being and the socio-economic security of its members in relation to the state.”

The report finds that given “the fact that sponsorship involves the undertaking of responsibility for women by the spouse, the fact that the application for permanent residence may be refused if the spouse withdraws his sponsorship and the fact that the access of sponsored women to social assistance is limited by provincial regulations (and remains so for the entire duration of the sponsorship, even after citizenship has been obtained), mean that the equality rights of women immigrants are being violated. Indeed, our research revealed that the sponsorship regime has a discriminatory effect on immigrant women who are sponsored by their husbands in that it exacerbates their unequal status within the marriage, diminishes their dignity and degree of independence, aggravates existing socio-economic disadvantages and violates their most basic human rights.”

Based on the legal analysis of the impact of sponsorship, as well as comments and suggestions from sponsored women themselves, the report discusses the Quebec and American models. The Quebec model reduced the sponsorship period from 10 years to 3 years, but did not address issues concerning the withdrawal of sponsorship, the exclusion of sponsored women from undertaking sponsorship agreements and from the sponsorship application process, and the sponsored women’s restricted access to welfare. The American model under VAWA, allows self-petitioning for immigrants who are victims of conjugal violence and are in the US without status. It does not apply to all sponsored immigrant women, resulting in not only a problematic hierarchy of “deserving” vs. “undeserving” immigrants but also promotes a policy that remedies the effects of violence after it has taken place, without calling into question the basic structure of the sponsorship undertaking.

Instead, the report recommends, among others: 1) reducing the duration of the sponsorship undertaking (as in the Quebec model), 2) ensuring that sponsored women have access to social assistance in case of sponsorship breakdown, 3) ensuring protection against withdrawal of sponsorship (or threats) by considering humanitarian grounds over criteria of financial autonomy, 4) allowing the rescinding of the sponsorship undertaking in cases of conjugal violence so that a sponsored women does not have to maintain contact with the abusive sponsor, and 5) respecting the rights of low-income people to family reunification.

The Guide was produced by the BC Institute against Family Violence (BCIFV) with funding by the BC Ministry of Multiculturalism and Immigration through its Anti-Racism and Multiculturalism Program. The guide features more than 10 scenarios of women experiencing violence, such as sponsored fiancée, women with an in-Canada sponsorship application in progress, women applying for convention refugee status, women with children and with no permanent resident status, etc. Due to the technical and changing nature of legal information, it is unlikely that this guide from 2003 contains reliable information. To be useful, a guide like this would have to be updated constantly. The scenarios are nonetheless helpful in demonstrating how people interact with policies, illustrating how actual policies affect real life situations.

Available from http://www.bcifv.org (website no longer available)


Intimate partner violence is prevalent and is associated with significant impairment, yet it remains unclear as to which interventions, if any, reduce rates of abuse. There is no mention of immigrant or refugee women.


This large-scale Seattle-based study by a group of epidemiologists found that financial independence and abuse of family or friends are important factors associated with the decision to seek a protection order in intimate partner violence. Victims who obtained protection orders were more likely than victims without protection orders to be employed full-time, be pregnant, be married, aged over 24, and less likely to be involved with the perpetrator at the incident of violence. Interestingly, it also found that women who sought protection orders were less likely to be physically assaulted or injured, but more likely to have family members or friends physically assaulted.


Based on a study utilizing focus groups in the Seattle area, the researchers categorized the many barriers for victims into three themes: 1) predisposing characteristics—situational and personal factors; 2) fears and negative experiences...
with police abuse; and 3) fears of possible repercussions. The study also list what the victims described as “positive experiences with police,” and suggests policy changes for the police and social service agencies in addressing the barriers in seeking police help. For example, it recommends modifying police policies, conducting police training in addressing violence against women, and the creation of an easy to use on-call system with professional interpreters to address the language barrier for non-English-speaking victims. Ongoing training of police officers is also advised to address cultural sensitivity for immigrant populations, racial/ethnic minorities, and lesbian populations. More specifically, the article suggests that there be a shift in thinking concerning the police’s use of the “cozying up” technique with the perpetrators as this often gives the appearance of “male bonding” between the perpetrator and the police, and decreases the victim’s trust in the police officer.


The article examines feminist and “status inconsistency” theories and their application to domestic violence in Chinese immigrant families. The feminist approach is defined as a perspective, which maintains that gender inequality in society is the root of all forms of violence against women. Status inconsistency theory as an approach, suggests that violence is more likely to occur when an individual’s status is inconsistent with new norms or when standard norms governing the family become ambiguous. For Chinese immigrant families, status inconsistency theory addresses the impact on the marriage or family resulting from the cultural transition of immigration, downward economic mobility, racial discrimination, and the lack of proficiency in the English language.
Section 3: Federal Briefing Documents
Needs of Women without Status as a Result of Leaving an Abusive Spouse

Immigrant, refugee, and non-status women are vulnerable if they leave an abusive spouse on whom they are dependent for an immigrant or refugee claim. Fear of losing a claim to permanent status may cause these women to remain in abusive relationships, putting themselves and their children at risk. Their primary options are to: have their applications severed from those of their spouses; apply for a temporary resident permit (TRP) to stay in Canada while seeking permanent status; or apply for permanent status on Humanitarian and Compassionate (H&C) grounds. Significant challenges are associated with these options. Also, proposed changes to Canada’s refugee system (Bill C-11) may threaten women’s safety.

Recommendations

Immediate

1. Bill C-11 should be reviewed with specific focus on the safety of women who are victims of violence, including, in particular, reconsideration of the concept of “safe countries of origin”, the proposal to hold hearings within two months, and a proposed bar on claimants receiving H&C consideration.

2. Citizenship and Immigration Canada (CIC) should provide or arrange for qualified interpreters for those engaged in the TRP or H&C process, for hearings, interviews, and other official meetings.

3. CIC should establish a formal, expedited process for severing dependent refugee and immigration claims for women who have left abusive spouses, whose applications could stand on their own.

4. Immigration and refugee law, regulations, policy, and guidelines should be sufficiently detailed and explicit that discretion of decision-makers is clearly guided in cases involving domestic violence - both in terms of what kind of evidence is acceptable to demonstrate that the claimant or her children have suffered domestic violence from the husband/father and in terms of granting permanent residency on H&C grounds if domestic violence has been demonstrated. (ongoing)

5. Specific, detailed information should be provided in operations manual IP 5 section 12.7 Family Violence on the nature and dynamics of domestic violence.

6. The list of factors in operations manual IP 5 section 12.7 to be considered in relation to domestic violence should include specific risk factors for women and children who are victims of violence.
7. Operations manual IP 5 section 12.7 Family violence and section 5.14 Children – Best interests of a child should be cross-referenced and officers alerted to the fact that best interests of a child are integrally bound up with the safety of their mother.

**Medium-term**

8. CIC should specifically adapt and expedite the TRP and H&C processes to address the safety of abused women and their children as a priority.

9. The amended TRP and H&C processes should be coordinated to ensure that abused women engaged in the H&C process have access to essential and emergency health and dental care, an expedited no-fee work permit, and access to subsidized child care.

10. Having Canadian-born children should serve as a compelling reason for an abused woman to be granted permanent resident status on H&C grounds.

**Longer-term**

11. Consideration should be given to introducing a statutory obligation for CIC officers to consider the safety of women who are victims of violence.
FEDERAL BRIEFING DOCUMENT 1

Needs of Women without Status as a Result of Leaving an Abusive Spouse

ISSUE: Immigrant, refugee, and non-status women are vulnerable if they leave an abusive spouse on whom they are dependent for an immigrant or refugee claim.

KEY POINTS

Women who are vulnerable to loss of status

• Certain immigrant, refugee, visitor, and non-status women are particularly vulnerable to further abuse because they may be reluctant to report spousal violence to police or leave an abusive spouse for fear of losing their claim to permanent status. These include:
  - Immigrant women in Canada who are in the process of becoming sponsored by a husband and whose husband could withdraw his sponsorship application if the woman reports the abuse or leaves the relationship;
  - Women immigrating as a dependent of a husband who is immigrating under the independent class, such as the entrepreneurial class. These women will lose their status as a dependent if they leave their abusive husband;
  - Women who are claiming refugee status as a dependent of their husband who is the principal refugee claimant. These women will lose their status as a dependent if they leave their abusive husband;

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1 This document may also apply in situations where any other family member has been left without status because of abuse by his/her sponsor, such as a senior abused by a son or daughter who has sponsored them. It may also apply to women who are in Canada as part of a temporary foreign worker program such as the Seasonal Agricultural Worker Program or the Live-in Caregiver Program, who are afraid to report or to leave an abusive situation because of fear of losing their work status or their eligibility to apply for permanent residency.

2 This could include so-called ‘mail-order brides’, a term that refers to women who met their foreign spouse through an international introduction or ‘pen-pal’ agency. (The controversy around the use of the term ‘mail-order bride’ is acknowledged. In the absence of another more ‘neutral’ term, the term ‘mail-order bride’ is used in this document. However, there is no intent to stereotype or stigmatize immigrant women who have married a Canadian as a result of an introduction or ‘pen-pal’ agency.)
Abused women in Canada on a visitor’s visa whose visitor status is expired, not renewed, or breached because she did not comply with its terms (such as working at paid employment in contravention of the terms of her visa);

- Women named in a sponsorship application who are vulnerable in circumstances of abuse are: i) those who have a temporary resident permit (TRP) who leave their abusive husband before the sponsorship process is complete and whose temporary resident status subsequently expires; and ii) those without status who are therefore living in Canada illegally, who leave their abusive husband before the sponsorship process is complete.

**Risks of further violence**

- As a result of fears of losing their claim to permanent status and/or being removed, immigrant, refugee, and non-status women experiencing abuse in Canada often remain in abusive relationships, putting themselves and their children at serious risk of further abuse. This danger, in relation to withdrawal of a sponsorship application, is acknowledged in the operations manual *IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* under section 12.7 Family Violence.

- Such loss of potential immigration or refugee status and threat of removal may constitute re-victimization and may contravene the *Canadian Charter of Rights and Freedoms, Section 7 - Life, liberty, and security of person*. It could be argued that Canadian policies that make it difficult for a woman to leave an abusive relationship themselves constitute a form of abuse that threatens her and her children’s rights to life or security of the person.

- A situation in which a woman is forced to leave Canada while a custody case is in progress, leaving her children in the custody 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.

**Legal options currently available**

- The primary avenues open to such non-status or temporary status women are:
  
  - For women who are dependent refugee claimants or are dependent on husbands who are “independent class” immigrants, but whose claims could stand on their own merits, to have their applications severed from those of their husbands;
  
  - To apply for a TRP to remain in Canada while seeking permanent status;
  
  - To apply for permanent residence on Humanitarian and Compassionate (H&C) grounds.

**Challenges associated with current legal options**

- With respect to dependent refugee claimants or dependent independent class immigrants whose claims could stand on their own, there is currently no formal process in place to ensure that the severing of a woman’s case from that of her
husband who is the principal applicant will happen in a routine, expedited manner and that her case will not have to “go back to the beginning” rather than continuing from the point at which she asked to have her case processed on its own merits. While she has a right to access her personal information in an existing application, there is no policy or guidelines in place that allow a woman who has severed her application from that of her husband to access her file on a routine basis or to have the data in that file transferred to her own application as the principal applicant.

- Regarding the H&C process for women whose sponsorship applications were withdrawn by abusive husbands or whose refugee or immigration claims could not stand on their own, there are a number of difficulties. These include: the complexity and length of the process; the ongoing threat of removal; a non-status or temporary status woman's lack of access to services; inability to apply for a work permit without a TRP for six months or more; lack of guidance for Citizenship and Immigration Canada (CIC) officers in dealing with women who are victims of violence and in the exercise of their discretion in decisions regarding such applicants; and lack of training for CIC officers on issues related to violence against women.

- Changes to Canada’s refugee system proposed in Bill C-11 (the proposed Balanced Refugee Reform Act) may threaten the safety of women refugee claimants in a number of ways.

Addressing the challenges
- Establishing a formal process for severing dependent refugee and immigration applications for women who have left abusive spouses and an expedited, comprehensive H&C process specifically targeted to domestic violence victims, together with a TRP process specifically targeted to abused women, would go a long way toward resolving these difficulties.

- In addition to the enhanced H&C and TRP processes described above, coordination of these processes with the operations of the CBSA would act as an additional safeguard to ensure that abused women who have applied for permanent residency on H&C grounds cannot be removed from Canada while that process is underway. This is particularly important in cases involving unresolved custody and access issues.

- The primary focus of any laws, regulations, policy, guidelines, and processes pertaining to immigration and refugee matters involving women who are victims of domestic or sexual violence (including changes proposed in Bill C-11) must be safety for the women and their children. This focus is consistent with the program objectives and comments on appropriate use of discretion cited in 2. Program objectives of IP 5, as well as instructions to officers in section 12.7 Family violence to “be sensitive to situations where the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved sponsorship” (p.40).

- Enhanced training and guidelines for CIC officials dealing with abused immigrant, refugee, and non-status women are essential for women’s and children’s safety.
THE CONTEXT

Murder of immigrant women

• There have been approximately 75 domestic violence homicides in the past five years in BC\(^3\). A significant number of these victims have been immigrant women.

• In 2007, Sunny Yong Sun Park, her young son, and her parents were murdered by Park’s husband, Peter Hyun Joon Lee in Oak Bay, an affluent neighbourhood in Victoria. This murder resulted in a high profile coroner’s inquest and an investigation by BC’s Representative for Children and Youth. The results of both investigations, published in late 2009, emphasized the need for cross-sector information-sharing and coordination and the importance of risk assessment. The coroner’s report included a recommendation for universally available advocacy services. The Representative for Children and Youth’s report included a recommendation for strengthened services to immigrant women in circumstances of domestic violence.

Seeking status

• Proposed changes to Canada’s refugee system are to be welcomed if they increase support for refugees in need of protection and decrease delays in rendering final decisions on asylum claims. However, the Canadian Council for Refugees has put forward a number of concerns about changes proposed in Bill C-11 which have particular relevance for women refugees who have suffered gender-based violence. (Canadian Council for Refugees, 2010). These include:

  o The concept of “safe countries of origin” or “democratic countries with robust human rights records” for purposes of fast-tracking the return of failed asylum claimants, as countries otherwise considered “democratic” or “safe” may have poor records in terms of gender-based crimes;

  o The proposal to hold hearings within two months, which may be problematic for refugees who require time to build trust before they can testify openly, such as traumatized women who have been victims of sexual assault or sexual torture;

  o A proposed bar on claimants receiving H&C consideration\(^4\), which is an important avenue for abused women whose circumstances are not adequately addressed in the refugee system.

• Assurances of public consultation on Bill C-11 are welcome, but must include lawyers, community-based agencies, and provincial organizations addressing needs of immigrant, refugee, and non-status women who are victims of violence.

• H&C applications and applications as independent refugees or independent immigrants severed from their original applications as dependents of their husbands

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\(^3\) This is likely a conservative estimate as deaths occurring in a family context are not always appropriately classified as domestic violence cases.

\(^4\) The Canadian Council for Refugees points out that “Bill C-11 would bar refugee claimants from applying for H&C (while the claim is in process and for 12 months afterwards). Applicants for H&C would also be barred from raising factors related to risks feared in the country of origin.” (Canadian Council for Refugees, 2010).
are complex and best completed with the help of a lawyer. With cumulative Legal Aid cutbacks over many years, such legal service is difficult or impossible to access.

- The H&C process is lengthy, sometimes taking two or three years, in the meantime leaving the claimant without status and vulnerable to removal or in the uncertain position of constantly having to apply to renew a TRP.
- Applicants who are applying for a TRP on the basis of not meeting the requirement of the Immigration and Refugee Protection Act to enter or remain in Canada – that is, people who do not qualify to enter or remain in Canada on ordinary grounds – must show the officer “compelling reasons”\(^5\) for the TRP to be issued.
- The H&C process, handled by the CIC branch dealing with admission to Canada, is not coordinated with the Canada Border Services Agency (CBSA) that is responsible for the removal of inadmissible persons. This means that removal of a claimant from the country could (and reportedly does) occur while the H&C process is underway.
- There is no formal, protected channel through which an abused woman can pass on relevant information to the CBSA about ongoing abuse or threats by her husband with an assurance that this information will not be disclosed to her husband or his family. This lack of confidentiality puts the woman and her children at further risk.
- Interpreters are generally provided by CIC only for hearings. For all other meetings and interviews, the client is expected to either know English or bring someone who can interpret for them. This may be problematic in that if initial interviews, for example, are interpreted by a non-accredited or unqualified interpreter, there is potential for errors, omissions, or misunderstandings which could then be used at hearings as the basis of cross-examination to show inconsistencies or allege credibility concerns.

**Surviving in Canada**

- While awaiting the outcome of the H&C process, a non-status woman does not have access to services, including essential or emergency health and dental care, social assistance, or subsidized housing, placing her and her children at risk of health problems, poverty, and homelessness.
- While awaiting the outcome of the H&C process, a non-status woman or temporary status woman with a TRP of less than six months does not have the right to apply for a work permit to work to support herself and her children, thus limiting her ability to live independently from her husband.
- A non-status woman or temporary resident is not eligible for child care subsidy, thus making employment outside the home difficult or impossible.

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\(^5\) According to CIC guidelines “An inadmissible person’s need to enter or remain in Canada must be compelling and sufficient enough to overcome the health or safety risks to Canadian society” (Citizenship and Immigration Canada, 2007, p. 18) and may include the fact that an applicant was a victim of human trafficking.
Operations Manual IP 5

- The criteria in operations manual, *IP 5 section 12.7 Family Violence* are discretionary guidelines rather than mandatory directives. The decision to grant permanent resident status on the basis of an H&C application is therefore subject to considerable discretion on the part of immigration officers. While the operations manual states that this discretion is intended to work for the applicant’s benefit, there are no detailed criteria to guide that use of discretion. In the absence of guidance regarding the nature, dynamics, and risk factors of violence against women, wide discretion available to CIC officers may result in inconsistent decisions across situations with similar facts and increased risk for women and children. The only avenue to challenge a negative H&C decision is to seek leave to appeal to the Federal Court of Canada, an expensive process. If a woman is under a removal order, she would have to seek a stay of that order pending the Federal Court appeal, which involves another, expensive court motion. There are no guarantees that the stay would be granted.

- Section 12.7 *Family violence* in the operations manual states that: “Officers should be sensitive to situations where the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved sponsorship.” (p.40).

- While criteria in section 12.7 pertain to temporary or non-status women who have suffered domestic violence, these criteria are rather limited and general in nature:
  
  o The type of evidence that should be considered in determining whether there was, in fact, abuse, includes “police incident reports, charges or convictions, reports from shelters for abused women, medical reports, etc.” (p. 40). Unlike in Australia, this list does not include statutory declarations from the victim, professionals, or others familiar with her situation. These sources of verification are important because many abused women are too fearful to report the violence to police or seek help. In addition, many newcomers to Canada are unaware of the protections and services available to them;

  o There is no specific information on the nature and dynamics of domestic violence, including the fact that victims are almost always under the control of their abusive husbands, often resulting in social isolation and fear of disclosing;

  o There is no information about the particular complexities of the circumstances surrounding so-called ‘mail-order brides’;

  o There is no reference to specific risk factors for women or their children who are victims of domestic violence that should be considered when making a decision;

  o There is no cross-referencing of this section with section 5.14 *Children – Best interests of a child*.

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6 Under 2. *Program objectives* of the operations manual, *IP 5*, it states: "The purpose of H&C discretion is to allow flexibility to approve deserving cases not anticipated in the legislation. This discretionary tool is intended to uphold Canada's humanitarian tradition." (p.7).
Statutory obligations regarding women and children

- 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 the “best interests of the child” in an H&C application and stated how important it was for an immigration officer to properly consider all of the evidence in that regard. This decision is consistent with s.3 (1) of the *Immigration Act*, which states that one of the objectives of the Act is to see that “families are reunited in Canada”. Preventing a women without status from attending to custody matters pertaining to her children by, for example, removing her from Canada while a custody case is still before the courts, would appear to be contrary to this objective.

- In the operations manual *IP 5 section 5.14 Children – Best interests of a child*, there is a statutory obligation 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).

- No such statutory obligation exists in relation to considering safety for women who are victims of domestic violence.

Guidelines on Domestic Violence

- Detailed guidelines for CIC officers in dealing with cases involving women and their children who are victims of domestic violence may be best addressed by developing a stand-alone guideline comparable to *Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution Guidelines*.

- *Guideline 4* deals with substantive issues. In contrast, *Guideline 8. Guideline on Procedures with respect to Vulnerable Persons Appearing Before the IRB* deals only with procedural issues. An appropriate guideline addressing the particular circumstances of victims of domestic violence should either deal with both substantive issues and procedural issues or should focus on substantive issues and be cross-referenced with *Guideline 8* that has been revised to include specific reference to victims of domestic violence.

US and Australian models

- Canada has, in some important respects, a well-deserved reputation for a fair and humanitarian approach to immigration and refugee law and policy. *Guideline 4. Women Refugee Claimants Fearing Gender-related Persecution*, for example, has served as a model for initiatives in the US. On the other hand, Canada has fallen behind other developed nations such as Australia and the US in some important

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7 While this Briefing Document focuses on domestic violence, it is suggested that any new or revised guidelines include a focus on both domestic and sexual violence, given the serious risk posed to women and girls by sexual violence worldwide. See also the Briefing Document in this series: *Citizenship and Immigration Canada Guidelines For Cases Involving Victims of Domestic or Sexual Violence*
immigration areas relating to the safety of abused women and their children. Australia in 1991 introduced Family Violence Provisions into its migration program. In 1994, the US Violence Against Women Act (VAWA) provisions relating to immigration were codified in its Immigration and Nationality Act (INA).

- In the US, in provisions initiated in 1994 under VAWA, abused women who have been legally married for at least three years can “self-petition” for permanent residency if their husbands fail to file for permanent residency on their behalf. Unlike Canada’s H&C process, this “self-petition” process is geared specifically to women who have been abused. It not only allows the abused woman to apply for permanent residency herself, independent of the abuser, but also prevents her deportation and allows her to support herself by granting her a work permit during this process. Another legal mechanism also exists in the US for an abused woman to obtain legal status – the U-Visa. However, this visa depends on a woman’s willingness to assist government officials in the investigation or prosecution of the criminal abuse.

- In Australia, the 1991 Family Violence Provisions (FVP) of its migration program allow women applying for permanent residency to continue with their application after the breakdown of their spousal relationship if they or a member of their family unit have experienced violence from the husband or partner. Proof of violence may be judicially or non-judicially determined and may include a statutory declaration by the abused partner or two statutory declarations from competent people in two different professions setting out the allegation of family violence or the evidence on which they have based their opinion that family violence occurred and naming the person alleged to have committed it.

**Temporary resident permits**

- In Canada, a process currently exists whereby CIC officers can authorize TRPs for up to three years, after which another TRP must be applied for. The normal length of time for which a TRP is issued is six months to a year, with possibility of renewal. A TRP authorizes a person who is inadmissible or does not meet the requirements of the Immigration and Refugee Protection Act or Regulations either as a temporary resident or as a permanent resident to enter or stay in Canada.

- The TRP process has been adapted specifically for use in the case of victims of trafficking in persons (VTIPs), including expediting the process so that no-fee VTIP TRPs are generally granted after an interview with a CIC officer, with no requirement to attend before the Immigration and Refugee Board. These VTIP TRPs may be issued for up to 180 days and can be reissued at the end of that period. The temporary residency period is designed to assist these victims to escape from the influence of their traffickers, recover from their experience, and decide if they want to return to their home country or stay in Canada and assist in the investigation or prosecution. Holders of VTIP TRPs may receive emergency and essential health and dental services through the Interim Federal Health Agreement, as well as provincial income assistance. Trauma counselling and referrals to other services are also provided. VTIP TRP holders are also eligible to apply for a no-fee work permit,
which is generally issued the same day as the VTIP TRP. There is no requirement that a trafficking victim cooperate with police investigations or criminal proceedings.

Permanent resident status

- Once the sponsorship, refugee, or immigration process is complete and a woman has obtained permanent residence in Canada (as long as the legal or common-law marriage is a legitimate one and she has not obtained her permanent status on false pretences), she is no longer vulnerable to removal or loss of status because she leaves her abusive husband. However, many abused immigrant women are not aware of this fact and are subject to threats from an abusive husband that he will “withdraw” his sponsorship or that she will lose her status and be deported if she leaves him or reports the abuse.

- It is possible that an abused woman who has obtained permanent status on the basis of false pretences, including a marriage entered into solely for the purpose of immigration, has been a victim of intimidation or coercion on the part of the man, his or her family, or others.

RECOMMENDATIONS

Severing of dependent refugee or independent class immigration applications

1. Citizenship and Immigration Canada (CIC) should establish a formal, expedited process for severing dependent refugee and immigration claims for women who have left abusive husbands, whose applications could stand on their own.

2. The process of applying for refugee or immigrant status as independent claimants should be made more accessible to women who have left abusive husbands by simplifying the application process and/or by providing for legal advice and support to assist them through the process, including coordinating with Legal Aid in BC.

Amendments to the TRP and H&C processes

3. CIC should specifically adapt and expedite the temporary resident permit (TRP) and Humanitarian and Compassionate (H&C) processes to address the safety of abused women and their children as a priority.

4. The amended TRP and H&C processes should be coordinated to ensure that abused women engaged in the H&C process have access to essential and emergency health and dental care, an expedited no-fee work permit, and access to subsidized child care.

5. CIC should provide or otherwise arrange for qualified interpreters for those engaged in the TRP or H&C process, not only for hearings but for interviews and other official meetings.
Amendments to the TRP process

6. The TRP process should be adapted specifically for victims of domestic violence who are without status because they have lost the potential sponsorship of an abusive spouse or the potential for being granted refugee status or immigration within the independent class because they have left an abusive spouse who was the principal applicant.

7. Policy should be put in place to ensure that, once domestic violence has been established, it should be considered a “compelling reason” to issue or extend a TRP and that TRPs or extensions in these circumstances are expeditiously granted to allow an abused woman to stay legally in Canada.

8. TRPs specifically adapted for women who are victims of domestic violence should be free and should ensure access to essential and emergency medical and dental care, a no-fee work permit, and subsidized child care while engaged in and awaiting the results of an expedited H&C application.

Amendments to the H&C process

9. The H&C process should be adapted specifically for victims of domestic violence who are without status because they have lost the potential sponsorship of an abusive husband or have lost their status as a refugee or independent immigrant applicant dependent on an abusive husband who was the principal applicant.

10. The H&C process should be made more accessible to abused women, by simplifying the application process and/or by providing for legal advice and support to assist them through the process, including coordinating with Legal Aid in BC.

11. The H&C process should be expedited in order to meet safety needs of women and children and avoid placing them at risk of further violence or removal from Canada.

12. The H&C process should be coordinated with the Canada Border Services Agency (CBSA) in order to ensure that abused women who have applied for permanent residency on H&C grounds cannot be removed from Canada while that process is underway.

13. Immigration and refugee law, regulations, policy, and guidelines should be sufficiently detailed and explicit that discretion of decision-makers is clearly guided in cases involving domestic violence - both in terms of what kind of evidence is acceptable to demonstrate that the claimant or her children have suffered domestic violence from the husband/father and in terms of granting permanent residency on H&C grounds if domestic violence has been demonstrated. In particular:

- Acceptable evidence that the claimant or her children have suffered domestic violence from the former sponsor should include statutory declarations from the abused partner or from competent professionals setting out the allegation of domestic violence or the evidence on which they have based their opinion that domestic violence occurred and naming the person alleged to have committed it.
• CIC officers should be advised that if an applicant has successfully demonstrated that she or her children have suffered domestic violence in Canada, the woman should normally be granted permanent residency on the basis of H&C grounds.

14. Detailed specific information should be provided in operations manual *IP 5* section 12.7 *Family Violence* on the nature and dynamics of domestic violence.

15. Information should be provided in section 12.7 on the complexities and potential risks involved in the circumstances of 'mail-order brides'.

16. The list of factors in section 12.7 to be considered in relation to domestic violence should include specific risk factors for women and children who are victims of violence.

17. Having Canadian-born children should serve as a compelling reason for an abused woman to be granted permanent resident status on H&C grounds.

18. Operations manual *IP 5* Section 12.7 *Family violence* and section 5.14 *Children – Best interests of a child* should be cross-referenced and officers alerted to the fact that best interests of a child are integrally bound up with the safety of their mother.

19. CIC should establish and inform women about a formal, protected channel through which they can pass on relevant information to CBSA about ongoing abuse or threats from abusive husbands without putting themselves or their children at further risk.

20. Consideration should be given to introducing a statutory obligation for CIC officers to consider the safety of women who are victims of violence.

**Provision of information to clients**

21. CIC should take proactive steps to ensure that adequate, linguistically appropriate information is provided to immigrant women both before they immigrate and immediately upon arriving in Canada. Particular attention should be paid to finding effective ways to inform so-called 'mail-order brides' and participants in temporary foreign worker programs about the realities of immigrating to or working in Canada and about the particular vulnerabilities they may face as 'mail-order brides' or temporary foreign workers. Information should be provided on:

• the facts about sponsorship and other forms of dependent immigration;

• the nature, dynamics, and risks of domestic violence;

• their rights in Canada;

• relevant Canadian laws, including immigration, family, civil, and criminal law;

• options and services available to them in Canada, including language training, settlement services, skills training, social assistance, cultural support services, legal advocacy, victim support services, and how to get help if they need it;

• any sponsorship or criminal history of their proposed sponsor.

22. CIC should take every reasonable opportunity to inform women that once they have obtained permanent status through sponsorship or as a dependent applicant in a
refugee or independent class immigrant application, their sponsor or the principal applicant cannot “withdraw” sponsorship or cause them to lose their status.

23. CIC should take every reasonable opportunity to inform immigrant, refugee, and non-status women about any special measures that are in place to help ensure their safety and assist them in gaining permanent resident status in Canada.

24. Keeping in mind that abused women are often subject to isolation and control by abusers, information on the above matters should be provided directly to the women, at various stages of the process, in various formats, and in women’s own language.

25. CIC should take proactive steps to ensure that other ministries and agencies responding to the needs of immigrant, refugee, and non-status women have accurate and consistent information about legal and policy realities for immigrant, refugee, and non-status women and have adequate and linguistically appropriate information resources to provide to the women themselves.

**Guidance regarding women and their children who are victims of domestic violence** (see also above under Amendments to the H&C process)

26. Detailed guidelines should be developed for CIC officers in dealing with cases involving women and their children who are victims of domestic violence, comparable to Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution Guidelines. Two options should be considered:

- This guideline should address both substantive issues informing officials about the particular nature, dynamics, and impacts of domestic violence and procedural accommodations that should be made in cases involving domestic violence, similar to those included in Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB; or

- This guideline should address substantive issues informing officials about the particular nature, dynamics, and impacts of domestic violence and be cross-referenced with Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB, which have been revised to include specific reference to victims of domestic violence.

Whatever form these guidelines take, they should be cross-referenced as appropriate with the operations manual IP 5.

27. Policy and guidelines on women who are victims of domestic violence should take account of the fact that an abused woman who has obtained permanent status on the basis of false pretences, including a marriage entered into solely for purposes of immigration, may have been a victim of intimidation or coercion on the part of the man, his or her family, or others. Investigations of such circumstances and subsequent action should be informed by an understanding of the nature, dynamics, and risk factors inherent in domestic violence.

28. CIC should provide adequate training to all CIC officials dealing with abused immigrant, refugee, or non-status women to ensure that officials understand the particular pressures and serious risks faced by these women and their children.
Changes proposed in Bill C-11

29. Bill C-11 (proposed Balanced Refugee Reform Act) should be reviewed with a specific focus on the safety of women who are victims of violence, including, in particular, re-consideration of the concept of “safe countries of origin”, the proposal to hold hearings within two months, and a proposed bar on claimants receiving H&C consideration.

30. Any public consultation on Bill C-11 must proactively include lawyers, community-based agencies, and provincial organizations addressing the needs of immigrant, refugee, and non-status women who are victims of violence.

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REFERENCES


LEGAL CASE CITED

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

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

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 Immigrant, Refugee, and Non-Status Women who are Victims of Violence in BC
• Training on Violence Against Immigrant, Refugee, and Non-Status Women
Gender Bias in Immigration Criteria

Gender bias in criteria and rules that determine eligibility to immigrate to Canada may threaten the safety of abused women and their children. A number of immigration criteria and rules make it easier for men than for women to immigrate to Canada as independent immigrants. These include: the points system for skilled workers and professionals; the Business Immigration Program; and the Canada Experience Class. Programs that favour male applicants encourage women’s dependence on men for their immigration status. Women may therefore remain in abusive relationships in order to be allowed into Canada or to gain permanent resident status. The only immigration program that favours traditional female skills is the Live-in Caregiver Program. But this program restricts participants in ways that other immigration programs do not. Some aspects of this program may also put some women at risk of abuse by employers. It is important that all new legislation and programs, including the proposed Balanced Refugee Reform Act, be assessed for their impact on women, especially women’s safety.

Recommendations

Immediate
1. If monitoring and comparative research on the gender impacts of the Immigration and Refugee Protection Act (IRPA), as suggested in the gender-based analysis of IRPA, have taken place, the results should be made public and corrective action taken as appropriate. If such monitoring and comparative research has not taken place, Citizenship and Immigration Canada (CIC) should undertake such monitoring and comparative research on an urgent basis, make public the results, and take corrective action as appropriate.

2. CIC should institute a policy that all new programs, legislation, policies, guidelines, and criteria, including the proposed Balanced Refugee Reform Act, must be assessed for gender bias, including ways in which identified bias might jeopardize the safety of abused women and their children, and that this gender bias must be addressed before new initiatives are implemented.

Medium-term
3. CIC should conduct a gender and safety audit of all existing programs, legislation, policies, guidelines, and criteria to assess for gender bias, including how this bias
might jeopardize the safety of abused women and their children, and take immediate steps to address such bias where it is identified.

**Longer-term**

4. CIC should work with provincial settlement services, language and employment programs, and educational institutions to develop strategies to enable abused non-status or temporary status women to acquire language skills, employment skills, and post-secondary education necessary to qualify for application for permanent residency through the Canada Experience Class as it is currently set out.

5. CIC should amend the Canada Experience Class criteria to include lower skill jobs that are often occupied by women, in order to facilitate more women becoming permanent residents on their own merits rather than as dependents of their husbands.

6. CIC should undertake comprehensive reviews of the points system and the Live-in Caregiver Program to identify ways to address gender bias in order to facilitate more women entering Canada as independent immigrants on their own merits rather than as dependents of their husbands or as Live-in Caregivers.


FEDERAL BRIEFING DOCUMENT 2

Gender Bias in Immigration Criteria

ISSUE: Gender bias in criteria and rules that determine eligibility to immigrate to Canada may threaten the safety of abused women and their children

KEY POINTS

• A number of immigration criteria and rules make it easier for men than for women to immigrate to Canada as independent immigrants. These include: the points system for skilled workers and professionals; the Business Immigration Program; and the Canada Experience Class.

• Programs that favour male applicants encourage women’s dependence on men for their immigration status. Women may therefore remain in abusive relationships in order to be allowed entry to Canada or to gain permanent resident status. This dependence puts abused women and their children at high risk of victimization.

• The immigration points system, the Business Immigration Program, and the Canada Experience Class are all biased in favour of men because men are more likely than women to be well-educated, to be trained for high skill jobs, to have substantial cash sums, to have been enrolled in Canadian post-secondary educational institutions, and to have work experience in managerial, professional, or technical occupations or skilled trades in their home country or in Canada.

• The only immigration program that favours the traditional skills of women is the Live-in Caregiver Program. However, this program restricts the participants in ways that other immigration programs do not. The program does not provide an opportunity to apply for permanent resident status or the ability to bring in family members until after two years of employment. As the program requires the caregiver to live with the family and the caregiver is dependent on her employment in order to be eligible for permanent residency, some circumstances of the Live-in Caregiver Program may put some women at risk of abuse by their employer.

• It is important that all new legislation and programs, including the proposed Balanced Refugee Reform Act (Bill C-11), be assessed for its impact on women, and in particular the safety of women who are victims of violence.
• The promised public consultation on Bill C-11 is applauded. It is important, in order to canvas a women-centred perspective and assess and address any potential gender bias, that this consultation includes the women-serving community.

THE CONTEXT

• To apply to immigrate as a skilled worker or professional, there are six categories in which an applicant can earn a maximum of 100 points. Three of these categories, worth a maximum of 70 of those points, depend on education, ability in English and/or French, and work experience in professional, managerial, or high skill occupations. In all of these categories, men are more likely to have more points than women, thus becoming the principal applicant on whom their wives are dependent for their application.

• The Business Immigration Program has three classes of business immigrants: investors, entrepreneurs, and self-employed persons. Applicants in the investor and entrepreneurial classes must have business experience and a net worth of $800,000 or $300,000 respectively. In addition, investor class applicants must have at least $400,000 to invest in Canada. Applicants in the self-employed class must have the experience, intention, and ability to establish a business that will, at minimum, create their own employment and that will make a significant contribution to cultural activities or athletics in Canada or must purchase or manage a farm in Canada. These criteria are far more likely to apply to men than women.

• The Canada Experience Class is a category that allows temporary residents who have worked in Canada for two years in a skilled, professional, managerial, or technical occupation or successfully completed a course of at least two years at a Canadian post-secondary educational institution plus completed one year at a skilled, managerial, professional, or technical job to apply for permanent resident status. Again, this class would exclude most female immigrants.

• In the Live-in Caregiver Program, caregivers must work within their employer’s home caring for children, elderly persons, or persons with disabilities. They may not bring other family members, including their own children, with them to Canada. This program provides participants with only a temporary resident permit (TRP). They may apply for permanent resident status only after they have worked for two of the three years following the date of arrival. Live-in caregivers may not bring in any other family members until after they are eligible to apply for and have received permanent resident status. Family members living abroad will not receive their papers to come to Canada until the live-in caregiver has received permanent resident status.

• The gender-based analysis of the Immigration and Refugee Protection Regulations (Gender-Based Analysis of the Immigration and Refugee Protection Regulations. C. Gaz. 2002) acknowledges this gender bias. Regarding federal skilled workers selection criteria, it states:

    The global labour market is highly gendered.....the selection criteria may have differential impact by gender. Although modifications have been made as a result of consultations, disproportionate impacts of the criteria by gender and diversity
continue to be identifiable, largely because of the differential treatment of men and women in source countries.

Perhaps even more significantly, the analysis also states:

The new selection grid will require on-going monitoring to identify and assess the extent of potential differential impacts by gender, age and source country.

• Such monitoring implies that action may need to be taken in response to identification of continued differential impacts by gender.

• The gender-based analysis goes on to acknowledge that, despite potential benefits in the 2002 Immigration and Refugee Protection Act (IRPA):

    ...patterns of gender discrimination and labour market segmentation by race and gender remain prevalent, particularly in many of Canada’s top source countries.

• Similarly, gender bias in the Low Income Cut-Off for urban areas of $500,000 as a measure of immigrants’ “ability to establish”:

    ...may likely have a differential impact by gender, given that women the world over have less money, and earn less, than men do.

    The gender analysis states that “Ongoing monitoring is required.”

• Finally, gender bias is also noted in the “years of education” requirement. The gender-based analysis states:

    The requirement of degrees/certificates AND years of education will likely have differential and disproportionate impacts by gender. The requirements also tend to reflect linear paths of education. Research indicates that women are more likely to have non-linear educational paths – often linked to child-bearing, child-rearing and related family responsibilities. In many of Canada’s source countries, women and men have very different access to education. Reliance on formal education as an indicator of skill may disproportionately disadvantage women.

    The analysis goes on to state that:

    Comparative research into educational credentials from Canadian source countries may be needed to assess if, or to what extent there are differential impacts, by gender and source country under the criteria.

RECOMMENDATIONS

1. Citizenship and Immigration Canada (CIC) should conduct a gender and safety audit of all existing programs, legislation, policies, guidelines, and criteria to assess for gender bias, including how this bias might jeopardize the safety of abused women and their children, and take immediate steps to address such bias where it is identified.

2. As priorities, CIC should undertake comprehensive reviews of the points system and the Live-in Caregiver Program to identify ways to address gender bias in order to
facilitate more women entering Canada as independent immigrants on their own merits rather than as dependents of their husbands or as Live-in Caregivers.

3. CIC should institute a policy that all new programs, legislation, policies, guidelines, and criteria, including the proposed *Balanced Refugee Reform Act* (Bill C-11), must be assessed for gender bias, including ways in which identified bias might jeopardize the safety of abused women and their children, and that this gender bias must be addressed before new initiatives are implemented.

4. If monitoring and comparative research on the gender impacts of the *Immigration and Refugee Protection Act* (IRPA), as suggested in the gender-based analysis of IRPA, have taken place, the results should be made public and corrective action taken as appropriate. If such monitoring and comparative research has not taken place, CIC should undertake such monitoring and comparative research on an urgent basis, make public the results, and take corrective action as appropriate.

5. It is important, in order to canvas a women-centred perspective and assess and address any potential gender bias, that the promised public consultation on Bill C-11 includes the women-serving community.

6. CIC should work with provincial settlement services, language and employment programs, and educational institutions to develop strategies to enable abused non-status or temporary status women to acquire language skills, employment skills, and post-secondary education necessary to qualify for application for permanent residency through the Canada Experience Class as it is currently set out.

7. CIC should amend the Canada Experience Class criteria to include lower skill jobs that are often occupied by women, in order to facilitate more women becoming permanent residents on their own merits rather than as dependents of their husbands.

See also the Briefing Document *Needs of Women without Status as a Result of Leaving an Abusive Spouse – Suggested Actions* addressing the severing of dependent immigration applications from those of an abusive spouse and amendments to the TRP and H&C processes.

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REFERENCES


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FEDERAL BRIEFING DOCUMENT 3: EXECUTIVE SUMMARY

Citizenship and Immigration Canada Guidelines for Cases Involving Victims of Domestic or Sexual Violence

Citizenship and Immigration Canada (CIC) has acknowledged the vulnerabilities and needs of women who are victims of domestic or sexual violence in a number of ways, including in operations manual IP 5. Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds and Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution. However, these documents do not adequately address the specific circumstances and needs of these women. While Guideline 8, Guidelines on Procedures with Respect to Vulnerable Persons Appearing Before the IRB, as currently written, clearly could include women who are victims of violence, it would better serve the safety needs of these women and their children if it included discussion of their particular vulnerabilities and potential remedies. Or, procedural guidelines could be included in a comprehensive domestic/sexual violence guideline.

Recommendations

Immediate
1. Any CIC guidelines relating to new refugee legislation should include a focus on the safety of claimants who have been victims of gender-based violence.

Medium-term
2. A detailed guideline should be developed for CIC officers for dealing with cases involving women and their children who are victims of domestic or sexual violence, comparable to Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution Guidelines. Two options should be considered:

   • This domestic/sexual violence guideline should address both substantive issues informing officials about the particular nature, dynamics, and impacts of domestic and sexual violence and procedural accommodations that should be made in cases involving domestic or sexual violence, similar to those included in Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB; or

   • This domestic/sexual violence guideline should address only substantive issues, informing officials about the nature, dynamics, and impacts of domestic and sexual violence, and be cross-referenced with Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing before the IRB, which
should be revised to include specific reference to victims of domestic or sexual violence, including in the title.

3. The domestic/sexual violence guideline should be tailored to address the needs of all types of applicants, including immigrant, refugee, and non-status women and temporary foreign workers such as Seasonal Agricultural Workers and Live-in Caregivers.

4. The domestic/sexual violence guideline should be applicable to all types of hearings or other CIC matters in which abused women may be engaged.

5. The domestic/sexual violence guideline should include reference to any new legislation governing the refugee process, including the need for CIC officials to consider as a priority the safety of refugee claimants who are victims of gender-based violence.

6. Any additional procedural guidelines developed, whether included in a new domestic/sexual violence guideline or in existing procedural Guideline 8, should include reference to the need for interpreters, not only for CIC hearings, but for all official CIC matters.
FEDERAL BRIEFING DOCUMENT 3

Citizenship and Immigration Canada Guidelines for Cases Involving Victims of Domestic or Sexual Violence

ISSUE: There is a need for specific guidelines for CIC officials on handling cases involving immigrant, refugee, and non-status women\(^1\) who are victims of domestic or sexual violence.

KEY POINTS

- There is a need for a specific guideline on the circumstances, vulnerabilities, and needs of victims of domestic or sexual violence, comparable to Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution.

- This domestic/sexual violence guideline should be applicable to all types of applicants, including immigrant, refugee, and non-status women and their children and temporary foreign workers.

- This domestic/sexual violence guideline should be applicable to all types of hearings in which abused women may be engaged, including applications for temporary resident permits (TRPs) and for permanent residence on Humanitarian and Compassionate (H&C) grounds for women who have lost their status or potential for sponsorship as a result of leaving an abusive spouse, and requests for a dependent immigrant or refugee application to be severed from that of the primary applicant husband because of abuse.

- This domestic/sexual violence guideline should include procedural accommodations as well as substantive issues or, alternatively, should be cross-referenced with Guideline 8. Guidelines on Procedures with Respect to Vulnerable Persons Appearing Before the IRB, revised to include specific reference to victims of domestic or sexual violence.

- While Guideline 8, as currently written, clearly could include women who are victims of domestic or sexual violence, it would better serve the interests of abused women and their children, including their safety interests, if it included discussion of the

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\(^1\) This document may also apply in situations where any other vulnerable person has been a victim of domestic or sexual violence. It may also apply to women who are in Canada as part of a temporary foreign worker program such as the Seasonal Agricultural Worker Program or the Live-in Caregiver Program who are being abused by an employer or fellow worker.
particular vulnerabilities of victims of domestic or sexual violence, as well as potential remedies.

- If *Guideline 8* is amended to specifically address the circumstances of abused women, the title should also include reference to victims of domestic or sexual violence.

- Alternatively, guidelines regarding procedural accommodations could be included in the more comprehensive substantive domestic/sexual violence guideline.

- Abused ‘mail-order brides’\(^2\), a term that refers to women who met their foreign spouse through an international introduction or ‘pen-pal’ agency, may have vulnerabilities and needs specific to their circumstances which should be acknowledged in any guidelines - substantive or procedural - regarding victims of domestic or sexual violence.

- Applicants who have been abused by other family members, such as seniors abused by a son or daughter, or women in Canada as part of a temporary foreign worker program such as the Live-in Caregiver Program who have suffered abuse by an employer, may be in need of similar protections as women who have suffered domestic or sexual violence.

- These domestic/sexual violence guidelines should address the same range of issues as *Guideline 4*.

- In addition, these domestic/sexual violence guidelines should include reference to: the provision of information to clients; the need for interpreters for all official Citizenship and Immigration Canada (CIC) business; and the need for coordination among various divisions and departments of CIC and between CIC and relevant provincial ministries and agencies, including child protection, the criminal and family justice systems, and Legal Aid.

- Cross-referencing of all CIC documents addressing the specific circumstances and needs of victims of domestic or sexual violence will ensure maximum safety.

- It is important that training of CIC officials include the implementation of any guidelines addressing the needs and circumstances of immigrant, refugee, and non-status women.

**THE CONTEXT**

- In focusing here on the needs of women who are victims of domestic or sexual violence, there is no intention to minimize the traumas that other applicants may have suffered.

- Proposed changes to Canada's refugee system are to be welcomed if they increase support for refugees in need of protection and decrease delays in rendering final

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\(^2\) The controversy around the use of the term ‘mail-order brides’ is acknowledged. In the absence of another more ‘neutral’ term, the term ‘mail-order bride’ is used in this document. However, there is no intent to stereotype or stigmatize immigrant women who have married a Canadian as a result of an introduction or ‘pen-pal’ agency.
decisions on asylum claims. However, the Canadian Council for Refugees has put forward a number of concerns about Bill C-11 (proposed Balanced Refugee Reform Act) which have particular relevance for women refugees who have suffered gender-based violence. (Canadian Council for Refugees, 2010). These include:

- The concept of “safe countries of origin” or “democratic countries with robust human rights records” for purposes of fast-tracking the return of failed asylum claimants, as countries otherwise considered “democratic” or “safe” may have poor records in terms of gender-based crimes;
- The proposal to hold hearings within two months, which may be problematic for refugees who require time to build trust before they can testify openly, such as traumatized women who have been victims of sexual assault or sexual torture;
- A proposed bar on claimants receiving H&C consideration, which is an important avenue for abused women whose circumstances are not adequately addressed in the refugee system.

- Any guidelines for CIC officials relating to new refugee legislation should include a focus on the safety of refugee claimants who have been victims of gender-based violence.
- CIC has acknowledged the particular vulnerabilities and needs of women who are victims of domestic or sexual violence in a number of ways, including: the operations manual, IP 5. Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds, especially section 5.5, where domestic violence considerations are listed as a factor on which applicants may base their requests for H&C considerations, and section 12.7 Family Violence; and Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution.
- While Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing before the IRB clearly could apply to women who are victims of domestic or sexual violence, domestic and sexual violence is not listed as an example of a source of a person’s vulnerability. Examples listed include experience or witnessing of torture and physical or mental illness.
- An abused woman who has obtained permanent status on the basis of false pretences, including a marriage entered into solely for the purpose of immigration, may have been a victim of intimidation or coercion on the part of the man, his or her family, or others. It is important that guidelines relating to investigations of such circumstances and subsequent action taken be informed by an understanding of the nature, dynamics, and risk factors inherent in violence against women.

**RECOMMENDATIONS**

1. A detailed guideline should be developed for CIC officers for dealing with cases involving women and their children who are victims of domestic or sexual violence, comparable to Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution Guidelines. Two options should be considered:
• This domestic/sexual violence guideline should address both substantive issues informing officials about the particular nature, dynamics, and impacts of domestic and sexual violence and procedural accommodations that should be made in cases involving domestic or sexual violence, similar to those included in Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB; or

• This domestic/sexual violence guideline should address only substantive issues, informing officials about the nature, dynamics, and impacts of domestic and sexual violence, and be cross-referenced with Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing before the IRB, which should be revised to include specific reference to victims of domestic or sexual violence, including in the title.

2. This domestic/sexual violence guideline should follow approximately the same format as Guideline 4. It should:
   • Outline the nature and dynamics of violence against women and its impacts on women, including minimization, fear of disclosure, and fear of retaliation;
   • Outline factors to be considered in determining the validity of a claimant’s allegation of domestic or sexual violence;
   • Assess the feared harm a woman who is a victim of domestic or sexual violence may face if she is not provided with temporary or permanent status in Canada;
   • Discuss evidentiary considerations;
   • Outline special problems at determination hearings faced by women claimants alleging domestic or sexual violence;
   • Provide a framework of analysis to guide decision-makers.

3. This domestic/sexual violence guideline should be tailored to address the needs of all types of applicants, including immigrant, refugee, and non-status women and temporary foreign workers such as Seasonal Agricultural Workers and Live-in Caregivers.

4. This domestic/sexual violence guideline should include reference to the particular vulnerabilities and needs of so-called ‘mail-order brides’.

5. This domestic/sexual violence guideline should make reference to situations where an applicant has been abused by any other family member, such as a senior abused by a son or daughter.

6. This domestic/sexual violence guideline should be applicable to all types of hearings or other CIC matters in which abused women may be engaged.

7. This domestic/sexual violence guideline should include reference to any new legislation governing the refugee process, including the need for CIC officials to consider as a priority the safety of refugee claimants who are victims of gender-based violence.
8. This domestic/sexual violence guideline should address the fact that an abused woman who has obtained permanent status on the basis of false pretences, including a marriage entered into solely for the purpose of immigration, may have been a victim of intimidation or coercion on the part of the man, his or her family, an international agency, or others.

9. This domestic/sexual violence guideline should include reference to provision of information to clients, including ensuring that CIC officials make every effort to provide adequate, linguistically appropriate information to immigrant, refugee, and non-status women, including participants in temporary foreign worker programs, at all stages of the immigration, refugee, or employment process. Information should be provided on:
   - the nature, dynamics, and risks of domestic and sexual violence;
   - their rights in Canada;
   - relevant Canadian laws, including immigration, refugee, family, and criminal law;
   - the particular vulnerabilities of 'mail-order brides' and participants in the various temporary foreign worker programs;
   - options and services available to them in Canada, including language training, settlement services, skills training, social assistance, cultural support services, legal advocacy, victim support services, and what to do if they need help.

10. Any additional procedural guidelines developed, whether included in a new domestic/sexual violence guideline or in existing procedural Guideline 8, should include reference to the need for interpreters, not only for CIC hearings, but for all official CIC matters.

11. Any guidelines developed should include reference to the need for coordination among various divisions and departments of CIC and between CIC and relevant provincial ministries and agencies, including but not limited to child protection, the criminal and family justice systems, and Legal Aid.

12. All CIC documents addressing the specific circumstances and needs of victims of domestic or sexual violence, including operations manuals and guidelines, should be cross-referenced in order to help ensure maximum accommodation of the needs of abused women and their children, including especially their need for safety.

13. Training of CIC officials should address the implementation of any new domestic/sexual violence guideline.

14. Any other CIC guidelines relating to new refugee legislation should include a focus on the safety of claimants who have been victims of gender-based violence.

See also Suggested Actions under Federal Briefing Document 1. Needs of Women without Status as a Result of Leaving an Abusive Spouse

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REFERENCES


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

Sponsorship debt or threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children. Sponsorship debt may be accrued by a woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the sponsorship period. Sponsorship debt or threat of sponsorship debt may deter women from leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to large debt. While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in cases of abuse, the debt is not cancelled and may be collected at a later date. A further complicating issue is that sponsors who have an outstanding sponsorship debt are ineligible to sponsor anyone else under the family class.

Recommendations

Immediate
1. In the interest of safety for abused immigrant women and their children, Citizenship and Immigration Canada (CIC) should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are abused by their sponsoree, both by forgiving existing sponsorship debt and by revising sponsorship undertakings to ensure that such debt is not accrued or is forgiven in situations where such abuse has been demonstrated. Discretion of officials should be guided to the extent that, once abuse has been demonstrated, it will generally be considered grounds for cancelling sponsorship debt.

2. CIC should take immediate steps to ensure that criteria for meeting the burden of “substantial proof” of domestic violence for purposes of cancelling existing sponsorship debt and exempting abused sponsors in the future include statutory declarations from the women or from competent professionals.

3. CIC should work with the provinces to develop consistent policy, guidelines, and practices to ensure that immigrant women are freed from sponsorship debt arising from domestic violence.
4. The Federal Government should ensure that wording in the federal undertaking clearly states that the provinces have the right to not only suspend debt collection but cancel it.

Medium-term

5. CIC should implement policy that women who have outstanding sponsorship debt because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance. This policy should be stated in the Application to Sponsor and Undertaking as well as in other materials provided to abused immigrant women.

6. CIC should implement policy that abused immigrant women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance. This policy should be stated in the Application to Sponsor and Undertaking as well as in other materials provided to abused immigrant women.
FEDERAL BRIEFING DOCUMENT 4

Sponsorship Debt for Abused Women

ISSUE: Sponsorship debt or the threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children.

KEY POINTS

The current situation

• Sponsorship debt may be accrued by an abused woman who leaves her abusive spouse whom she has sponsored and whose spouse then collects social assistance within the three years (or, under an older form of the undertaking, ten years) named in a sponsorship undertaking she has signed. This undertaking makes her legally responsible for that debt.

• Sponsorship debt or threat of sponsorship debt may act as a deterrent to women leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to large debt.

• While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in circumstances of abuse, the debt is not cancelled and may be collected at a later date.

Potential remedies

• A requirement that a victim must repay a debt incurred by an offender may be considered a form of re-victimization. It may also constitute an infringement of the Canadian Charter of Rights and Freedoms, Section 7 - Life, liberty and security of person. It could be argued that Canadian policies that make it difficult for a woman to leave an abusive relationship themselves constitute a form of abuse that threatens her right to life or security of person.

1 This briefing document may also apply in situations where another family member has accrued sponsorship debt because of abuse by his/her sponsor, such as a senior abused by a son or daughter whom they have sponsored.
• Sponsorship Undertakings and sponsorship debt may also constitute infringements of the Charter’s Section 15 – Equality Rights that states that every individual has the right to equality before the law and equal protection and benefit of the law. It could be argued that the burdens imposed on abused immigrant women by sponsorship undertakings and sponsorship debt constitute unequal treatment before the law.

• There have been successful attempts by counsel and agencies such as the BC Public Interest Advocacy Centre (PIAC) to have the Province of BC cancel the collection of sponsorship debts in individual situations of abuse.

• Discretion is already inherent in many aspects of the federal and provincial positions on the accrual and collection of sponsorship debt. Therefore, one option for addressing the burden placed on abused women by sponsorship debt may be for both Citizenship and Immigration Canada (CIC) and provincial ministries to develop policy to guide discretion in these matters. Policy could state that once abuse had been determined, it should generally be considered grounds to cancel sponsorship debt. Such policy would also have to address the difficulties some immigrant women face in meeting the “substantial proof” requirement.

Bars to sponsorship

• A further complicating issue is that sponsors who have an outstanding debt arising from an undertaking are ineligible to sponsor anyone else under the family class. Women with such outstanding sponsorship debt could still make the application to sponsor other family members, which would inevitably be refused, but they could appeal the matter to the Immigration Appeal Division (IAD) on Humanitarian and Compassionate (H&C) grounds. Such an appeal would be complex, time-consuming, and best handled by a lawyer. Legal Aid, however, is generally not available for these cases.

• In addition, an abused immigrant woman who was sponsored under the family class and is forced to claim social assistance because of fleeing an abusive relationship is ineligible to sponsor under the family class while she is in receipt of such services.

THE CONTEXT

Sponsorship application and undertaking

• The Federal Government treats sponsors and sponsorees who are victims of abuse very differently. The current Sponsorship Agreement addresses the issue of domestic violence perpetrated against sponsored persons by stating that: “Sponsored persons and/or their family members who are being abused or assaulted by their sponsors should seek safety away from their sponsors even if this means that they will have to apply for social assistance benefits. A sponsor cannot force Citizenship and Immigration Canada to remove you from Canada.” (Citizenship

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2 This could include so-called ‘mail-order brides’, a term that refers to women who met their foreign spouse through an international introduction or ‘pen-pal’ agency. (The controversy around the use of the term ‘mail-order bride’ is acknowledged. In the absence of another more ‘neutral’ term, the term ‘mail-order bride’ is used in this document. However, there is no intent to stereotype or denigrate immigrant women who have married a Canadian as a result of an introduction or ‘pen-pal’ agency.)
and Immigration Canada, 2008). This encouragement for sponsored victims of domestic abuse to leave their abuser is in marked contrast to the penalties imposed on abused sponsors who leave their abusive sponsorees, in the form of sponsorship debt incurred if their abuser subsequently receives social assistance.

• The CIC Application to Sponsor and Undertaking appears to be inconsistent on the matter of eligibility of an applicant who has previously sponsored someone who has (or whose family members have) received social assistance during the period covered by the undertaking. Section E. Eligibility Assessment states that if an applicant answers “yes” to the question “Have persons you previously sponsored or their family members received social assistance during the validity period of the undertaking?” they are not eligible to be a sponsor and should not submit their application. On the other hand, the final paragraph in Section G. Undertaking states the applicant’s understanding that they will not be allowed to sponsor another person “....if I am in default of any sponsorship undertaking. This holds true for both this undertaking and any past undertakings where I have not satisfactorily paid back my debts.” This clearly implies that it is not the fact that sponsored persons received social assistance that is the bar to sponsorship, but the unpaid sponsorship debt.

• Furthermore, while it is possible (albeit, expensive) to appeal a negative response to a sponsorship application, this is not stated on the Application to Sponsor and Undertaking. On the contrary, the form states that if an applicant is ineligible for any of the reasons contained in Qs. 5 – 13, they should not submit their application.

• Until 2002, the older forms of sponsorship undertakings imposed a ten-year period of financial responsibility. This was reduced to three years after organizations such as the National Organization of Women and the Law (NAWL) advocated for changes. NAWL provided a written brief to the 2001 Standing Committee on Citizenship and Immigration backed by a study which analyzed the impact of spousal sponsorship undertakings on the equality rights of immigrant women. (Coté et al, 2001; Han, 2009). These formed the basis for comments contained in the Regulatory Impact Analysis Statement (RIAS) for the Immigration and Refugee Protection Regulations published in the Canada Gazette in 2002.

• In section XIV of RIAS, it was acknowledged that the length of the spousal sponsorship undertaking was decreased because of concerns that the undertaking aggravated domestic violence: “The Regulations take into account the protection of ...spouses, common-law partners and conjugal partners from violence. The duration of sponsorship for a spouse, common-law partner and conjugal partner was decreased from 10 to 3 years given concerns that domestic violence is aggravated by the implied dependency created by the undertaking of support.” (Regulatory Impact Analysis Statement. Immigration and Refugee Protection Regulations C. Gaz. 2002). While a three-year undertaking is clearly preferable to a ten-year undertaking, the government’s acknowledgement that this was changed because the ten-year undertaking aggravated domestic violence is also applicable to the current undertaking. The difference is in degree, not in substance.
• The current Application to Sponsor and Undertaking addresses the issue of abuse by stating that “The Minister and the province concerned may choose not to take enforcement action to recover money... if the default is the result of abuse...” However, the document goes on to say that “The decision not to act at a particular time does not cancel the debt. The Minister and the province concerned may recover the debt when circumstances have changed.” (Citizenship and Immigration Canada, 2009). Therefore, the decision to suspend collection results in a debt that hangs over the woman and may be collected at any time.

• Federal and provincial discretion appears to be inherent in the wording of the undertaking. As noted, the undertaking states that the federal and provincial governments may choose not to collect the debt in cases of abuse and may collect the debt when circumstances change. The undertaking further states that the sponsor “…will continue to be in default until the amount of benefits received are repaid in full or repaid to the satisfaction of the government concerned (italics added). (Citizenship and Immigration Canada, 2009).

Provincial suspension of debt collection

• In 2006, BC Ministry of Community Services announced that its relevant collection branch “was prepared to suspend debt collection and interest accrual where there was substantial proof of abuse or threat of abuse by a sponsoree, and where collection could potentially harm the sponsor’s health or safety.” (Correspondence from Deputy Minister Sheila Wynn, 2006). However, while suspension of debt and interest accrual in circumstances of abuse suggests some provincial movement in favour of an abused sponsor, this policy addresses only the suspension of debt, not forgiveness of the debt. In addition, it is difficult for many women who are victims to meet the criteria of “substantial proof”. This would be especially true for those immigrant women in rural areas where access to services may be limited.

• The BC Government also has the discretion to forgive debts under section 18 of the BC Financial Administration Act.

Impact of bars to sponsorship

• An inability to sponsor family members to come to Canada may seriously impact abused immigrant women’s ability to settle in Canada and earn their own living because it increases their social isolation, deprives them of emotional support necessary to recover from trauma, and cuts off potential financial and child-care support from family members.

• The predicament for many women is that they cannot find a job because they do not have the education or language skills, so they are forced to accept social assistance. For many this creates a vicious cycle: they are alone with young children, they cannot upgrade their skills and find work because they need family to help look after their children. But they cannot get their family here because they are receiving social assistance. For others who are working, the job is often poorly paid and does not enable them to repay sponsorship debt. So they are unable to bring family members here to provide the support they need to upgrade their skills in order to earn a higher wage.
Legal responses

• The successful attempts to cancel sponsorship debt collection in BC pertain to an old form of the undertaking which contained vaguer wording than the current undertaking and did not contain language stating that governments could collect on the sponsorship debts even if they arose out of circumstances of abuse. In addition, these successful cases occurred through settlement negotiations or on an individual basis, and there is as yet no case precedent which can be consistently applied in other cases.

• In a recent decision, the Ontario Court of Appeal in Mavi v. Canada (Attorney General), 2009 found that governments, in the exercise of their discretion regarding the collection of sponsorship debt, have a duty of procedural fairness to those from whom they are trying to collect this debt. This means that sponsors’ individual circumstances must be considered before the government can collect on sponsorship debts and that they cannot force people to pay substantial sponsorship debts without first providing them with an opportunity to explain why they should not have to pay. Leave has recently been granted to appeal this decision to the Supreme Court of Canada.

• In an earlier case (Singh v. Minister of Employment and Immigration, [1985]), the court found that, unless it specifically states that it applies only to Canadian citizens, the Canadian Charter of Rights and Freedoms applies to anyone on Canadian soil. On this basis, refugees have a right to Section 7 – Life, liberty and security of person protection and therefore have a right to procedural fairness, including oral hearings, because their security of person is at stake.

• While the Mavi decision was based on administrative law arguments, there are also potential constitutional (Section 7 - Life, liberty and security of person or Section 15 - Equality rights) arguments against the collection of sponsorship debt when there are health and/or safety concerns, including abuse of the sponsor.

• With respect to Section 15, only those who sponsor a foreign national are required to sign an undertaking and subjected to sponsorship debt. Thus, only those who have signed these undertakings are responsible for paying back abusive spouses’ social assistance. It is arguable that this constitutes unequal treatment before the law. Additionally, domestic violence is suffered disproportionately by women. Therefore, the health and safety repercussions of sponsorship debt incurred as a result of domestic violence are suffered disproportionately by women, which may also constitute an infringement of Section 15.

• Constitutional challenges have thus far not reached the courts.

RECOMMENDATIONS

1. In the interest of safety for abused immigrant women and their children, Citizenship and Immigration Canada (CIC) should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are abused by their sponsoree, both by forgiving existing sponsorship debt and by revising sponsorship undertakings to
ensure that such debt is not accrued or is forgiven in situations where such abuse has been demonstrated. Discretion of officials should be guided to the extent that, once abuse has been demonstrated, it will generally be considered grounds for cancelling sponsorship debt.

2. CIC should take immediate steps to ensure that criteria for meeting the burden of “substantial proof” of domestic violence for purposes of cancelling existing sponsorship debt and exempting abused sponsors in the future include statutory declarations from the women or from competent professionals.

3. CIC should work with the provinces to develop consistent policy, guidelines, and practices to ensure that immigrant women are freed from sponsorship debt arising from domestic violence.

4. The Federal Government should ensure that wording in the federal undertaking clearly states that the provinces have the right to not only suspend debt collection but cancel it.

5. CIC should implement policy that women who have outstanding sponsorship debt because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance. This policy should be stated in the Application to Sponsor and Undertaking as well as in other materials provided to abused immigrant women.

6. CIC should implement policy that abused immigrant women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance. This policy should be stated in the Application to Sponsor and Undertaking as well as in other materials provided to abused immigrant women.

7. CIC should state in the Application to Sponsor and Undertaking and in other information available to immigrant women that, while certain factors may make an applicant initially ineligible to sponsor a family member, such decisions can be appealed, and what first steps a woman must take to launch such an appeal.

8. CIC should take proactive steps to ensure that adequate, linguistically appropriate information is provided to immigrant women both before they immigrate and immediately upon arrival. Particular attention should be paid to finding effective ways to inform so-called ‘mail-order brides’ about the realities of immigrating to Canada and about the particular vulnerabilities they may face. Accurate and consistent information should be provided on:
   - the facts about sponsorship;
   - the nature, dynamics, and risks of domestic violence;
   - their rights in Canada;
   - relevant Canadian laws, including immigration, family, civil, and criminal law;
• options and services available to them in Canada;
• any sponsorship or criminal history of their proposed sponsor.

This includes helping to ensure that other ministries and agencies responding to the needs of immigrant women have accurate and consistent information about sponsorship to provide to abused immigrant women.

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REFERENCES


LEGAL CITATIONS


Mavi v. Canada (Attorney General), 2009 ONCA 794

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This document is one of a series of six federal and eight provincial Briefing Documents produced by the Ending Violence Association’s Community Coordination for Women’s Safety Program as part of its Safety of Immigrant, Refugee, and Non-Status Women Project.
COORDINATION OF RESPONSES TO IMMIGRANT, REFUGEE, AND NON-STATUS WOMEN WHO ARE VICTIMS OF VIOLENCE

Lack of coordination between Citizenship and Immigration Canada (CIC) and the criminal, family justice, and child protection systems, settlement and language services, health services, labour and employment programs, child care subsidy program, schools, community-based services, and the private bar may place abused immigrant, refugee, and non-status women and children at risk. Lack of coordination relates to policies, practices, and provision of accurate, consistent information to women about immigration and refugee issues, including their rights, obligations, and options. Joint initiatives, inter-agency protocols, information-sharing, and cross-training are some of the ways in which coordination can be facilitated.

RECOMMENDATIONS

IMMEDIATE

1. CIC should proactively reach out to other departments, levels of government, and agencies to coordinate policies and practices and share information as appropriate to ensure the safety of women and their children. CIC should also respond positively when approached by other departments, agencies, or ministries for purposes of coordination. Where appropriate, coordination strategies should be formalized in policy, protocols, guidelines, and operations manuals. (ongoing)

2. CIC should facilitate coordination between the branch that deals with admission to Canada and the Canada Border Services Agency (CBSA) to make sure that an abused non-status woman is not removed from Canada while she is engaged in or awaiting the results of a Humanitarian and Compassionate (H&C) application or before a child custody matter has been resolved.

3. CIC should facilitate coordination between CBSA and provincial services providing safe shelter, essential health care, and other help and support to abused non-status women to ensure that non-status women who seek help are not apprehended by CBSA and removed from Canada.

4. CIC should facilitate coordination and appropriate risk related information-sharing with provincial child protection authorities to make sure that both authorities are aware of the concerns and actions of the other in order to protect Canadian-born children whose mothers face removal from Canada.
5. CIC should make appropriate referrals to provincial agencies serving abused immigrant women to ensure that abused non-status women receive the support they need to negotiate the expedited temporary resident permit (TRP) and H&C process.

Medium-term
6. CIC, police, and criminal and family justice ministries should work together to develop policy or protocols to address situations where domestic violence is perpetrated against non-status women.

7. CIC should coordinate with the provincial Legal Aid program and the Provincial Government to ensure that Legal Aid is provided to abused non-status women facing removal from Canada, especially while a child custody matter is still before the courts.

8. CIC should coordinate with other federal departments and the Provincial Government to ensure that abused women and their children have access to services such as essential health and dental care and subsidized child care while engaged in and awaiting the result of an H&C application.

9. CIC should ensure that accurate, complete, and consistent information in their own language is provided to immigrant, refugee, and non-status women, both before they come to Canada and immediately upon arrival. Information should address their rights, responsibilities, and options, including options for obtaining permanent residency.
Coordination of Responses to Immigrant, Refugee, and Non-Status Women¹ Who are Victims of Violence

ISSUE: Lack of coordination among those who respond to abused immigrant, refugee and non-status women may impact the safety of these women and their children.

KEY POINTS

• Lack of coordination between Citizenship and Immigration Canada (CIC) and the criminal, civil, and family justice systems, the child protection system, settlement services, language services, health care services, the child care subsidy program, schools, labour and employment programs, community-based support services, and the private bar may leave abused immigrant, refugee, and non-status women and their children vulnerable to further abuse. This lack of coordination relates to policies, practices, and the provision of accurate and consistent information to women about immigration and refugee issues, including their rights, obligations, and options. Joint initiatives, inter-agency protocols, information-sharing, and cross-training are some of the ways in which coordination can be facilitated.

• There is no coordinated attempt to link the best interests of the child and the mother.

• Lack of coordination between the branch of CIC which deals with admission to Canada and the Canada Border Services Agency (CBSA), which is responsible for the removal of inadmissible persons means that an abused non-status woman may be subject to removal while she is in the process of applying for permanent resident status on Humanitarian and Compassionate (H&C) grounds.

• Access to provincial services such as essential health and dental care and subsidized child care while engaged in and awaiting the result of an H&C application varies with the specific status of immigrant or refugee women. Not only is the situation not straightforward, but it includes some inconsistencies. For example, lack of coordination between the Federal and Provincial Governments may result in a

¹ 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.
temporary resident’s eligibility to apply for a work permit, but inability to access subsidized child care in order to take employment.

• Lack of coordination between CIC and the family justice system regarding non-status women who have unresolved custody issues involving Canadian-born children may result in a woman being removed from Canada while a custody case is still in progress, thus leaving her children in the custody of a father who has been violent towards their mother.

• Lack of coordination between CIC and provincial child protection authorities may result in a lack of information-sharing about the risks facing Canadian-born children if their mother is removed from Canada.

• There is a need for coordination between CIC and provincial Legal Aid in cases involving abused non-status women. Cases such as those involving potential removal from Canada and those involving child custody issues are complex, with potentially serious results for women and their children. Yet Legal Aid is increasingly difficult or impossible to access in these situations.

• There is a need for coordination between CIC and the police, provincial justice ministries, and other provincial services such as hospitals and transition houses regarding the handling of domestic violence cases involving immigrant, refugee, or non-status women. The threat of deportation will prevent many women from reporting the abuse or seeking safe shelter, essential health care, or other services, thus putting them and their children at risk by causing them to remain in an unsafe situation.

• There is no coordinated approach or legislative framework to regulate the ‘mail-order bride’ industry, a term that refers to women who met their foreign spouse through an international introduction or ‘pen-pal’ agency.

THE CONTEXT

• The need for coordination of responses to domestic violence has been highlighted as a key safety factor in many research, government, and coroner’s reports in recent years (Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, 2003; BC Coroner’s Service, 2009; Critical Components Project Team, 2008; Light, 2007; Representative for Children and Youth, 2009).

• The Ad Hoc Federal-Provincial-Territorial Working Group examining domestic violence responses in Canadian provinces and territories cited the “key lesson learned” in the three-year review process as the “need for comprehensive and coordinated strategies to address...spousal abuse” (Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, 2003, p. 83).

2 The controversy around the use of the term ‘mail-order bride’ is acknowledged. In the absence of another more ‘neutral’ term, the term ‘mail-order bride’ is used in this document. However, there is no intent to stereotype or stigmatize immigrant women who have married a Canadian as a result of an introduction or ‘pen-pal’ agency.

• Examples of cross-sector approaches to this issue exist in other jurisdictions. In the US, for example, the Violence Against Women Act (VAWA) 1994 advocated for a multi-pronged approach that encouraged systems to work together to protect abused women, including specific provisions for abused immigrant women.

• Assurances of public consultation on Bill C-11 (proposed Balanced Refugee Reform Act) are welcome, but must utilize a coordinated federal-provincial-territorial approach, including lawyers, community-based agencies, and provincial organizations addressing needs of abused immigrant, refugee, and non-status women.

• Lack of coordination between CIC and other responders regarding abused immigrant, refugee, and non-status women is more than simply a matter of efficiency or convenience for the woman. It is a matter of safety, as any factor that results in a woman staying longer in a violent relationship or that prevents her from knowing what services and options are available to her puts her and her children at further risk.

• Front-line workers have described cases where women without status have called the police about domestic violence, were reported by the police to CIC for being without status, and were subsequently removed from Canada.

• Front-line workers have described cases of non-status women being threatened with criminal charges if they leave the country with their children before a custody matter has been resolved.

• There have been incidents reported in BC and Ontario where CBSA officials have contacted a transition house, waited outside a transition house to apprehend a non-status resident, entered a transition house in search of a non-status woman, or arrived at a hospital after having been alerted that a non-status woman was a patient.

• 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 the “best interests of the child” in an H&C application and stated the importance of a CIC officer properly considering all the evidence in that regard. This decision is consistent with S.3 (1) of the Immigration and Refugee Protection Act (IRPA), which states that one of the objectives of the Act is to see that “families are reunited in Canada”. It is also consistent with “a statutory obligation to take into account the best interests of a child who is directly affected by a decision” under section A 25(1) of the IRPA, pertaining to the H&C process. (Citizenship and Immigration Canada, 2009, p. 20).

• It may also be that the failure to coordinate the CBSA with the provincial family court process in custody cases, thereby putting children and their mother at risk, constitutes an infringement of Section 7 of the Canadian Charter of Rights and Freedoms which guarantees the right to life, liberty, and security of the person.

• CIC policies control some elements of the circumstances that may impact so-called ‘mail-order brides’ (for example, policies restricting migration of minors, sponsorship...
by those with a violent crime record, and minimum duration of relationships in order to be considered for sponsorship) but there is no coordinated approach.

RECOMMENDATIONS

1. Citizenship and Immigration Canada (CIC) should proactively reach out to other departments, levels of government, and agencies to coordinate policies and practices and share information as appropriate to ensure the safety of women and their children. CIC should also respond positively when approached by other departments, agencies, or ministries for purposes of coordination. Where appropriate, coordination strategies should be formalized in policy, protocols, guidelines, and operations manuals.

2. CIC should provide training to all CIC officials dealing with abused immigrant, refugee, or non-status women on the importance of coordination and appropriate information-sharing as a safety issue for women and their children, and on effective coordination strategies.

3. Any public consultation on Bill C-11 (proposed Balanced Refugee Reform Act) must take a coordinated federal-provincial-territorial approach and proactively include lawyers, community-based agencies, and provincial organizations addressing the needs of immigrant, refugee, and non-status women who are victims of violence.

4. CIC should facilitate coordination between the branch that deals with admission to Canada and the Canada Border Services Agency (CBSA) to make sure that an abused non-status woman is not removed from Canada while she is engaged in or awaiting the results of a Humanitarian and Compassionate (H&C) application or before a child custody matter has been resolved.

5. CIC should facilitate coordination and appropriate risk related information-sharing with provincial child protection authorities to make sure that both authorities are aware of the concerns and actions of the other in order to protect Canadian-born children whose mothers face removal from Canada.

6. CIC should facilitate coordination between CBSA and provincial services providing safe shelter, essential health care, and other help and support to abused non-status women to ensure that non-status women who seek help are not apprehended by CBSA and removed from Canada.

7. CIC should make appropriate referrals to provincial agencies serving abused immigrant women to ensure that abused non-status women receive the support they need to negotiate the expedited temporary resident permit (TRP) and H&C process.

8. CIC should coordinate with other federal departments and the Provincial Government to ensure that abused women and their children have access to services such as essential health and dental care and subsidized child care while engaged in and awaiting the result of an H&C application.

9. CIC should coordinate with the provincial Legal Aid program and the Provincial Government to ensure that Legal Aid is provided to abused non-status women
facing removal from Canada, especially while a child custody matter is still before the courts.

10. CIC, police, and criminal and family justice ministries should work together to develop policy or protocols to address situations where domestic violence is perpetrated against non-status women.

11. CIC should work with Department of Justice and appropriate provincial authorities to develop a coordinated approach to protecting so-called ‘mail-order brides’, including legislation and policy to regulate the operations of international introduction agencies.

12. CIC should ensure that accurate, complete, and consistent information in their own language is provided to immigrant, refugee, and non-status women, both before they come to Canada and immediately upon arrival. Information should address their rights, responsibilities, and options, including options for obtaining permanent residency.

13. CIC should take appropriate action to ensure that other relevant agencies, departments, and ministries in contact with abused immigrant, refugee, and non-status women have access to accurate, complete, and consistent information to pass on.

14. CIC should coordinate with international introduction agencies and organizations dealing with temporary foreign workers such as Live-in Caregivers or Seasonal Agricultural Workers to ensure that prospective ‘mail-order brides’ or temporary foreign workers are made aware of the realities of working in or immigrating to Canada, the particular vulnerabilities they may face, and what to do if they need help.

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REFERENCES


**LEGAL CASE CITED**

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

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Training of Immigration Officials on Violence Against Women

Domestic violence represents a very real danger for immigrant, refugee, and non-status women as it does for Canadian-born women. Since 1996, a significant number of immigrant women and their families have been murdered or seriously injured by their husbands or ex-husbands or other family members in BC. It is essential that all Citizenship and Immigration Canada (CIC) officials working with women and their children who may be victims of domestic or sexual violence be adequately trained on the complexities and risks of these forms of violence, their impacts on women and children, and the particular needs of abused women and their children arising out of these circumstances, with a focus on their safety needs. Training should focus on effective implementation of existing operations manuals and guidelines and should include the development of supplemental materials for staff on violence against women where necessary. It is important that training on new legislation or policy includes a specific focus on its potential impact on immigrant or refugee claimants who may be victims of violence.

Recommendations

Immediate

1. Comprehensive, in-depth training on all forms of violence against women and its potential impact on immigrant, refugee, and non-status women should be provided on a regular basis to all those immigration officials who may be in a position to provide advice or support to abused women or those who assist them or who are in a position to make decisions that affect abused women and their children. (ongoing)

2. Training on new immigration or refugee legislation or policy should include a specific focus on its potential impact on claimants who may be victims of gender-based violence and the fact that safety of these claimants must be a priority. (ongoing)

3. Training curricula and other resources should address both domestic violence and sexual violence and their potential impact on women and their children who are seeking refugee or immigrant status in Canada. (ongoing)

4. Training curricula and other resources should be developed and delivered in collaboration with those who have front-line experience and expertise with abused
immigrant, refugee, and non-status women, including lawyers and non-lawyer advocates and support workers. (ongoing)

**Medium-term**

5. In addition to training courses, resource material such as detailed manuals should be developed for the use of CIC personnel on an ongoing basis.
FEDERAL BRIEFING DOCUMENT 6

Training of Immigration Officials on Violence Against Women

ISSUE: It is essential that Canadian immigration officials be adequately trained on domestic and sexual violence and its potential impact on the safety of immigrant, refugee, and non-status women.¹

KEY POINTS

• Domestic violence represents a very real danger for immigrant, refugee, and non-status women as it does for Canadian-born women. Since 1996, a significant number of immigrant women and their families have been murdered or seriously injured by their husbands or ex-husbands or other family members in BC.

  o In April 1996 in Vernon, Mark Chahal shot and killed his estranged wife, Rajwar Gakhal and eight family members, as well as himself, in the worst mass murder in the province’s history.

  o In July 2003, Rajinder Atwal stabbed his daughter Amandeep to death in a car near Cache Creek because he objected to her love affair with a schoolmate.

  o In December 2003, Denise Purdy was murdered by her husband, Kelvin Purdy, in Nanaimo.

  o On October 18, 2006, pregnant schoolteacher Manjit Panghali was killed in Surrey by her husband Mukhtiar Panghali. Her brother-in-law, Sukhvinder Panghali was also charged with offences related to the murder.

  o On October 19, 2006, Port Coquitlam nurse Gurjeet Kaur Ghuman was shot in the face and blinded by her estranged husband, Paramjit Singh Ghuman, who then killed himself.

  o On October 29, 2006, Navreet Kaur Waraich was stabbed to death by her husband, Jatinder Singh Waraich in Surrey.

  o On July 5, 2007, school principal Shemina Hirji was killed in Burnaby five days after marrying Narinder Cheema who had a criminal record for violent offences.

¹ For purposes of this document, immigrant women may include participants in temporary foreign worker programs such as the Seasonal Agricultural Workers Program or the Live-in Caregiver Program.
• On September 4, 2007, Peter Hyun Joon Lee murdered his wife, Sunny Yong Sun Park, their six-year old son, Christian, and his wife’s parents in Oak Bay on Vancouver Island.

• On August 28, 2009, Yan Lin was stabbed to death along with her ex-husband in Richmond. Her second husband, Chang Xi Wang, who had a history of violence against Yan Lin, was charged with the killing.

• On September 21, 2009, Lesney Valencia, mother of five, was murdered in Burnaby. Her estranged partner, Oswill Vergara, was charged with the murder.

• On January 5, 2010, Kamaljit Singh Dhanoa was charged with the murder of his wife, Tejinder Kaur Dhanoa, mother of their two small children, in Surrey.

• There is a need for all Citizenship and Immigration Canada (CIC) personnel working with women and their children who may be victims of domestic or sexual violence to understand the complexities and risks of these forms of violence, their impacts on women and children, and the particular needs of abused women and their children arising out of these circumstances, with a focus on their safety needs.

• Regular provision of comprehensive training to CIC personnel on violence against women and its potential impact on immigrant, refugee, and non-status women and their children would help ensure maximum safety for women and children. Such training would enhance the ability of CIC personnel to support and advise women who are victims of violence who are seeking immigrant or refugee status and inform the decision-making of Immigration and Refugee Board (IRB) members.

• Training should focus on effective implementation of existing operations manuals and guidelines, including *IP5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* and *Guideline 4. Women Refugee Claimants Fearing Gender Related Persecution* and should include the development of supplemental materials for staff on violence against women wherever necessary.

• It is important that training on new legislation or policy includes a specific focus on its potential impact on immigrant or refugee claimants who may be victims of violence.

• The expertise of community-based workers and lawyers serving immigrant, refugee, and non-status women who are victims of domestic or sexual violence is key to developing and delivering effective training on the issue of violence against women and its particular relevance in the context of immigrant and refugee claims.

**THE CONTEXT**

• Mary Ellen Turpel-Lafond, BC’s Representative for Children and Youth, in her report on the murder of Christian Lee, wrote: “Domestic violence occurs throughout the world and it cuts across social, cultural, economic and religious lines. Immigrant women who are abused by their partners have needs particular to their experiences as newcomers to the Canadian social service systems and justice systems.” (Representative for Children and Youth, 2009, p. 61). She also stated: “If an immigrant woman has been sponsored by her partner...she may fear deportation if the sponsorship breaks down. An abusive partner may use the woman’s immigration
status against her; that is, threaten deportation if she reports the abuse to authorities. Often, the woman lacks information about her rights and options.” (Representative for Children and Youth, 2009, p. 61).

- Some important steps have been taken in Canada to address the particular circumstances of immigrant, refugee, and non-status women and their children who are victims of domestic or sexual violence (for example, Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution; Section 12.7 Family Violence in the operations manual IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds; and reference in the Sponsorship Undertaking to possible deferral or cancellation of sponsorship debt collection in cases of abuse). However, much remains to be done to maximize the impact of existing resources and guidelines specifically targeting victims of domestic or sexual violence and to afford maximum protection to abused women and their children, including the provision of high quality training to CIC personnel.

- Cross-sector training should be undertaken wherever possible and appropriate. Cross-training of CIC personnel with staff in other relevant government ministries and agencies has many benefits, including utilization of available expertise and encouraging collaborative and coordinated approaches to practice.

- While domestic violence is not specifically included as a ground for establishing Convention Refugee status in Canada, Guideline 4 provides a reasonably effective means to address the issue of domestic violence in the context of a refugee claim. However, experience of those supporting women refugee claimants who are victims of violence indicates that Guideline 4 may not be used as often or as effectively as it might be to find that women fleeing such circumstances have a well-founded fear of gender persecution and should be granted refugee status in Canada.

- Training on Guideline 4 should be informed by existing case law that supports the finding of domestic violence as gender persecution against members of a social group and the argument that a well-founded fear of gender persecution as a basis for claiming refugee status may include fear of domestic violence. This case law includes:
  - Canada (Attorney General) v. Ward [1993], a Supreme Court of Canada decision regarding the meaning of “social group” as per Guideline 4;
  - Narvaez v. Canada (Minister of Citizenship and Immigration), [1995] and Diluna v. Canada (Minister of Employment and Immigration) (1995), decisions by the Federal Court of Canada; RPD TA604007, a 2007 decision of the IRB; and RPD AA3-0181, a 2004 decision of the IRB, regarding findings that women and children who were victims of domestic violence fell into the category of “particular social group” as per Guideline 4;
  - C93-00433, a 1993 decision of the then Convention Refugee and Determination Division (CRDD) regarding the finding of domestic violence as persecution;
  - Garcia v. Canada (Minister of Citizenship and Immigration), 2007, a Federal Court decision which reviews case law pertaining to claims of gender
opposite sex may have a need for their cases to be heard by female immigration officers or female IRB members and to be assisted by female interpreters;

- the need for psychological reports in some cases to help CIC officers assess the effects of trauma and fear experienced by women who have been victims of violence;
- women’s need for accurate information about their rights, options, and obligations as immigrants or refugees, and about their status at all stages of the process;
- the need to identify safety as a priority in all actions and decisions respecting women and their children who may be victims of violence.

6. Training on new immigration or refugee legislation or policy should include a specific focus on its potential impact on claimants who may be victims of gender-based violence and the fact that safety of these claimants must be a priority.

7. Training curricula and other resources should be developed and delivered in collaboration with those who have front-line experience and expertise with abused immigrant, refugee, and non-status women, including lawyers and non-lawyer advocates and support workers.

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

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.

1 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.
• 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).

• 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, Section15 – 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 of 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

Please note that this Briefing Document was amended in April 2011.
PROVINCIAL BRIEFING DOCUMENT 2: EXECUTIVE SUMMARY

Collection of Sponsorship Debt Accrued by Abused Immigrant Women

Sponsorship debt or the threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children. Sponsorship debt may be accrued by an abused woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the period named in a sponsorship undertaking she has signed. The undertaking makes her legally responsible for that debt. Sponsorship debt or threat of sponsorship debt may deter women from leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to enormous debt. While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in circumstances of abuse, the debt is not cancelled and may be collected at a later date. While the legal obligations contained in sponsorship undertakings are a federal matter, the collection of sponsorship debt has been assigned by the Federal Government to the provinces. Therefore, a potential resolution of the issue of sponsorship debt for abused women lies in provincial policy change.

Recommendations

Immediate
1. As part of its Domestic Violence Action Plan, the BC Government should address the most pressing issues putting abused immigrant women at risk, including the need to cancel sponsorship debt accrued by women who have been abused by their sponsoree.

2. The BC Government should develop an accessible and effective process by which women can demonstrate that they are victims of domestic violence.

Medium-term
3. The BC Government should develop guidelines for provincial officials so that once abuse has been “proven” it will generally be considered grounds for cancelling sponsorship debt.
**Longer-term**

4. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who have outstanding sponsorship debt arising from a sponsorship undertaking because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance.

5. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance.
PROVINCIAL BRIEFING DOCUMENT 2

Collection of Sponsorship Debt
Accrued by Abused Immigrant Women

ISSUE: Sponsorship debt or the threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children.

KEY POINTS

The current situation

• Sponsorship debt may be accrued by an abused woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the period named in a sponsorship undertaking she has signed. The undertaking makes her legally responsible for that debt.

• Sponsorship debt or threat of sponsorship debt may deter women from leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to enormous debt.

• While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in circumstances of abuse, the debt is not cancelled and may be collected at a later date.

• While the legal obligations contained in sponsorship undertakings are a federal matter, the collection of sponsorship debt has been assigned by the Federal Government to the provinces. Therefore, a potential resolution of the issue of sponsorship debt for abused women lies in provincial policy change.

Potential remedies

• A requirement that a victim must repay a debt incurred by an offender may be considered a form of re-victimization. It may also constitute an infringement of the

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1 This briefing document may also apply in situations where any other family member has accrued sponsorship debt because of abuse by his/her sponsor, such as a senior abused by a son or daughter whom they have sponsored.
Canadian Charter of Rights and Freedoms, Section 7 - Life, liberty and security of person. It could be argued that Canadian policies that make it difficult for a woman to leave an abusive relationship are themselves a form of abuse that threatens her right to life or security of person.

- Sponsorship Undertakings and sponsorship debt may also constitute infringements of the Charter’s Section 15 – Equality Rights, that states that every individual has the right to equality before the law and equal protection and benefit of the law. It could be argued that the burdens imposed on abused immigrant women by sponsorship undertakings and sponsorship debt constitute unequal treatment before the law.

- Discretion is already inherent in many aspects of the federal and provincial positions on the accrual and collection of sponsorship debt. Therefore, one option for addressing the burden placed on abused women by sponsorship debt may be for BC’s Ministry of Housing and Social Development to develop policy to guide discretion in these matters. Policy could state that once abuse had been determined, such abuse should generally be considered grounds to cancel sponsorship debt. Such policy would also have to address the difficulties some immigrant women face in meeting the requirement for “substantial proof”.

Bars to sponsorship

- A further complicating issue is that sponsors who have an outstanding debt arising from an undertaking are ineligible to sponsor anyone else under the family class. Women with such outstanding sponsorship debt could still make the application to sponsor other family members, which would inevitably be refused, and then they could appeal the matter to the Immigration Appeal Division (IAD) on Humanitarian and Compassionate (H & C) grounds. Such an appeal would be complex, time-consuming, and best handled by a lawyer. Legal Aid, however, is generally not available for these cases.

- In addition, an abused immigrant woman² who was sponsored under the family class and is forced to claim social assistance because of fleeing an abusive relationship is ineligible to sponsor under the family class while she is in receipt of such services.

- A provincial policy of cancellation of sponsorship debt in cases of domestic violence would remove these bars to sponsorship.

THE CONTEXT

Provincial discretion to suspend or cancel debt

- The current federal Application to Sponsor and Undertaking addresses the issue of abuse by stating that “The Minister and the province concerned may choose not to take enforcement action to recover money...if the default is the result of abuse...”

² This could include so-called ‘mail-order brides’, a term used to describe women who met their foreign spouses through an international introduction or ‘pen-pal’ agency. (The controversy around the use of the term ‘mail-order bride’ is acknowledged. In the absence of another more ‘neutral’ term, the term ‘mail-order bride’ is used in this document. However, there is no intent to stereotype or stigmatize immigrant women who have married a Canadian as a result of an introduction or ‘pen-pal’ agency.)
However, the document goes on to say that “The decision not to act at a particular time does not cancel the debt. The Minister and the province concerned may recover the debt when circumstances have changed.” (Citizenship and Immigration Canada, 2009). Therefore, the decision to suspend collection results in a debt that hangs over the woman and may be collected at any time.

- Provincial and federal discretion appears to be inherent in the wording of the federal undertaking. As noted above, the undertaking states that the federal and provincial governments may choose not to collect the debt in circumstances of abuse and may collect the debt when circumstances change. The undertaking further states that the sponsor “…will continue to be in default until the amount of benefits received are repaid in full or repaid to the satisfaction of the government concerned” (italics added). (Citizenship and Immigration Canada. (2009).

- The BC government also has the discretion to forgive debts under section 18 of the BC Financial Administration Act.

- In 2006, the then BC Ministry of Community Services announced that its relevant collection branch, the Ministry of Employment and Income Assistance “was prepared to suspend debt collection and interest accrual where there was substantial proof of abuse or threat of abuse by a sponsoree, and where collection could potentially harm the sponsor’s health or safety.” (Correspondence from Deputy Minister Sheila Wynn, received September 21, 2006). However, while suspension of the debt and interest accrual in circumstances of abuse suggests some provincial movement in favour of a sponsor who is a victim of abuse, this policy addresses only suspension, not forgiveness of the debt. In addition, it is difficult for many women who are victims to meet the criteria of “substantial proof”. This is especially true for immigrant women in rural areas where access to services is limited.

**Impact of bars to sponsorship**

- An inability to sponsor family members to come to Canada may seriously impact abused immigrant women’s ability to settle in Canada and earn their own living because it increases their social isolation, deprives them of emotional support necessary to recover from trauma, and cuts off potential financial and child-care support from family members.

- The predicament for many women is that they cannot find a job because they do not have the education or language skills, so they are forced to accept social assistance. For many this creates a vicious cycle: they are alone with young children or they cannot upgrade their skills and find work because they need family to help look after their children, but they cannot get their family here because they are receiving social assistance. For other women who are working, the job is often poorly paid and does not enable them to pay back money owed in the form of sponsorship debt. So they are unable to bring their family members here to provide the support they need to upgrade their skills in order to earn a higher wage.
Legal responses

- There have been successful attempts by counsel and agencies such as BC Public Interest Advocacy Centre to have the Province cancel collection of sponsorship debt in situations of abuse. However, the successes pertain to an old form of the undertaking which contained vaguer wording than the current undertaking and did not contain language stating that governments could collect on sponsorship debts even if they arose out of circumstances of abuse. Also, these cases occurred through settlement negotiations or on an individual basis: there is as yet no case precedent which can be consistently applied in other cases.

- In a recent decision, the Ontario Court of Appeal in Mavi v. Canada (Attorney General), 2009 found that governments, in the exercise of their discretion regarding the collection of sponsorship debt, have a duty of procedural fairness to those from whom they are trying to collect this debt. This means that sponsors’ individual circumstances must be considered before the government can collect on sponsorship debts and that they cannot force people to pay substantial sponsorship debts without first providing them with an opportunity to explain why they should not have to pay. Leave has recently been granted to appeal this decision to the Supreme Court of Canada.

- In an earlier case (Singh v. Minister of Employment and Immigration, [1985]), the court found that, unless it specifically states that it applies only to Canadian citizens, the Charter of Rights and Freedoms applies to anyone on Canadian soil. Thus, refugees have a right to Section 7 – Life, liberty and security of person protection and therefore have a right to procedural fairness, including oral hearings, because their security of person is at stake.

- While the Mavi decision was based on administrative law arguments, there are also potential constitutional (Section 7- Life, liberty and security of person or Section 15 - Equality rights) arguments against the collection of sponsorship debt when there are health and/or safety concerns, including abuse of the sponsor.

- Regarding Section 15, only those who sponsor a foreign national are required to sign an undertaking and subjected to sponsorship debt. Thus, only those people who have signed sponsorship undertakings are responsible for paying back their spouses’ social assistance. It is arguable that this constitutes unequal treatment before the law. Additionally, domestic violence is suffered disproportionately by women. Therefore, the health and safety repercussions of sponsorship debt incurred as a result of domestic violence are suffered disproportionately by women, which may also constitute an infringement of Section 15.

- Constitutional challenges have thus far not reached the courts.

Information to women

- Research and the experience of front-line workers indicate that abused immigrant, refugee, and non-status women often do not have accurate information about sponsorship, including their obligations and rights. It is important that they are provided with complete, accurate, and consistent information about sponsorship at
every opportunity, before they enter Canada, immediately upon entry, and at various points thereafter. Ministries and agencies responding to the needs of immigrant women must themselves have accurate and consistent information about sponsorship for abused immigrant women and must have adequate and linguistically appropriate information resources to provide to the women.

RECOMMENDATIONS

1. In the interest of safety for abused immigrant women and their children, the BC Government should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are victims of domestic violence.

2. The BC Government should develop an accessible and effective process by which women can demonstrate that they are victims of domestic violence.

3. The BC Government should take immediate steps to ensure that criteria for meeting the burden of "substantial proof" of domestic violence for purposes of cancelling existing sponsorship debt and exempting abused sponsors in the future include statutory declarations from the women or from competent professionals.

4. The BC Government should develop guidelines for provincial officials so that once abuse has been “proven” it will generally be considered grounds for cancelling sponsorship debt.

5. The BC Government should work with Citizenship and Immigration Canada (CIC) to facilitate coordination of federal and provincial policies and practices to ensure that abused immigrant women are freed from sponsorship debt arising from domestic violence, which may involve ensuring that sponsorship debt does not accrue or that accrued sponsorship debt is cancelled once abuse has been demonstrated.

6. The province should work with the Federal Government to ensure that wording in the federal undertaking clearly states that the provinces have the right not only to suspend debt collection, but to cancel it.

7. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who have outstanding sponsorship debt arising from a sponsorship undertaking because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance.

8. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance.

9. As part of its Domestic Violence Action Plan, the BC Government should address the most pressing issues putting abused immigrant women at risk, including the need to cancel sponsorship debt accrued by women who have been abused by their sponsoree.
10. As part of its *Domestic Violence Action Plan*, the BC Government, in consultation with Legal Services Society, should ensure that abused immigrant women who have legitimate needs for legal representation on issues related to sponsorship debt and cannot afford to pay for it are able to obtain legal representation through Legal Aid.

11. The BC Government should work with CIC and provincial ministries and community agencies to ensure that abused immigrant women are provided with accurate and consistent information on:

- the facts about sponsorship;
- their rights in Canada;
- relevant Canadian laws, including immigration, family, civil, and criminal law;
- options and services available to them in Canada, including language training, settlement services, skills training, social assistance, cultural support services, legal advocacy, and victim support services.

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**REFERENCES**


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**LEGAL CITATIONS**


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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 of Immigrant, Refugee, and Non-Status Women Project.
PROVINCIAL BRIEFING DOCUMENT 3: EXECUTIVE SUMMARY

Family Justice Issues for Abused Immigrant, Refugee, and Non-Status Women

As needs of abused immigrant, refugee, and non-status women and their children may differ in important ways from those who are Canadian-born, it is essential that family justice initiatives in BC take account of this vulnerable population. Legal Aid funding cuts have meant that many women – including women who do not understand Canada’s legal system or their rights and who are not fluent in English – are forced to represent themselves against husbands who are well-represented by counsel. Barriers and risks faced by these women should establish this group as among the highest priorities for family law Legal Aid.

Recommendations

Immediate

1. As part of its Domestic Violence Action Plan, the Ministry of Public Safety and Solicitor General (MPSSG) and Ministry of Attorney General should ensure that the family justice process is included as an integral component of the Action Plan and that the Action Plan includes a specific focus on the needs and circumstances of abused immigrant, refugee, and non-status women and their children.

2. As part of the Domestic Violence Action Plan, MPSSG and the Ministry of Attorney General (MAG) should ensure that all family justice personnel are well-trained in the nature and dynamics of domestic violence against immigrant, refugee, and non-status women, including risk-factors. (ongoing)

3. The Ministry of Attorney General, in its review of the Family Relations Act, should include a specific focus on the needs of abused immigrant, refugee, and non-status women and their children.

4. As part of the updating of the Violence Against Women in Relationships (VAWIR) Policy, MAG and MPSSG should ensure both that the family justice process is included as an integral component of the policy and that the policy includes a specific focus on the particular needs and circumstances of abused immigrant, refugee, and non-status women and their children.

5. As part of the updating of the VAWIR Policy, MPSSG and MAG should work with police and Citizenship and Immigration Canada (CIC) to develop policy or protocols to address situations of domestic violence against non-status women. These should ensure that: women and children's safety is a priority; any pending removal issues
arising from women’s lack of status are put “on hold” until custody matters have been resolved; and women are aware of these protections.

6. The Ministry of Attorney General should take steps to ensure coordination between the family justice system and CIC, including Canada Border Services Agency, to make sure that an abused non-status woman is not removed from Canada while a child custody matter is still before the courts.

Medium-term
7. The Ministry of Attorney General should work with CIC to develop policy or protocols to coordinate the Humanitarian and Compassionate (H&C) process and family justice process related to child custody matters, including expediting the child custody process where an abused immigrant, refugee, or non-status woman is engaged in an H&C process to gain permanent status in Canada.

8. The Ministry of Attorney General, in its continuing efforts to improve the family justice process in BC, should ensure that any woman not fluent in English is provided with language interpretation by a qualified interpreter in all family law related matters, both within and outside of court.

9. The Ministry of Attorney General should ensure that psychological assessments as per s. 15 of the Family Relations Act are always undertaken with appropriately trained interpreters to allow assessments to be conducted in the language normally used within that family.
Family Justice Issues for Abused Immigrant, Refugee, and Non-Status Women

ISSUE: Abused immigrant, refugee, and non-status women face particular challenges in dealing with family justice issues in BC.

KEY POINTS

• As needs of abused immigrant, refugee, and non-status women and their children may differ in important ways from those of Canadian-born women and children, it is essential that any family justice initiatives in BC, including the Review of the Family Relations Act, specifically take account of this particularly vulnerable population.

• Cuts to Legal Aid funding in BC since 2002 have meant that many women in desperate need of legal advice and representation, including abused immigrant, refugee, and non-status women, cannot access it, even when it may mean losing custody of their children. Women – including women who do not understand Canada’s legal system or their rights and who do not have fluency in English – are being forced to represent themselves against husbands who are well-represented by counsel.

• The barriers and risks faced by abused immigrant, refugee, and non-status women should establish this group as among the highest priorities for family law Legal Aid to assist them to address serious family law matters, including retaining custody of their children.

• 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.

• It is important that family justice personnel be well-trained in the particular circumstances of abused immigrant, refugee, and non-status women, including risk factors.

• It is essential that all non-English-speaking women, including abused immigrant, refugee, and non-status women, are provided with a qualified language interpreter for family law matters, both within and outside the court.
• It is important that language interpreters used to assist abused immigrant, refugee, or non-status women in family law matters are trained in the nature and dynamics of domestic violence and the particular impacts such violence may have for these women.

• It is important that psychological assessors conducting assessments as per s. 15 of the Family Relations Act be highly knowledgeable about the nature and dynamics of domestic violence and specific pressures facing abused immigrant, refugee, and non-status women.

• In order to maximize safety for immigrant, refugee, and non-status women, it is important that the family justice system respond to domestic violence against immigrant, refugee, and non-status women be coordinated with other provincial service providers responding to domestic violence as well as with Citizenship and Immigration Canada (CIC), including the Canada Border Services Agency (CBSA).

• Lack of coordination between CIC and BC’s family justice system regarding non-status women with unresolved custody issues involving Canadian-born children may result in her being removed from Canada while a custody case is still in progress, leaving children in the custody of a father who has been violent towards their mother. Such a situation may compromise 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.

THE CONTEXT

• The Representative for Children and Youth in her report Honouring Christian Lee following the Lee/Park murders in Oak Bay in 2007, recommended:

  That the Ministry of Attorney General undertake a review and enact necessary changes to improve administration of justice in family law matters in domestic violence cases, to better protect the safety of children and their mothers, and to ensure that the perspective of the child is considered. (Representative for Children and Youth, 2009)

• The Ministry of Attorney General is conducting a comprehensive review of the Family Relations Act to assess whether and how it could more effectively address domestic violence (Ministry of Public Safety and Solicitor General, 2010a).

• As part of its Domestic Violence Action Plan, the Province is updating the Violence Against Women in Relationships Policy to ensure a coordinated approach across all components of the justice system, setting out roles and responsibilities of all service providers who respond to domestic violence (Ministry of Public Safety and Solicitor General, 2010b).

• Cuts to Legal Services Society (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.

• It is indisputable 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 creates an obligation on 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.

• Abused immigrant, refugee, and non-status women face multiple barriers to accessing justice. These may include: the isolating, damaging dynamics of abuse; lack of any or of permanent 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; poverty resulting both from leaving an abusive spouse and from being unable to work in Canada; sponsorship debt; continuing risks to themselves and their children; and lack of awareness of rights, options, and services.

• When a woman receives family law Legal Aid, the amount of lawyers’ time allocated for family law cases is inadequate, even if her cases qualify 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 the need for language interpretation. In such cases, there should be both a family law referral and an immigration law referral.

• Front-line workers have described cases of non-status women being threatened with criminal charges if they leave the country with their children before a custody matter has been resolved. There have also been reports from workers of non-status women being removed from Canada while custody matters are still before the courts.

• There have been anecdotal reports from women and service providers that those conducting psychological assessments as per s. 15 of BC’s Family Relations Act do not always have an adequate understanding of the dynamics of family violence.

• There is also anecdotal evidence that psychological assessor are sometimes not accompanied by adequate interpreter services, thereby forcing the assessment to be conducted in English. In such circumstances, women who usually communicate with their children in their own language are required to relate to their children in English, with the result that reports assess the women’s relationship and interaction with their children as “stilted” or “limited”, or “without open communication”.

RECOMMENDATIONS

1. The Ministry of Attorney General (MAG), in its review of the Family Relations Act, should include a specific focus on the needs of abused immigrant, refugee, and non-status women and their children.

2. As part of its Domestic Violence Action Plan, the Ministry of Public Safety and Solicitor General (MPSSG) and Ministry of Attorney General (MAG) should ensure that the family justice process is included as an integral component of the Action Plan and that the Action Plan includes a specific focus on the needs and
circumstances of abused immigrant, refugee, and non-status women and their children.

3. As part of the updating of the Violence Against Women in Relationships Policy, the MAG and MPSSG should ensure both that the family justice process is included as an integral component of the policy and that the policy includes a specific focus on the particular needs and circumstances of abused immigrant, refugee, and non-status women and their children.

4. As part of the updating of the Violence Against Women in Relationships Policy, MPSSG and the MAG should work with police and Citizenship and Immigration Canada (CIC), including Canada Border Services Agency (CBSA), to develop policy or protocols to address situations where domestic violence is perpetrated against non-status women. These should ensure that: women and children's safety is a priority; any pending removal issues arising from women’s lack of status are put “on hold” until custody matters have been resolved; and women are aware of these protections.

5. The Ministry of Attorney General should take steps to ensure coordination between the family justice system and CIC, including CBSA, to make sure that an abused non-status woman is not removed from Canada while a child custody matter is still before the courts.

6. The Ministry of Attorney General should work with CIC to develop policy or protocols to coordinate the Humanitarian and Compassionate (H&C) process and family justice process related to child custody matters, including expediting the child custody process where an abused immigrant, refugee, or non-status woman is engaged in an H&C process to gain permanent status in Canada.

7. As part of the Domestic Violence Action Plan, MPSSG and the MAG should ensure that family justice personnel are well trained in the nature and dynamics of domestic violence against immigrant, refugee, and non-status women, including risk factors.

8. As part of its Domestic Violence Action Plan, the BC Government, working with Legal Services Society (LSS), should ensure that abused women who have legitimate needs for legal representation on serious family matters and cannot afford to pay for it are able to obtain legal representation through Legal Aid.

9. The BC Government should provide sufficient funds to LSS to pay for qualified interpretation services for those not fluent in English, for the Legal Aid application and intake process, interviews, and court appearances related to family law matters.

10. The Ministry of Attorney General, in its continuing efforts to improve the family justice process in BC, should ensure that any woman not fluent in English is provided with language interpretation by a qualified interpreter in all family law related matters, both within and outside of court.

11. The Ministry of Attorney General should ensure that psychological assessments as per s. 15 of the Family Relations Act are always undertaken with appropriately trained interpreters to allow assessments to be conducted in the language normally used within that family.
12. The Ministry of Attorney General should make every effort to ensure that language interpreters used to assist abused immigrant, refugee, and non-status women in family law matters, including psychological assessments, are trained in the nature and dynamics of domestic violence and the particular impacts of such violence for immigrant, refugee, and non-status women and their children.

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Ministry of Attorney General.


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PROVINCIAL BRIEFING DOCUMENT 4: EXECUTIVE SUMMARY

Health Care Services for Abused Immigrant, Refugee, and Non-Status Women

Abused immigrant, refugee, and non-status women and their children in BC face a range of challenges in accessing health care. Despite the province-wide availability of Provincial Language Services, most health authorities in BC do not have formal interpretation policies and/or do not utilize appropriately trained interpreters in their health facilities. Women and children who are ineligible for free essential health care or do not have access to appropriate interpreters are put at risk of untreated or inadequately treated health problems, including injuries resulting from the violence itself. In addition, training of health care providers on the specific needs of abused immigrant, refugee, and non-status women and their children is essential.

Recommendations

Immediate
1. Ministry of Public Safety and Solicitor General should include both health ministries on inter-ministry bodies responsible for developing and implementing a response to violence against women.

2. Citizenship and Immigration Canada (CIC), the police, provincial justice ministries, provincial health ministries, Regional Health Authorities, and hospitals should work together to ensure that abused non-status women who are hospital patients are not placed at risk of deportation.

3. BC health ministries should work with health authorities, hospitals, clinics, and other health care professionals to develop province-wide policy and guidelines to ensure that regardless of where a non-English-speaking patient in BC seeks health care services, she will be provided with appropriate interpretation services in a timely fashion. Policy and guidelines should address best practices for provision of language interpretation.

4. BC health ministries should work with health authorities, hospitals, clinics, health care professionals, universities, the Provincial Language Service, and other relevant interpretation services to ensure that appropriate ongoing training is provided to front-line staff on interpretation issues. (ongoing)

Medium-term
5. BC health ministries should work with CIC, health authorities, hospitals, clinics, and health care professionals to develop a multi-pronged approach to ensure that all
non-English-speaking persons using health care services have accurate information in their own language on accessing appropriate interpretation services.

6. BC health ministries and health authorities should work with the Provincial Language Service and other relevant interpretation services to ensure that interpreters are adequately trained in the nature and dynamics of domestic and sexual violence, including how this violence may impact on immigrant, refugee, and non-status women and their children.

7. CIC and the Province should work together to ensure that specially adapted and expedited temporary resident permit (TRP) and Humanitarian and Compassionate (H&C) processes are implemented for abused immigrant, refugee, or non-status women so that these women and their children have access to emergency and essential health and dental care while awaiting the outcome of an H&C application.

**Longer-term**

8. As part of the Province’s *Domestic Violence Action Plan*, health ministries should work with Regional Health Authorities and CIC to establish clinics and other strategies across BC to provide accessible health care services to abused non-status women and their children, as well as health care services specifically targeted to abused immigrant and refugee women.
PROVINCIAL BRIEFING DOCUMENT 4
Health Care Services for Abused Immigrant, Refugee, and Non-Status Women

ISSUE: Abused immigrant, refugee, and non-status women and their children in BC face a range of challenges in accessing appropriate health care services.

KEY POINTS

- Abused immigrant, refugee, or non-status women and their children who are ineligible for essential health care are put at risk of untreated health problems, including injuries resulting from the violence itself. The cost of essential medical services for someone who is ineligible for free health care in BC and has no other health insurance is prohibitive.

- It is important that ways be found to provide emergency and essential health care services to all abused immigrant, refugee, or non-status women regardless of their immigration, refugee, or insurance status. Vancouver’s Pine Clinic provides a model for the delivery of such medical services to people who have no medical coverage.

- An amended and expedited temporary resident permit (TRP) process and process based on humanitarian and compassionate (H&C) grounds (see federal Briefing Document 1, Needs of Women Without Status as a Result of Leaving an Abusive Spouse) will ensure that abused immigrant, refugee, and non-status women have access to essential health and dental services while they await permanent resident status in Canada.

- There is a need for coordination between CIC and the police, provincial justice ministries, provincial health ministries, and other provincial services such as health authorities and hospitals regarding the handling of domestic violence cases involving non-status women. The threat of deportation will prevent many such women from reporting abuse or seeking essential health care, thus putting them and their children at risk.

1 For purposes of this document, immigrant women may include participants in temporary foreign worker programs such as the Seasonal Agricultural Worker Program or the Live-in Caregiver Program.
• It is important that any new training initiatives developed as part of BC’s Domestic Violence Action Plan include health care providers and a focus on the particular health care needs of immigrant, refugee, and non-status women and their children.

• Appropriate language interpreter services are crucial for abused immigrant, refugee, and non-status women seeking health care services, because interpretation affects not only the quality of health care for women and their children’s, but also their safety.

THE CONTEXT

• Immigrant, refugee, and non-status women’s access to health care coverage in BC is complex and varies with immigrant or refugee status.

• The BC Medical Services Plan (MSP) website states that:

  An individual must be a resident of B.C. in order to qualify for medical coverage under MSP. A resident is a person who meets all of the following conditions:
  o must be a citizen of Canada or be lawfully admitted to Canada for permanent residence;
  o must make his or her home in B.C.;
  o must be physically present in B.C. at least 6 months in a calendar year; and
  o dependents of MSP beneficiaries are eligible for coverage if they are residents of B.C.

  …some holders of study and/or work permits issued under the federal Immigration and Refugee Protection Act are deemed to be residents, but tourists or visitors to B.C. do not qualify… (Ministry of Health Services, 2010)

• New BC residents who are eligible for medical coverage through MSP are eligible only after they have completed a waiting period, calculated as the balance of the month in which a person became a BC resident, plus two months. There is an appeal process.

• In limited circumstances – for example, foreign victims of trafficking in persons (VTIPS) who have been issued a 180 day TRP, Government Assisted Refugees (GARs), some refugee claimants – the federal government may provide some initial medical/dental coverage through the Interim Federal Health (IFH) Program. IFH coverage is immediate for eligible persons. However, IFH coverage is not indefinite: it is limited to 180 days for VTIPs and generally limited to one year (renewable if necessary) for refugee claimants. It is not automatic and is provided based on a needs assessment, except in the case of GARs.

• GARs are eligible for regular BC health services on arrival and receive IFH coverage for services not covered by MSP and for some extended benefits, normally for 12 months. For Privately Sponsored Refugees (PSRs) the IFH coverage may extend to 24 months. IFH coverage is not available for independent immigrants or sponsored family class immigrants.

• In order to qualify for medical coverage through MSP, a temporary foreign worker must have a work permit that is valid for six months or more. If a work permit limits a foreign worker to a specific employer, it is the employer’s responsibility to enrol the
worker in MSP. In certain cases, that employer must provide medical coverage during the waiting period.

- Women who have lost their sponsorship status because they have left an abusive spouse before the sponsorship process is complete may find themselves in Canada without legal status and therefore without access to no-cost medical services.

- While awaiting the outcome of the H&C process, a non-status woman does not have access to essential or emergency health and dental care.

- There are reports from front-line workers that Canada Border Service Agency (CBSA) officials have arrived at hospitals in search of abused non-status women who are patients.

- The TRP process has been adapted specifically for use in the case of trafficking victims. These VTIP TRPs may be issued for up to 180 days and can be reissued at the end of that period. Holders of VTIP TRPs may receive emergency and essential health and dental services through the Interim Federal Health Agreement.

- Few services exist in BC to provide medical care to those without medical coverage. The only such service in the Lower Mainland is Vancouver’s Pine Clinic. This is a youth-focused service, providing medical services to those over 24 years old only on weekday mornings. While it does have access to language interpretation services, it is not specifically equipped to provide services to those who do not speak English. It relies primarily on non-English-speaking patients bringing someone with them who can act as an interpreter.

- Vancouver’s Bridge Community Health Clinic provides a good model for delivery of services to refugees and refugee claimants, including free primary health care services. Staff include physicians, nurses, interpreters, settlement workers, nutritionist, psychologist, and psychiatrist. Services are offered in partnership with Immigrant Services Society of BC, and BC Multicultural Health Services Society.

- Policy regarding provision of language interpretation services to patients who do not speak English is set at the Health Authority level. Not all Regional Health Authorities in BC have policy that appropriate language interpreter services will be provided to non-English-speaking patients. Health Authority policies are as follows:
  - Vancouver Coastal Health Authority website states:
    Spoken Language interpreters are available to help with communication between staff and patients who have limited English. These interpreters may be requested by VCH staff only. If you or your family needs the help of an interpreter, please speak to a staff member.

    No other language interpretation policy is in place. Responsibility for language interpretation services has recently moved to the Provincial Language Service, so policy and practice is currently in transition.
  - Vancouver Island Health Authority (VIHA) has no language interpretation policy. The VIHA website directs patients to bring their own interpreter if they require language interpretation services. PIHA personnel also said that if someone
requires an interpreter, the switchboard makes an announcement asking for people who speak a particular language to identify themselves.

- Interior Health Authority has no language interpretation policy. Practices vary from use of whoever may be available on-site to use of Provincial Language Service interpreters.

- Fraser Health Authority (FHA) website states:
  
  - At no cost, we are prepared to provide an interpretation or written translation in over 60 different languages and dialects for patients, clients, or residents…
  
  - To access this service, please inform your healthcare provider when you schedule your appointment that you will require the use of language services. For unexpected and unscheduled visits, request the service from a staff member on your care team. We will do our best to provide a trained interpreter to meet your needs.

Responsibility for language interpretation in two FHA regions has recently moved to the Provincial Language Service, so policy and practice is currently in transition. Email communication has been used to inform staff about current practice in terms of who to call for interpretation services. Current practice also includes staff orientation and the provision of cards for patients to give to staff to request interpretation services.

- Northern Health Authority, while it has a brief written Interpretation Services policy, relies on volunteer interpreters rather than on qualified paid interpreters such as those supplied by the Provincial Language Service.

- Provincial Health Services Authority (PHSA), including provincial health institutions such as BC Women’s Hospital and Health Centre, BC Children’s Hospital, and the Provincial Language Service, has a comprehensive Language Access Policy that states:

  Effective language access will be achieved using a multi-pronged approach, such as the use of professional interpreters for verbal communication and professional translators for written communication….and

  PHSA discourages the use of family and friends as interpreters….and

  All patient/client information collected during the course of an interpreting or translation request is deemed, and will remain, confidential.

- There are reports from women and from front-line workers of cases in which interpreter services have not been provided to non-English-speaking patients, even in hospitals where policy exists that such interpreter services must be provided.

- As language interpretation is a key safety issue for abused immigrant, refugee, and non-status women, it is crucial that health authorities have comprehensive policies
on provision of language interpretation services to non-English-speaking patients that address use of qualified interpreters, the importance of confidentiality provisions, and the need for all front-line staff to be aware of and adequately trained on the language interpretation policy.

- The Provincial Language Service, a program of PHSA, provides in-person interpreter services on an on-call or appointment basis and 24-hour telephone interpreter services in over 150 languages to health care agencies and government institutions.

RECOMMENDATIONS

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

Women’s access to health care

1. Citizenship and Immigration Canada (CIC) and the Province of BC should work together to ensure that specially adapted and expedited temporary resident permit (TRP) and Humanitarian and Compassionate (H&C) processes are implemented in the case of abused immigrant, refugee, or non-status women so that these particularly vulnerable women and their children have access to emergency and essential health and dental care while awaiting the outcome of an H&C application.

2. As part of the Province’s Domestic Violence Action Plan, health ministries should work with Regional Health Authorities and CIC to establish clinics and other strategies across BC to provide accessible health care services to abused non-status women and their children, as well as health care services specifically targeted to abused immigrant and refugee women.

Information to women

3. BC should work with CIC officials to ensure that linguistically-specific information materials for immigrant, refugee, and non-status women entering BC clearly state who is and who is not eligible for no-cost health care in Canada, the waiting period for medical coverage for new BC residents, options for appealing waiting periods, and the cost of health care if paid for privately, and should strongly recommend that anyone entering Canada who is not eligible for free essential health care services enter with private medical insurance.

4. BC should work with CIC officials to ensure that linguistically-specific information materials for immigrant, refugee, and non-status women entering BC strongly advise that they not allow a temporary permit to expire, that if it expires they renew it without delay, and the consequences – including for health care coverage – of being without legal status.

Coordinated response

5. In order to ensure a specific focus on the health care needs of immigrant, refugee, and non-status women, Ministry of Public Safety and Solicitor General should
include both health ministries on inter-ministry bodies responsible for developing and implementing a response to violence against women.

6. CIC, the police, provincial justice ministries, provincial health ministries, Regional Health Authorities, and hospitals should work together to ensure that abused non-status women who are hospital patients are not placed at risk of deportation.

Training

7. BC health ministries should work with Regional Health Authorities, hospitals, clinics, universities, and other health care professionals to ensure that adequate training is provided to health care practitioners in BC on an ongoing basis on the unique needs of immigrant, refugee, and non-status women who are victims of violence.

8. Any inter-ministry committee developing or implementing training as part of the Province’s Domestic Violence Action Plan should include both health ministries.

9. Any training developed as part of the Domestic Violence Action Plan should include a specific focus on the health care needs of abused immigrant, refugee, and non-status women and their children.

Language interpretation

10. BC health ministries should work with health authorities, hospitals, clinics, and other health care professionals to develop province-wide policy and guidelines to ensure that regardless of where a non-English-speaking patient in BC seeks health care services, she will be provided with appropriate interpretation services in a timely fashion. Policy and guidelines should address best practices for provision of language interpretation, including:

• Importance of using qualified interpreters;
• dangers of using family members or friends for interpretation;
• ongoing training for interpreters;
• confidentiality issues;
• informing patients about how to access interpreters;
• informing staff about the policy and how to access qualified interpreters;
• use of professional in-house interpreters where demand justifies.

11. BC health ministries should work with health authorities, hospitals, clinics, other health care professionals, universities, the Provincial Language Service, and other relevant interpretation services to ensure that appropriate ongoing training is provided to front-line staff on interpretation issues, including:

• health authority and institutional policies regarding the provision of language interpretation services to non-English-speaking patients;
• the key role played by appropriate language interpretation for non-English-speaking patients;
• the particular needs of abused women and their children regarding language interpretation, including interpretation as a safety issue;
• how best to meet the interpretation needs of abused immigrant, refugee, and non-status women and their children.

12. BC health ministries and health authorities should work with the Provincial Language Service and other relevant interpretation services to ensure that interpreters are adequately trained in the nature and dynamics of domestic and sexual violence, including how this violence may impact on immigrant, refugee, and non-status women and their children.

13. BC health ministries should work with CIC and health authorities, hospitals, clinics, and other health care professionals to develop a multi-pronged approach to ensure that all non-English-speaking persons using health care services have accurate information in their own language on accessing appropriate interpretation services.

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REFERENCES


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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 of Immigrant, Refugee, and Non-Status Women Project.
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.
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 obligation\(^1\) 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.

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\(^1\) 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.”
• 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 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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PROVINCIAL BRIEFING DOCUMENT 6: EXECUTIVE SUMMARY

Criminal Justice System Issues for Abused Immigrant, Refugee, and Non-Status Women

It is important that the criminal justice system is equipped to respond to the particular circumstances of immigrant, refugee, and non-status women who are victims of domestic or sexual violence. As the needs of these women and their children may differ in crucial ways from those of abused Canadian-born women and their children, it is essential that any initiatives designed to improve the criminal justice system’s response to violence against women, including initiatives being undertaken as part of the Government’s Domestic Violence Action Plan, specifically take account of this particularly vulnerable population.

Recommendations

Immediate

1. The Ministry of Public Safety and Solicitor General (MPSSG) and the Ministry of Attorney General (MAG) should ensure that the Government’s Domestic Violence Action Plan, including the criminal justice system components, incorporates a specific focus on the needs and circumstances of abused immigrant, refugee, and non-status women and their children.

2. As part of the Domestic Violence Action Plan, MPSSG and MAG should ensure that all criminal justice personnel are well trained in the nature and dynamics of domestic violence against immigrant, refugee, and non-status women, including risk-factors that may be specific to this group, and on the importance of coordination and risk related information-sharing and federal and provincial privacy legislation.

3. As part of the updating of the Violence Against Women in Relationships (VAWIR) Policy, MPSSG and the MAG should ensure that the policy includes a specific focus on the needs and circumstances of abused immigrant, refugee, and non-status women and their children.

4. As part of the updating of the VAWIR Policy, MPSSG and MAG should work with police and Citizenship and Immigration Canada (CIC) to develop policy or protocols to address situations where domestic violence is perpetrated against non-status women. These should ensure that: women and their children’s safety is a priority; offenders are arrested for their abuse; any pending removal issues arising from
women’s lack of status be put “on hold” until custody matters have been resolved; and women are aware of these protections.

5. MPSSG and MAG should ensure that abused immigrant, refugee, and non–status women who do not speak English are provided with a qualified interpreter for all criminal justice matters, both within and outside the court, including at the time of the initial police response.

Medium-term

6. MPSSG should ensure that all its contracted victim-serving agencies receive adequate training on the importance of coordination and risk related information-sharing and on federal and provincial privacy legislation, while appreciating that the safety of women and their children must be the overriding concern.

7. MPSSG and the MAG should make every effort to ensure that language interpreters used to assist abused immigrant, refugee, and non-status women in criminal justice system matters are trained in the nature and dynamics of domestic violence and the particular impacts of such violence for immigrant, refugee, and non-status women and their children.
PROVINCIAL BRIEFING DOCUMENT 6

Criminal Justice System Issues
for Abused Immigrant, Refugee, and Non-Status Women

ISSUE: It is important that the criminal justice system is equipped to respond to the particular circumstances and needs of immigrant, refugee, and non-status women who are victims of domestic or sexual violence.

KEY POINTS

• As the needs of abused immigrant, refugee, and non-status women and their children may differ in some important ways from those of abused Canadian-born women and their children, it is essential that any initiatives designed to improve the criminal justice system’s response to domestic or sexual violence against women, including initiatives being undertaken as part of the Government's Domestic Violence Action Plan, specifically take account of this particularly vulnerable population.

• It is important that criminal justice personnel, including police, Crown counsel, corrections personnel, and victim service workers be well-trained in the particular circumstances and pressures facing abused immigrant, refugee, and non-status women, including risk factors that may be specific to this group.

• In order to address safety issues for abused immigrant, refugee, and non-status women and their children, it is essential that abused immigrant, refugee, and non-status women who do not speak English are provided with a qualified language interpreter for all criminal justice matters, both within and outside court, including for the initial police response.

• It is important that language interpreters used to assist abused immigrant, refugee, or non-status women in criminal justice system matters are trained in the nature and dynamics of domestic violence and the particular impacts such violence may have for immigrant, refugee, and non-status women.

• In order to maximize safety for immigrant, refugee, and non-status women, it is important that the criminal justice system response to domestic violence against immigrant, refugee and non-status women be coordinated with other provincial
service providers responding to domestic violence as well as with Citizenship and Immigration Canada (CIC), including the Canada Border Services Agency (CBSA).

- Lack of coordination between CIC, including CBSA, and police regarding non-status women who have unresolved custody issues involving Canadian-born children 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 arguably 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.

THE CONTEXT

- Many of the women murdered and seriously injured in BC in recent years as a result of domestic violence have been immigrants. Some of the risk-factors and needs relating to domestic violence cases involving immigrant, refugee, and non-status women, many of whom do not speak fluent English, may differ from those involving Canadian-born women.

- In response to the murder of the Lee/Park family in Oak Bay in 2007, two reports were produced: the British Columbia Coroner’s Service Report, Findings and Recommendations as a Result of the Inquest Into the Death of CHUN, Kum Lea; PARK, Moon Kyu; LEE, Christian Thomas Jin Young; PARK, Yong Sun; LEE, Hyun Joon and the report of the Representative for Children and Youth, Honouring Christian Lee.

- In response to these two reports, the BC Government has developed a Domestic Violence Action Plan, led by the Ministry of Public Safety and Solicitor General.

- As part of its Domestic Violence Action Plan, the Province is reviewing and updating the Violence Against Women in Relationships Policy to ensure a coordinated approach across all components of the justice system, setting out roles and responsibilities of all service providers who respond to domestic violence (Ministry of Public Safety and Solicitor General, 2010).

- Front-line workers have described cases of non-status women being threatened with criminal charges if they leave the country with their children before a custody matter has been resolved. There have also been reports from workers of non-status women being removed from Canada while custody matters are still before the courts.

- Research has indicated that in some instances, lack of qualified interpreters as part of the police response to domestic violence against non-English-speaking women in BC have put abused immigrant women at risk of further violence. (Light, 2007).

RECOMMENDATIONS

1. The Ministry of Public Safety and Solicitor General (MPSSG) and the Ministry of Attorney General (MAG) should ensure that the Government’s Domestic Violence
Action Plan, including the criminal justice system components, incorporates a specific focus on the needs and circumstances of abused immigrant, refugee, and non-status women and their children.

2. As part of its review and updating of the Violence Against Women in Relationships Policy, MPSSG and the MAG should ensure that the policy includes a specific focus on the particular needs and circumstances of abused immigrant, refugee, and non-status women and their children.

3. MPSSG and MAG should take steps to ensure coordination between the criminal justice system and Citizenship and Immigration Canada (CIC) to make sure that an abused non-status woman is not removed from Canada while a child custody matter is still before the courts.

4. As part of the Province’s review and updating of the Violence Against Women in Relationships Policy, MPSSG and MAG should work with police and CIC to develop policy or protocols to address situations where domestic violence is perpetrated against non-status women. These should ensure that: women and their children’s safety is a priority; offenders are arrested for their abuse; any pending removal issues arising from women’s lack of status be put “on hold” until custody matters have been resolved; and women are aware of these protections.

5. In order to address the safety of abused immigrant, refugee, and non-status women and their children, MPSSG and the MAG should ensure that abused immigrant, refugee, and non-status women who do not speak English are provided with a qualified language interpreter for all criminal justice matters, both within and outside the court, including at the time of the initial police response.

6. As part of the Domestic Violence Action Plan, MPSSG and the MAG should ensure that all criminal justice personnel are well trained in the nature and dynamics of domestic violence against immigrant, refugee, and non-status women, including risk-factors that may be specific to this group, and on the importance of coordination and risk related information-sharing and federal and provincial privacy legislation.

7. MPSSG should ensure that all its contracted victim-serving agencies receive adequate training on the importance of coordination and risk related information-sharing and on federal and provincial privacy legislation, while appreciating that the safety of women and their children must be the overriding concern.

8. MPSSG and the MAG should make every effort to ensure that language interpreters used to assist abused immigrant, refugee, and non-status women in criminal justice system matters are trained in the nature and dynamics of domestic violence and the particular impacts of such violence for immigrant, refugee, and non-status women and their children.

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REFERENCES


Ministry of Public Safety and Solicitor General.


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PROVINCIAL BRIEFING DOCUMENT 7

Coordination of Responses to Immigrant, Refugee, and Non-status Women who are Victims of Violence in BC

Coordination among those who respond to abused immigrant, refugee, and non-status women and their children is key to their safety. Coordination is necessary regarding policies, practices, and the provision of accurate and consistent information to women. Cross-sector bodies, joint initiatives, inter-agency protocols, information-sharing, and cross-training are some of the ways in which coordination can be facilitated.

Recommendations

Immediate

1. BC’s inter-ministry body responsible for violence against women should consult with Citizenship and Immigration Canada (CIC) and Department of Justice on the proposed Balanced Refugee Reform Act to ensure that safety of abused refugee women is considered a priority. This is particularly important regarding the concept of “safe countries of origin”, the proposal to hold hearings within two months, and a proposed bar on claimants receiving Humanitarian and Compassionate (H&C) consideration.

2. As part of the Province’s Domestic Violence Action Plan, in the review and updating of the Violence Against Women in Relationships Policy, Ministry of Public Safety and Solicitor General (MPSSG) and Ministry of Attorney General should work with police and CIC to develop policy or protocols to address situations where domestic violence is perpetrated against non-status women.

3. Government ministries and police responsible for developing a police domestic violence investigation policy and developing and implementing training on a provincial standard risk assessment tool as part of the Domestic Violence Action Plan, should consult with immigrant-serving ministries and agencies.

4. Ministry of Children and Family Development (MCFD) should work closely with immigrant-serving ministries and agencies in the updating of its Best Practice Approaches: Child Protection and Violence Against Women guidelines and subsequent training.
5. MCFD should take steps to ensure coordination and risk related information-sharing with CIC to make sure that both authorities are aware of the concerns and actions of the other in order to protect Canadian-born children whose mothers face removal from Canada.

6. MPSSG should include Immigration and WelcomeBC Branch on any inter-ministry bodies responsible for developing and implementing a response to violence against women. (ongoing)

7. MPSSG, as the lead ministry in responding to violence against women, should proactively reach out to other involved ministries, levels of government, institutions, and community-based organizations on an ongoing basis in order to coordinate policies and practices and share information as appropriate to ensure the safety of abused immigrant, refugee, and non-status women and their children. (ongoing)

8. All inter-ministry bodies responsible for developing and implementing a response to violence against women in BC should consult closely with community-based immigrant-serving organizations. (ongoing)

**Medium-term**

9. A formal relationship should be established between the inter-ministry body charged with ongoing development and coordination of the BC Government’s response to violence against women and the Community Coordination for Women's Safety Program Provincial Working Group.
PROVINCIAL BRIEFING DOCUMENT 7

Coordination of Responses to Immigrant, Refugee, and Non-status Women¹ Who are Victims of Violence in BC

ISSUE: Coordination among those who respond to abused immigrant, refugee, and non-status women is key to the safety of these women and their children.

KEY POINTS

• Lack of coordination may leave abused immigrant, refugee, and non-status women and their children vulnerable to further abuse. Coordination is essential among the criminal and family justice systems, the child protection system, settlement services, language services, health care services, BC Housing, the child care subsidy program, schools, labour and employment programs, community-based support and advocacy services, the private bar, and Citizenship and Immigration Canada (CIC). Coordination is necessary in relation to policies, practices, and the provision of accurate and consistent information to women about immigration and refugee issues, including their rights, obligations, and options.

• Cross-sector bodies, joint initiatives, inter-agency protocols, information-sharing, and cross-training are some of the ways in which coordination can be facilitated.

• As Government develops and implements its new Domestic Violence Action Plan, it is critical that it links on an ongoing basis with existing operational and coordinating initiatives in the community at both the provincial and local levels.

• It is essential that those responding to abused immigrant, refugee, and non-status women and their children understand that, while coordination and risk related information-sharing are key to women and children’s safety, they must be undertaken with an appreciation of:
  o the importance of having appropriate risk management mechanisms in place in order to ensure that information-sharing between agencies does not place women and their children at greater risk;

¹ For purposes of this document, immigrant women may include participants in temporary foreign worker programs such as the Seasonal Agricultural Worker Program or the Live-in Caregiver Program.
the importance of understanding federal and provincial privacy legislation, particularly regarding the potential use of statutory exceptions which allow information to be shared in the public interest or for health and safety reasons in domestic violence cases.

- Women’s access to provincial services such as essential health and dental care, subsidized child care, and subsidized housing while engaged in and awaiting the result of an H&C application varies with the specific status of immigrant or refugee women. Not only is the situation not straightforward, but it includes inconsistencies. For example, lack of coordination between the Federal and Provincial Governments may result in a temporary resident’s eligibility to apply for a work permit, but inability to access subsidized child care in order to take employment.

- Lack of coordination between CIC and the family justice system regarding non-status women who have unresolved custody issues involving Canadian-born children may result in a woman being removed from Canada while a custody case is still in progress, thus leaving her children in the custody of a father who has been violent towards their mother. Such a situation may compromise 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 having to leave her children.

- Lack of coordination between CIC and provincial child protection authorities may result in a lack of information-sharing about the risks facing Canadian-born children if their mother is removed from Canada.

- There is a need for coordination between CIC and provincial Legal Aid in cases involving abused non-status women. Cases such as those involving potential removal from Canada and those involving child custody issues are complex, with serious results for both women and their children. Yet Legal Aid is increasingly difficult or impossible to access in these situations.

- There is a need for coordination between CIC and the police, provincial justice ministries, provincial health ministries, and other provincial services such as health authorities, hospitals, or transition houses regarding the handling of domestic violence cases involving non-status women. The threat of deportation will prevent many women from reporting the abuse or seeking safe shelter, essential health care, or other services, thus putting them and their children at risk by causing them to remain in an unsafe situation.

- While there are federal policies that control some elements of circumstances that may impact so-called ‘mail-order brides’ - women who met their foreign spouse through an international introduction or ‘pen-pal’ agency - there is no coordinated federal-provincial approach or legislative framework to regulate the ‘mail-order bride’ industry.

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2 The controversy around the use of the term ‘mail-order brides’ is acknowledged. In the absence of another more ‘neutral’ term, the term ‘mail-order bride’ is used in this document. However, there is no intent to stereotype or stigmatize immigrant women who have married a Canadian as a result of an introduction or ‘pen-pal’ agency.
• The Community Coordination for Women’s Safety (CCWS) cross-sector Provincial Working Group could play a key role in linking Government coordinating bodies with coordination initiatives already operating in the community. The Working Group could provide Government coordinating bodies with information, suggestions, and feedback from the field. The Government coordinating body could, in turn, provide information updates to the Working Group. In such a way, a dynamic relationship of consultation and information-sharing could inform the work of both the Government and CCWS.

THE CONTEXT

• The need for coordination of responses to domestic violence has been highlighted as a key safety factor in many research, government, and coroner’s reports in recent years (Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, 2003; BC Coroner’s Service, 2009; Critical Components Project Team, 2008; Light, 2007; Representative for Children and Youth, 2009).

• The Ad Hoc Federal-Provincial-Territorial Working Group examining domestic violence responses in Canadian provinces and territories cited the “key lesson learned” in the three-year review process as the “need for comprehensive and coordinated strategies to address...spousal abuse” (Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation, 2003, p. 83).

• The Jury Recommendations arising from the Coroner’s Inquest into the deaths of the Lee and Park Families in Oak Bay approached the issue of coordination from a number of perspectives. The jury recommended that:
  o All police departments work across jurisdictional boundaries as one unit;
  o Special domestic violence units be set up regionally and coordinated with all stakeholders;
  o All updated “K” file information be shared across all jurisdictional lines immediately and with all agencies;
  o Develop a single domestic violence unit across all provincial jurisdictional lines and include all agencies and services.

  (British Columbia Coroner’s Service, 2009).

• The Representative for Children and Youth in her report investigating the death of Christian Lee in Oak Bay recommended:

  That the Ministry of Public Safety and Solicitor General take the lead in a special initiative that focuses on the issue of safety of children and youth in domestic violence situations, by ensuring a coordinated, effective and responsive system in Greater Victoria and throughout British Columbia.

She goes on to say that such a coordinated approach:
...will require the participation of the Ministry of Attorney General, Crown Counsel, Counsel, MCFD and representatives of the RCMP and municipal police forces.

and that such an approach should include, among other things:

Provisions to ensure the system is accessible and understandable to people outside of mainstream culture and language.

(Representative for Children and Youth, 2009).

• The Community Coordination for Women’s Safety (CCWS) Program of the Ending Violence Association of BC (EVA BC), funded by MPSSG, works with communities across BC to support the development of coordinated, cross-sector responses to violence against women. EVA and CCWS are the lead partners in the Safety for Immigrant, Refugee, and Non-Status Women Project of which this Briefing Document is a part. The CCWS cross-sector Provincial Working Group utilizes a solutions-based model to address the challenges of policy and program implementation and resolve systemic issues in the area of domestic and sexual violence in BC. The Working Group is composed of key representatives of a wide range of organizations charged with responding to violence against women and their children in the Province, including police, government ministries, community-based agencies, hospital and educational institutions, and the private bar.

• Examples of cross-sector approaches to this issue exist in other jurisdictions. In the US, for example, the Violence Against Women Act (VAWA) 1994 advocated for a multi-pronged approach that encouraged systems to work together to protect abused women, including specific provisions for abused immigrant women.

• Lack of coordination among front-line responders regarding abused immigrant, refugee, and non-status women is more than simply a matter of efficiency or convenience for the woman. It is a matter of safety, as any factor that results in a woman staying longer in a violent relationship or that prevents her from knowing what services and options are available to her puts her and her children at further risk.

• Front-line workers have reported cases where women without status have called the police about domestic violence, were reported by the police to CIC for being without status, and were subsequently removed from Canada.

• Front-line workers have described cases of non-status women being threatened with criminal charges if they leave the country with their children before a custody matter has been resolved.

• There have been incidents reported in BC and Ontario where CBSA officials have contacted a transition house, waited outside a transition house to apprehend a non-status resident, entered a transition house in search of a non-status woman, or arrived at a hospital after having been alerted that a non-status woman was a patient.
• BC is engaged in a number of senior level coordination initiatives:
  o a Senior Officials Task Force to provide an action plan within 60 days in response to the recommendations of the Coroner’s Jury and the Representative for Children and Youth reporting on the Lee/Park deaths in Oak Bay in 2007;
  o the Violence Against Women Steering Team which consists of representatives from the Ministries of Attorney General (MAG), Public Safety and Solicitor General (MPSSG), Children and Family Development (MCFD), Healthy Living and Sport, Health Services, and BC Housing, and which is currently developing its terms of reference;
  o A secretariat whose mandate is to oversee the development of the BC Government’s Domestic Violence Action Plan.

• A Domestic Violence Action Plan currently being developed by Government includes a number of important initiatives: a domestic violence police investigation policy; a standardized set of bail conditions and terms for high-risk domestic violence offenders; a provincial standard domestic violence risk-assessment tool for first responders; review and updating of the Violence Against Women in Relationships Policy; advanced police training; updating of MCFD’s Best Practice Approaches: Child Protection and Violence Against Women Guidelines; and advanced risk-assessment training for MCFD staff.

• Canadian Council for Refugees has put forward a number of concerns about the proposed Balanced Refugee Reform Act (Bill C-11) which have particular relevance for refugees who have suffered gender-based violence. (Canadian Council for Refugees, 2010).

• Assurance of public consultation on Bill C-11 is welcome, but it must utilize a coordinated federal-provincial-territorial approach including lawyers, community agencies and provincial organizations addressing needs of immigrant, refugee, and non-status women who are victims of violence. The input of these groups is particularly important in relation to:
  o Consideration of the concept of “safe countries of origin” or “democratic countries with robust human rights records” for purposes of fast-tracking the return of failed asylum claimants, as countries otherwise considered “democratic” or “safe” may have poor records in terms of gender-based crimes;
  o The proposal to hold hearings within two months, which may be problematic for refugees who require time to build trust before they can testify freely, such as traumatized women who have been victims of sexual assault or sexual torture;
  o A proposed bar on claimants receiving H&C consideration, which is an important avenue for abused women whose circumstances are not adequately addressed in the refugee system.

RECOMMENDATIONS

1. Ministry of Public Safety and Solicitor General (MPSSG), as the lead ministry in responding to violence against women, should proactively reach out to other involved ministries, levels of government, institutions, and community-based
organizations on an ongoing basis in order to coordinate policies and practices and share information as appropriate to ensure the safety of abused immigrant, refugee, and non-status women and their children.

2. Where appropriate, coordination strategies should be formalized in policy, protocols, and guidelines.

3. To ensure a specific focus on the needs of immigrant, refugee, and non-status women, MPSSG should include Immigration and WelcomeBC Branch on any inter-ministry bodies responsible for developing and implementing a response to violence against women.

4. In order to ensure federal-provincial coordination on matters relating to the safety of abused immigrant, refugee, and non-status women, all inter-ministry bodies responsible for developing and implementing a response to violence against women in BC should consult closely with Citizenship and Immigration Canada (CIC).

5. BC’s inter-ministry body responsible for violence against women should consult closely with CIC and Department of Justice on the proposed Balanced Refugee Reform Act to ensure that safety of abused refugee women is considered a priority. This is particularly important regarding the concept of “safe countries of origin”, the proposal to hold hearings within two months, and a proposed bar on claimants receiving Humanitarian and Compassionate (H&C) consideration.

6. To ensure that community voices are heard and community expertise is utilized, all inter-ministry bodies responsible for developing and implementing a response to violence against women in BC should consult closely with community-based immigrant-serving organizations.

7. To utilize the experience and expertise of community-based organizations and professionals working in the area of violence against women, including violence against immigrant, refugee, and non-status women, a formal relationship should be established between the inter-ministry body charged with ongoing development and coordination of Government’s response to violence against women and the Community Coordination for Women’s Safety Program Provincial Working Group.

8. To ensure that needs of abused immigrant, refugee, and non-status women are taken into account, Government ministries and police responsible for developing a police domestic violence investigation policy and developing and training on a provincial standard risk assessment tool, as part of the Domestic Violence Action Plan, should consult with immigrant-serving ministries and agencies.

9. To ensure that the needs of abused immigrant, refugee, and non-status women and their children are taken into account, Ministry of Children and Family Development (MCFD) should work closely with immigrant-serving ministries and agencies in the updating of its Best Practice Approaches: Child Protection and Violence Against Women guidelines and subsequent training.

10. MCFD should take steps to ensure coordination and risk related information-sharing with CIC to make sure that both authorities are aware of the concerns and actions of
the other in order to protect Canadian-born children whose mothers face removal from Canada.

11. MPSSG, MCFD, Ministry of Housing and Construction Standards, BC Housing, police, hospitals, health authorities, and other provincial services providing protection, assistance, and support to abused non-status women should coordinate with the CIC branch that deals with admission to Canada and CBSA to ensure that abused non-status women who seek help are not apprehended by CBSA and removed from Canada.

12. MPSSG and BC Housing should coordinate with CIC to ensure that abused non-status women receive the protection and assistance they need to apply for both temporary and permanent status through an expedited temporary resident permit (TRP) and H&C process.

13. The BC Government should work with CIC and other federal departments to ensure that abused women and their children have access to services such as essential health care and subsidized child care while engaged in and awaiting the result of an H&C application.

14. Legal Aid and the Ministry of Attorney General should work with CIC to ensure that Legal Aid and other legal advocacy services are provided to abused non-status women facing removal from Canada, especially while a child custody matter is still before the courts.

15. As part of the Province’s Domestic Violence Action Plan, in the review and updating of the Violence Against Women in Relationships Policy, MPSSG and MAG should work with police and CIC to develop policy or protocols to address situations where domestic violence is perpetrated against non-status women.

16. MPSSG should ensure that all its contracted victim-serving agencies receive adequate training on the importance of coordination and risk related information-sharing with CIC and immigrant-serving ministries and agencies and on federal and provincial privacy legislation, while appreciating that the safety of women and children must be the overriding concern.

17. The BC Government should cooperate with CIC and the Department of Justice to develop a coordinated approach to protecting so-called ‘mail-order brides’, including legislation and policy to regulate the operations of international introduction agencies.

18. The BC Government should work with CIC to help ensure that accurate, complete, and consistent information in their own language is provided to immigrant, refugee, and non-status women, including participants or prospective participants in temporary foreign worker programs, about their rights, responsibilities, and options, both before they come to Canada and immediately upon their arrival.
REFERENCES


Ministry of Public Safety and Solicitor General.


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 of Immigrant, Refugee, and Non-Status Women Project.
PROVINCIAL BRIEFING DOCUMENT 8: EXECUTIVE SUMMARY

Training on Violence Against Immigrant, Refugee, and Non-Status Women

It is essential for the safety of women and children that those in positions to respond to violence against immigrant, refugee, and non-status women be well trained. Lack of adequate training on domestic and sexual violence, including complexities and risks of this violence for immigrant, refugee, and non-status women, may put women and children at increased risk. Domestic violence poses a real danger for immigrant, refugee and non-status women, as it does for Canadian-born women. A significant number of immigrant women and their families have been murdered or seriously injured by husbands, ex-husbands or other family members in BC.

Recommendations

Immediate

1. Any training developed as part of BC’s Domestic Violence Action Plan must include a focus on the needs of immigrant, refugee, and non-status women and their children.

2. Any inter-ministry committee developing or implementing training as part of BC’s Action Plan should include Immigration and WelcomeBC Branch.

3. Provincial ministries serving women victims of violence and their children should work closely with federal and provincial ministries serving immigrants and with community-based immigrant and women-serving agencies to develop and deliver training curricula and resources. (ongoing)

4. Responders should be cross-trained with staff in other sectors, agencies, ministries, and levels of government wherever possible and appropriate, including personnel from Citizenship and Immigration Canada, to facilitate information-sharing and encourage a coordinated approach. (ongoing)

5. Training curricula and other resources should address both domestic and sexual violence and their potential impact on women and their children who are seeking status in Canada. (ongoing)

6. Training should include information that addresses the following factors integral to violence against immigrant, refugee, or non-status women (ongoing):
   • Need to identify safety as a priority in all actions and decisions regarding abused immigrant, refugee, and non-status women and their children;
• Importance of understanding privacy legislation from a safety perspective;
• Nature and dynamics of violence and how it may affect immigration and refugee claims;
• Risk factors that may be exacerbated by immigrant or refugee status or lack of status;
• Particular vulnerabilities of temporary foreign workers and of 'mail-order brides';
• Relationship between child protection and safety for immigrant, refugee and non-status women;
• Need to coordinate and share risk related information among federal and provincial responders;
• Importance of having appropriate risk management mechanisms in place;
• Need for effective referral processes for immigrant, refugee, and non-status women;
• That a woman’s need for an interpreter is a key safety issue;
• That women who have been traumatized by gender-based violence or face certain cultural pressures may need their cases to be handled by females;
• Women’s need for accurate information about their rights, options, obligations, and status.

Longer-term

7. Effective methods should be found to educate immigration and family law lawyers about domestic and sexual violence and immigration matters respectively and the importance of coordinating with each other regarding the best interests of immigrant, refugee, or non-status clients and their children who are victims of violence.
PROVINCIAL BRIEFING DOCUMENT 8

Training on Violence Against Immigrant, Refugee, and Non-Status Women

ISSUE: It is essential for the safety of women and their children that all those who are in a position to respond to violence against immigrant, refugee, and non-status women be adequately trained.

KEY POINTS

• Lack of adequate training on domestic and sexual violence, including the particular complexities and risks of these forms of violence for immigrant, refugee, and non-status women and the particular needs arising out of these circumstances, may put women and children at increased risk.

• Domestic violence represents a very real danger for immigrant, refugee, and non-status women as it does for Canadian-born women. Since 1996, a significant number of immigrant women and their families have been murdered or seriously injured by their husbands, ex-husbands, or other family members in BC.

In April 1996 in Vernon, Mark Chahal shot and killed his estranged wife, Rajwar Gakhal and eight family members, as well as himself, in the worst mass murder in the province’s history.

In July 2003, Rajinder Atwal stabbed his daughter Amandeep to death in a car near Cache Creek because he objected to her love affair with a schoolmate.

In December 2003, Denise Purdy was murdered by her husband, Kelvin Purdy, in Nanaimo.

On October 18, 2006, pregnant schoolteacher Manjit Panghali was killed in Surrey by her husband Mukhtiar Panghali. Her brother-in-law, Sukhvinder Panghali was also charged with offences related to the murder.

On October 19, 2006, Port Coquitlam nurse Gurjeet Kaur Ghuman was shot in the face and blinded by her estranged husband, Paramjit Singh Ghuman, who then killed himself.

1 For purposes of this document, immigrant women may include participants in temporary foreign worker programs such as the Seasonal Agricultural Worker Program or the Live-in Caregiver Program.
On October 29, 2006, Navreet Kaur Waraich was stabbed to death by her husband, Jatinder Singh Waraich in Surrey.

On July 5, 2007, school principal Shemina Hirji was killed in Burnaby five days after marrying Narinder Cheema who had a criminal record for violent offences.

On September 4, 2007, Peter Hyun Joon Lee murdered his wife, Sunny Yong Sun Park, their six-year old son, Christian, and his wife’s parents in Oak Bay on Vancouver Island.

On August 28, 2009, Yan Lin was stabbed to death along with her ex-husband in Richmond. Her second husband, Chang Xi Wang, who had a history of violence against Yan Lin, was charged with the killing.

On September 21, 2009, Lesney Valencia, mother of five, was murdered in Burnaby. Her estranged partner, Oswill Vergara, was charged with the murder.

On January 5, 2010, Kamaljit Singh Dhanoa was charged with the murder of his wife, Tejinder Kaur Dhanoa, mother of their two small children, in Surrey.

• A particular focus of training on violence against immigrant, refugee, and non-status women should be on the laws, policies, and guidelines governing the rights and obligations of this client group, in order that immigrant, refugee, and non-status women have access to the rights, privileges, and services to which they are entitled, including accurate, consistent information.

• The full range of responders must be well-trained in domestic and sexual violence against immigrant, refugee, and non-status women, as an inadequate response by any service provider or any component of the system may place women or their children in jeopardy. These include: criminal and family justice system personnel, victim service and other anti-violence workers, health care providers, child protection workers, social assistance workers, BC Housing personnel, labour and employment programs, immigrant and multicultural agency personnel, settlement workers, English as a second language workers, interpreters, legal aid workers, and the private bar.

• It is essential that those responding to abused immigrant, refugee, and non-status women and their children understand that, while coordination and information-sharing are key to women and children’s safety, they must be undertaken with an appreciation of:
  o The importance of having appropriate risk-management mechanisms in place in order to ensure that information-sharing between agencies does not place women and their children at greater risk.
  o The importance of understanding both federal and provincial privacy legislation, particularly regarding the overriding concern for the safety of women and their children.

• Comprehensive training - including information on both domestic and sexual violence in general, as well as a specific focus on the circumstances, needs, and
rights of immigrant, refugee, and non-status women - must be provided on an ongoing basis in order to address the needs of a mobile work force.

- The expertise of both community-based workers and lawyers who are knowledgeable and experienced in serving abused immigrant, refugee, and non-status women is key to developing and delivering effective training on the issue of violence against women and its particular relevance in the context of immigrant and refugee claims.

- Cross-sector training best utilizes available expertise and encourages collaborative and coordinated approaches to practice.

- It is important that any new government training initiatives developed as part of BC’s Domestic Violence Action Plan include a focus on immigrant, refugee, and non-status women and their children.

THE CONTEXT

- Mary Ellen Turpel-Lafond, in her report on the murder of Christian Lee, wrote:

  Domestic violence occurs throughout the world and it cuts across social, cultural, economic and religious lines. Immigrant women who are abused by their partners have needs particular to their experiences as newcomers to the Canadian social service systems and justice systems.

  and

  If an immigrant woman has been sponsored by her partner...she may fear deportation if the sponsorship breaks down. An abusive partner may use the woman’s immigration status against her; that is, threaten deportation if she reports the abuse to authorities. Often, the woman lacks information about her rights and options.” (Representative for Children and Youth, 2009, p.61).

- Some important steps have been taken in BC to address the particular circumstances of immigrant, refugee, and non-status women and their children who are victims of domestic or sexual violence. These include, for example:
  
  - Funding of 12 Multicultural Outreach programs, now in the Ministry of Public Safety and Solicitor General;
  
  - Implementation of three regional consultations by Immigration and WelcomeBC Branch (formerly Multiculturalism and Immigration Branch of the Ministry of Attorney General) to bring together the settlement/English Language Services for Adults (ELSA) and anti-violence sectors to increase the safety and well-being of immigrant and refugee women;
  
  - Ministry of Housing and Social Development policy regarding suspension of sponsorship debt collection and interest accrual in cases of abuse;
  
  - It is also worth noting that, while there are significant restrictions on the provision of provincial services to women who do not have legal status in Canada, Victim
Services, Stopping the Violence programs and Transition Houses can provide services to women regardless of their immigrant or refugee status\(^1\).

- However, much remains to be done in order to afford maximum protection to abused women and their children, including the provision of adequate training to the full range of domestic violence responders.

- Most recently, BC’s *Domestic Violence Action Plan* includes: an advanced course for criminal justice professionals involved in domestic violence response, including training on a standardized risk assessment tool; advanced risk assessment training for Ministry of Children and Family Development (MCFD) and other child protection professionals involved in domestic violence response; enhanced domestic violence training within the court system; and specialized training for front-line MCFD staff working with immigrant women.

- Recent consultations by Immigration and WelcomeBC Branch involving both the immigrant settlement/ELSA and the anti-violence sectors indicated the need for training for both sectors. One of the primary needs that emerged from the Vancouver and Lower Mainland consultation, for example, was the need for:

  Better training on a range of topics, with a particular focus on issues related to violence against women for the Settlement/ELSA sector and immigrant and refugee issues for the anti-violence/Victim Services sector, and on cultural sensitivity training for all those working with immigrant and refugee women who are victims of violence. (Light, 2008, p. 4).

**RECOMMENDATIONS**

1. Comprehensive, in-depth training on all forms of violence against women and its potential impact on immigrant, refugee, and non-status women and their children should be provided on a regular basis to those who may be in a position to provide advice, support, or other services to this client group.

2. Any training developed as part of BC’s *Domestic Violence Action Plan* must include a focus on the needs of immigrant, refugee, and non-status women and their children.

3. To address the complexity of domestic and sexual violence against immigrant, refugee, and non-status women, provincial ministries serving women victims of violence and their children should work closely with federal and provincial ministries serving immigrants and with community-based immigrant and women-serving agencies to develop and deliver training curricula and resources.

4. Any inter-ministry committee developing or implementing training as part of BC’s Action Plan should include Immigration and WelcomeBC Branch.

5. Responders should be cross-trained with staff in other sectors, agencies, government ministries, and levels of government wherever possible and appropriate.

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\(^1\) The only exception to this is enhanced services funded by MPSSG through federal transfer payments specifically for permanent residents who have been in Canada for one – three years.
including personnel from Citizenship and Immigration Canada, to facilitate information-sharing and encourage a coordinated approach.

6. Resource material such as training manuals and guidelines on violence against immigrant, refugee, and non-status women should be shared across both provincial and federal levels of government, to facilitate information-sharing and encourage a coordinated approach.

7. Training curricula and other resources should address both domestic and sexual violence and their potential impact on women and their children who are seeking immigrant or refugee status in Canada.

8. Training should include information that addresses the following factors integral to violence against immigrant, refugee, or non-status women:
   • The need to identify safety as a priority in all actions and decisions regarding abused immigrant, refugee, and non-status women and their children;
   • The importance of understanding privacy legislation from a safety perspective;
   • Nature and dynamics of violence and how it may affect immigration and refugee claims;
   • Risk factors that may be exacerbated by immigrant or refugee status or lack of status;
   • Particular vulnerabilities of temporary foreign workers and of ‘mail-order brides’;
   • The relationship between child protection and safety for immigrant, refugee and non-status women;
   • The need to coordinate and share risk related information among federal and provincial responders;
   • The importance of having appropriate risk-management mechanisms in place;
   • The need for effective referral processes for immigrant, refugee, and non-status women;
   • That a woman’s need for an interpreter is a key safety issue;
   • That women who have been traumatized by gender-based violence or face certain cultural pressures may need their cases to be handled by females;
   • Women’s need for accurate information about their rights, options, obligations, and status.

9. Effective methods should be found to educate immigration and family law lawyers about domestic and sexual violence and immigration matters respectively and the importance of coordinating with each other regarding the best interests of immigrant, refugee, or non-status clients and their children who are victims of violence.

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REFERENCES


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 of Immigrant, Refugee, and Non-Status Women Project.
Section 5: Submissions on Specific Reforms in Process
Safety of Immigrant, Refugee, and Non-Status Women

Submission to the Public Commission on Legal Aid

Access to Justice Needed to Keep Immigrant Women Safe
Written and Presented by Kamaljit Lehal, Project Supervising Lawyer
October 2010

Background

1. These submissions were made on behalf of Ending Violence Association of BC (EVA BC) to the Public Commission on Legal Aid on October 8, 2010.

2. These submissions pertain specifically to legal aid services for abused immigrant, refugee and non-status women.

Reasons For This Submission

3. As a result of a high number of murders in BC involving immigrant women in the past few years EVA BC was asked by the Law Foundation of BC to create and initiate a strategic plan on how to increase the safety of immigrant women. As part of the process leading to the development of the strategic plan, 5 focus groups were held across the province: in Vancouver, (2 focus groups were held in Vancouver) Victoria, Prince George, and Kelowna and with groups, organizations and front line workers involved with immigrant women who have been abused.

4. At the focus groups common themes and issues were identified that appeared to perpetuate and put women who were being abused at further risk. Such as:

   a. Immigrant women feared leaving an abusive relationship because they felt their husband would take away their status or feared the spouse would stop his sponsorship of them and they would be deported. A number of examples were provided by focus group participants:
i. There were women either on visitor’s status or no-status that were in the process of being sponsored by a Canadian or Permanent Resident (PR). These women felt if they left or reported the abusive situation the spouse would report them and they would be deported.

ii. Their fears were real. There were actual accounts of non-status women being arrested and referred to immigration for having no status and deported, after they reported abuse.

iii. There are actual accounts of a trend, in Ontario, of immigration enforcement personnel entering transition houses and picking up non-status women for removal.

b. Our immigration system is focused on the removal of non-status women without any regard for ongoing custody issues involving Canadian-born children.

c. Non-status abused women who apply to stay in Canada on Humanitarian & Compassionate (H&C) grounds do not have any status while their application is being processed and thus have no ability to access essential benefits, like healthcare.

d. There were cases of women accruing huge sponsorship debts after an abusive spouse they have sponsored and from whom they have separated due to the abuse, went on welfare.

e. Women who had immigrated, been abused, and who wanted to sponsor their family living abroad to come to Canada, were unable to do so if they were on welfare. They could make an application, which would be rejected and then they would only be eligible to appeal the decision on H&C grounds. A complex situation.

f. There was a clear lack of coordination between the immigration system and family law system.

g. In addition to issues of isolation and no status, there was the common theme throughout the focus groups of the inability of these women to navigate the systems due to language barriers and a lack of interpreters to assist them.

5. The reason that EVA BC is making submissions here today is as a result of not only the critical concerns addressed above, but because of the consistent message we heard from the focus groups that abused immigrant, refugee and non-status women do not have access to legal aid and are therefore denied legal representation to assist in addressing complex issues and systems. This has the unfortunate effect that many of these women, rather than risk being removed from the country and separated from their children, make the difficult choice to stay in their abusive relationship. This undermines their and their children’s safety.

6. Since 2002 legal aid funding and services have declined dramatically in B.C. Core funding has fallen from 88.3M in 2001/2002 to 66.5M in 2010/2011. These
decreases have occurred in spite of significantly rising costs and significant increases in demand for legal aid services.

**Lack Of Legal Aid Or Inadequacy Of Funding**

At present the legal aid being offered to immigrant women facing these complex situations is either inadequate or non-existent.

7. For instance, in the immigration realm:
   a. If a woman is detained (due to her non-status, or in relation to a crime) she is provided with duty counsel while in detention. This is for the 48 hour review and not, necessarily, the subsequent mandatory 7 day and 30 day reviews.
   b. Outside of detention, while facing removal hearings, there is no automatic provision for legal aid.
   c. If a woman is a refugee claimant she is provided legal aid in bits and pieces. To complete the Personal Information Form (PIF) and then to complete the hearing. While other refugees face a similar bifurcation of legal aid services, for women who have taken the courageous step of getting out of an abusive relationship, this significant gap in legal aid services may result in the woman feeling that she has no other option that to return to the abusive context.
   d. Currently the only way for a non-status woman to obtain some kind of status is to file an H&C application. For most of these women it will be too difficult to complete without legal assistance, and currently there is very little, if any, funding for a lawyer to file an H&C application on H&C grounds.

8. In addition, in the family law realm:
   a. When a woman receives family law legal aid the amount of lawyer’s time allocated is inadequate.
   b. Cases involving abused immigrant, refugee, non-status women are particularly complex, not just in terms of the family issues but with the immigration issues as well. These cases require that two legal counsels be appointed, one to deal with the family law matters and one to deal with the immigration matters. That coordination just does not happen. As stated, the effect is women have been removed when they have ongoing custody battles in Canada. As a result, again, women fear leaving the abusive relationship.

9. Prevalent across the board, regardless of whether the legal matter involves immigration law, family law or both, is the fact that there is an almost complete absence of funding for interpreters. Obviously having legal counsel with no ability to communicate with the client is rather pointless. The two have to be facilitated...
where the lawyer and the interpreter is provided in conjunction with one another in order to be effective.

10. Again, the net effect is that these women fleeing abuse, without the ability to access legal representation, are choosing to remain in the abusive relationship and further putting themselves and their children at risk. Thus, lack of legal aid not only denies justice to these women but puts them and their children at great risk. It is a dangerous but inevitable domino effect.

Charter And International Obligations

11. A reminder that:
   a. By continuing to 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; 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.
   b. In response to the Lee/Park Coroner’s Report recommendation that all victims be provided with universally available advocacy services, the Government’s Domestic Violence Action Plan cites the availability of legal aid services throughout BC. This is misleading. Serious underfunding over many years has made it increasingly difficult or impossible to obtain legal aid for many victims of domestic violence.

Summary

12. The aim of the strategic plan developed by EVA BC is to ensure that at all times, the primary and foremost consideration, when it comes to dealing with immigrant women who have been abused, is to keep them safe. It is our objective to ensure that whatever needs to be done within the various systems to effect safety is done. That includes making sure that commissions, such as this one, are alert to the fact that further legal aid cuts cannot be tolerated, that in fact there has to be an increase in their funding to ensure that these women are able to find safety for themselves and their children, through effective legal representation.

For more information please refer to recommendations in our Provincial Briefing Document 1: Legal Aid for Abused Immigrant, Refugee, and Non-Status Women available on our website: www.endingviolence.org.
Background

1. These submissions are on behalf of the Ending Violence Association of BC (EVA BC).

2. These submissions pertain to the requirement for refugee claimants, including women experiencing abuse in their relationships, to provide all documents and attend an interview within 15 days. A number of high profile murders, death reviews and coroners’ reports (BC Representative for Children and Youth, 2009; Seventh Annual Report of Domestic Violence Death Review Committee, 2009; Lee Inquest, 2008) have highlighted the issue of safety for immigrant, refugee and non-status women and have identified the need for reform. Reforms are needed to prevent the revictimization of immigrant and refugee women and to maintain the integrity of our immigration system. Safety of refugee women and their children is a primary concern and it is important that CIC personnel understand the unique risk faced by them in situations of domestic violence.

3. Immigrant and refugee women without status risk staying in an abusive relationship because they fear being deported. This is a very real risk: some have Canadian born children and are not permitted to attend to their custody matters and are removed from Canada and the children are left in the care of the abusive spouse. Also if they take the step out of the abusive relationship, they have no access to basic health care and other benefits without status. If they pursue an H&C application, it is complicated and the process takes years.
4. In our submission we refer to two categories of women who will be affected by the 15 day proposed turnaround time:

a. One is, refugee women coming into Canada fleeing abusive situations. These women need support and their safety concerns need to be assessed. A 15-day turn around may not give these women enough time to gather the necessary documentation. In fact there is a good chance domestic violence would never have been documented or disclosed at all in the woman’s home country due to cultural factors. In some countries reporting domestic violence or fleeing an abusive husband can result in severe penalties being imposed on the woman. It is unrealistic and unsafe to subject women who may never have spoken openly about their abuse before, to collect documentation and be prepared to present their case in Canada within 15 days. These women need time and support to help them with the process, from beginning to end. Such support would include adequate legal aid, competent interpreters, and dealing with CIC personnel who are sensitive to domestic violence issues.

b. The second category at issue pertains to the need for a process for dependent women refugee claimants being provided a process by which they can sever their claim from their abusive spouse and be facilitated and supported in making their own independent claim. For these women the fear of deportation results in them staying in abusive relationships because there is no formal process in place for severing the refugee claim and having their own claims heard. This places them in further danger when subjected to the 15-day turnaround time. Such a severing process should be set up with adequate support for the women (see above). The women should be facilitated and supported in making their own independent claim.

Overview Of Eva’s Recommendations

1. Where there are indicators of domestic violence, the 15-day period should be waived for women refugee claimants.
2. CIC personnel should use a recognized tool or resource to determine whether there are indicators that women and children are at risk of domestic violence.
3. CIC personnel should be trained regarding domestic violence risk factors with the training to apply a safety lens first as opposed to removal.
4. Interpreters should be provided for official meetings during Temporary residence permit and H&C processes
5. To encourage immigrant women to leave abusive relationships, CIC should facilitate them obtaining Temporary Residents Permits (TRP) as well as expediting Humanitarian and Compassionate (H&C) applications.
6. Use a vehicle of providing for TRP and then extending it as is currently done for women victims of trafficking.
7. Create policy and guidelines re: cross sector coordination and referral.
8. A set of guidelines is needed that deals with domestic violence overall for both the immigration and refugee context; just as there are guidelines for vulnerable people and gender persecution in the refugee system. All current policy and regulations need to be screened using a safety impact assessment. Guidelines should address the unique types of information that could be provided to satisfy that domestic violence has occurred.

Eva’s Interest In This Issue

5. As a result of a high number of murders in BC involving immigrant women in the past few years, EVA BC was asked by the Law Foundation of BC to create and initiate a strategic plan on how to increase the safety of immigrant women. As part of the process leading to the development of the strategic plan, a number of forums were held across the province with groups, organizations and front line workers involved with immigrant women who have been abused.

6. We have done extensive research on the issue of immigrant, refugee women and abuse and have determined that they need unique attention to ensure their safety. This includes providing them with sensitive and competent interpreters, and ensuring that those that interview them have some background or training in domestic violence. A number of common themes and issues were identified in our research and forums that appeared to perpetuate and put women who were being abused at further risk. Such as:
   a. Immigrant women feared leaving an abusive relationship because they felt their husband would take away their status or feared the spouse would stop his sponsorship of them:
      i. Example: there were women either on visitor’s status or no-status that were in the process of being sponsored by a Canadian or Permanent Resident). So these women felt if they left or reported the abusive situation the spouse would report them and they would be deported.
   b. Their fears were real, there were actual accounts of non-status women being arrested and referred to immigration for having no status and deported when they reported abuse.
   c. There are actual accounts of a trend, in Ontario, of immigration enforcement personnel attending transition homes to pick up non-status women for removal.
   d. A core theme was that we have an immigration system focused on the removal of non-status women without any regard to ongoing barriers and challenges facing refugee women experiencing abuse including complicated custody issues involving Canadian born children.
   e. Another theme was that non-status abused women who had applied to stay in Canada on H & C grounds did not have any status in the meantime and thus had no ability to access essential benefits.
f. There were cases of women being left with huge sponsorship debts after a spouse they have sponsored abused them and went on welfare.

g. Women who had immigrated and been abused and had no one else here and wanted to sponsor their family abroad were unable to if they were on welfare. They could make an application which would be rejected and then that would involve appealing the decision on humanitarian grounds. A complex situation.

h. There was a clear lack of coordination between the immigration system and family law system.

i. In addition to issues of isolation and having no status, there was a common theme throughout of the inability of these women to navigate the systems due to language barriers and lack of interpreters to assist them.

7. The above are just some of the common themes identified through the forums. Compounding these issues was another critical theme and the REASON we are making this submission IS THAT the 15-day turn around period is just too short for women refugee claimants fleeing from or currently in abusive relationships. They require time and support to help them with the process, from beginning to end, that is obtaining legal aid, having competent interpreters, and dealing with individuals who are sensitive to domestic violence issues in addressing these very complex issues.

8. The unfortunate effect is that many of these women chose to stay in their abusive relationship rather than risk being removed from the country and being separated from their children.

Specifically, and currently the immigration and refugee board needs to offer refugee women and their children safety from abuse by allowing them time beyond the 15 days being proposed.

9. In the immigration realm:

a. If a woman is detained she is provided with duty counsel while in detention. This is for the 48 hour review and not, necessarily, the subsequent mandatory 7 day and 30 day reviews.

b. Outside of detention, while facing removal hearings there is no automatic provision for legal aid.

c. If a woman is a refugee claimant she is provided legal aid in bits and pieces…to complete the PIF and then to complete the hearing. While other refugees face a similar bifurcation of legal aid services, for women who have taken the courageous step of getting out of an abusive relationship, this significant lag in legal aid services may very result in them returning to the abusive context.

d. Currently the only way for a non-status woman to obtain some kind of status is to file an H & C application. For most of these women it will be too difficult to complete without legal assistance, and currently there is
very little if any funding for a lawyer to file a H & C application on H & C grounds.

e. Safety of refugee women and their children is a primary concern and it is important that CIC personnel understand the unique risk faced by them in situations of domestic violence.

f. Is 15 days sufficient for refugee women experiencing domestic violence to have a risk assessment completed? Training of CIC personnel should include a specialized focus on the analysis of risk in cases involving immigrant, refugee and socially isolated women.

g. Strong policy direction at CIC is needed to ensure appropriate risk management for refugee women experiencing domestic violence. Adequate resources for training are also needed. An already under-resourced or patchwork approach to risk assessment will be exacerbated by the 15-day requirement. Fifteen days may be too short for a fully informed risk assessment to be conducted and documented. This timeframe will put women and children at risk of death.

h. Through our focus groups EVA was made aware of supports and services to help refugee women experiencing domestic violence to access resources. The focus groups acknowledged the importance of programs and services that help families respond to and manage issues related domestic violence. With the significant change to the processing now being proposed by CIC, along with pressures related to legal aid cuts – there is a greater risk that domestic violence will be overlooked by CIC. The short turnaround time now being proposed combined with cuts to legal aid services increase the chances that risks posed to refugee women experiencing domestic violence will be overlooked, and women and children put back into a situation of greater risk and face deportation: presumably deported back with their abusive partners or to their home country where the abuser lives.

i. Refugee women and children who experience domestic violence face particular barriers that make it difficult for them to gain access to the justice system and to articulate the dangers they face. A variety of community-based programs provide critical, life saving social safety nets. For example, they play a key role in helping an abused woman navigate the legal system and develop a coordinated safety plan. A provision needs to ensure that these women are referred to these programs and this may not be possible with the proposed 15-day turnaround time. There are significant gaps in the network of support services for refugee women who are victims of domestic violence. We must ensure that a safe context is available for information about abuse to be shared. For many refugee women, mainstream legal structures or personnel will not be the context for disclosing critical information about past violence or perceived risk. Time must be allowed for other community-based programs to facilitate risk assessment and safety planning. Community-based programs can play an important bridging role. Implementation of the CIC reform should include additional support for community-based programs and services,
which can encourage disclosure and provide risk assessment and safety planning. Interpreter services to help immigrant women access services should also be supported. It is unlikely that women will be able to access these services within the 15-day turnaround time.

j. Interpretation services are urgently needed in a variety of immigration contexts to ensure appropriate access to services and legal support. The CIC reforms should include the provision that any woman not fluent in English or who has communication needs is provided with language interpretation by a qualified interpreter in all CIC related matters. Sufficient funds should also be provided to pay for interpretation services for the Legal Aid application and intake process and interviews.

k. Training and minimum practice standards regarding risk assessments will be needed to ensure that only those cases which do not present any risk indicators for violence are streamed into the fast track to deportation and that those CIC justice professionals making the decision about entry into Canada are appropriately trained in risk assessment and risk dynamics specific to domestic violence cases. Strong policy direction from CIC will be needed to avoid an under-resourced or inappropriately fast track approach to risk assessment.

l. Family violence should be an explicit factor for CIC personnel to consider as part of the best interests test for children of refugee women. CIC policy should provide direction that even violence directed solely at the spouse can still be harmful to the child. Current social science research indicates that controlling, coercive patterns of emotional abuse are one of the highest predictors of future risk; where there is psychological abuse between family members the future risk of physical violence is up to 20 times more likely than where there is not. The proposed requirement for the 15-day turnaround would make it difficult to make a fully informed assessment of the best interests of the child. In the interests of protecting the child, every relevant piece of information should be considered by CIC officials including evidence presented at a separate court proceeding such as a child welfare matter or a criminal peace bond etc.

m. These separate but relevant processes will likely not be resolved within the 15-day period.

10. In the family law realm:
   a. When a woman receives family law legal aid the amount of lawyer’s time allocated is inadequate.
   b. Cases involving abused immigrant, refugee, non-status women are particularly complex not just in terms of the family issues but the immigration issues. These cases require that two legal counsel be appointed, one to deal with the family law matters and one to deal with the immigration matters. That coordination just does not happen. As stated the effect is women have been removed when they have ongoing custody
battles in Canada. As a result, again, women fear leaving the abusive relationship.

11. Regardless of whether the legal matter involves immigration law or family law or both, there is an almost complete absence of funding for interpreters. Obviously having legal counsel with no ability to communicate with the client is rather pointless. The two have to be facilitated.

12. The net effect, again is, that these women who are fleeing abuse, without the ability to access legal representation, resources and sufficient time to gather documents, are choosing to remain in the abusive relationship and further putting themselves and their children at risk. Thus the short period of 15 days denies justice to these women and puts them and their children at great risk. It is a dangerous but inevitable domino effect.

Charter And International Obligations

13. A reminder that that:
   a. By continuing to 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.
   b. In response to the Lee/Park Corner’s Report recommendation that all victims be provided with universally available advocacy services, the Government’s Domestic Violence Action Plan sites the availability of legal aid services throughout BC. This is misleading. Serious underfunding over the many years has made it increasingly difficult or impossible to obtain for many victims of domestic violence.

14. Other related Briefing Documents:
   - Federal Briefing Document 1: Needs of Women without Status as a Result of Leaving an Abusive Spouse,
   - Provincial Briefing Document 1: Legal Aid for Abused Immigrant, Refugee, and Non-Status Women, and

For more information pertaining to the Project and Briefing Documents is available on EVA BC’s website: www.endingviolence.org
Summary

15. The aim of the strategic plan developed by EVA is to ensure that at all times the primary and foremost consideration when it comes to dealing with immigrant and refugee women who have been abused is to keep them safe. It is our objective to ensure that whatever needs to be done within the various systems to effect safety is done. That includes making sure that CIC is alert to the fact that the proposed 15 day processing period and interview is inappropriate. It does not allow enough time for CIC to consider and address the challenges facing abused women and children and to help ensure that they are protected from further violence. Specific CIC policy and practice reforms outlined in the attached briefing notes, can help maintain the integrity of our immigration system, while protecting those who are particularly vulnerable.
“The integrity of the immigration system”, this is the platform upon which the proposed new rules for immigrant spouses are being made. These new rules, an aim to crack down on fraudulent or “sham” marriages, propose that a sponsored spouse only be granted a “conditional permanent residence” status. The condition is that the sponsored spouse must stay in the relationship with their spouse for two years before they are formally granted permanent residence status. Sponsored Partners who fail to continue the relationship for the required time period would, apparently, be denied formal permanent status and would be required to leave Canada.

While clearly fraudulent and sham marriages do occur, and this is a very important issue, an equally important question is, will the proposed new rules be able to curtail such conduct? Will those that are so inclined to misuse and abuse the laws be circumvented by placing them on a two year conditional status? It is not unheard of that a sponsor’s initial application is rejected and what follows is years of appealing the decision with an ultimate positive decision only to have the sponsored spouse leave the marriage shortly upon arrival in Canada. During the appeal period those sponsored spouses are very accommodating and loving and show no signs of deception. They would, likely, continue on with the “act” during the two-year conditional status, after which they would follow through with their original plan of leaving the marriage. Those clearly on a mission to gain entry to Canada are, unlikely, to be deterred by a two year conditional permanent status.

More concerning is that when viewed through a safety lens the proposed changes will undermine the integrity of the immigration system as those who are already marginalized, such as women in abusive circumstances, will be re-victimized. There are many accounts of women who have been sponsored to Canada and then abused who are told by their sponsor that if they leave or report the matter they will be deported by
immigration. Being immigrant women, their access to information and justice is limited to non-existent. As such, these women choose not to risk losing their status by leaving the relationship. Instead they remain in an abusive potentially dangerous situation, compromising their safety and that of their children. To now codify, what was previously a myth, into law will no doubt give the actual ammunition to abusive sponsor’s to ruthlessly wield their control over their spouse.

The new rules suggest that for those facing violent relationships there will be a process in place for allowing bona fide spouses and partners to come forward without facing enforcement action. However, there are no details about that process, no information on what sort of evidence will satisfy proof of violence and what training officials will have in dealing with domestic violence issues and assessing lethality factors. With much uncertainty women again will be discouraged from leaving the abusive relationship. The effect, as stated, is re-victimization of an already marginalized and at risk group.

Clearly, ongoing dialogue is required before these broad sweeping rules are put into effect. Clearly, a more thorough safety analysis is required with full details of the analysis disclosed. It is essential that the critical question be asked: will these changes have the desired effect, will these rules prevent fraudulent/sham marriages or deter them in a significant way? If not, then perhaps other methods should be used, such as more training of overseas officers in assessing sponsors at interviews; more teeth given to the enforcement and removals department once a fraudulent or sham marriage is discovered.

It is critical that the integrity of our immigration system is maintained. But we must ensure that immigrant women on Canadian soil are protected from spousal abuse. This is another key component of an immigration system with integrity. The need to circumvent misuse by one group of people should not be attempted at the expense of women and children who are particularly vulnerable to violence. Integrity within our immigration system will only be achieved when the safety of women and children is at the forefront of any changes in the proposed immigration rules.

A series of briefing documents, which recommend changes to the Canadian immigration system are designed to both maintain the system’s integrity and also take steps to help better protect immigrant women and children on Canadian soil. The series of Briefing Documents are available on our website: www.endingviolence.org
Section 6: Lee Inquest
Lee Inquest
Overview of Context and Suggested EVA BC Recommendations
Submitted to Jurors and Presiding Coroner

In order to assist the Jury in developing recommendations, the Ending Violence Association of BC (formerly the BC Association of Specialized Victim Assistance and Counselling Programs) has developed a set of recommendations for consideration by the Jury. The events leading up to the deaths of Sunny Park, Christian Lee, Kum Lea Chun, Moon Kyu Park and the suicide of Peter Lee in Oak Bay in September, 2007 followed a pattern similar to that in other cases involving fatalities, where there were identifiable gaps in the system. Lack of risk identification and analysis, as well as the lack of referrals to programs with expertise in safety planning, were direct contributors to the Oak Bay tragedy as well as other similar tragedies in our province.

Given the experience in other provinces, such as Ontario, we believe that increased attention to risk assessment, early intervention and referrals in BC domestic violence cases, will help prevent such deaths. We recognize there is an immediate need for the development of tools and training in risk assessment for all sectors of the justice and community response systems. For the future safety of women and children in BC, we must ensure that those who have the responsibility to respond and manage these cases have the tools, training and guidelines needed in order to do their jobs.

In terms of financial costs, two 1995 studies, while undoubtedly significantly underestimating 2009 costs, nevertheless provide some figures for the financial impact of violence against women. Day (1995) estimated the measurable cost impact of violence against women in Canada on health and well being to be $1.5 billion annually. Greaves et al (1995) estimated partial costs for criminal justice, heath and social services, education and labour/employment to be $4.2 billion annually. A 1996 BC study estimated partial costs of violence against women at an annual figure of $385 million, rising to an annual figure of $1 billion if the costs of health care, court, services for children and the effects of intergenerational violence are taken into account. Statistics Canada (2007) states that “…studies of the economic costs of violence against women to victims and society estimate that costs to health, criminal justice, social services and lost productivity range in the billions of dollars.” Similarly, the BC Ministry of Public Safety and Solicitor General has acknowledged that the effects of violence against women on already overloaded social and health services are significant for all users of those systems and for the overall economy.

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1 The numbered recommendations were submitted to the Jurors and Coroner. The introductory text in each section has been added to provide some context for readers.
2 The provincial organization with Standing at this Inquest. EVA BC works on behalf of 240 community based victim support, counselling and outreach programs across BC that respond to domestic and sexual violence and child abuse.
Proactive Identification of High Risk Cases

For those with experience in domestic violence response, it is readily apparent that an informed approach to the nuances and challenges of cases involving women in abusive relationships is needed. Common to many cases are inconsistent disclosures, extreme embarrassment and personal conflict in reporting violence to authority figures. Rather than viewing such cases as “weak,” efforts would be better expended in the pursuit of expert evidence to explain these phenomena, which are well-established in social science literature.

1. The Government of British Columbia develop, implement and maintain a comprehensive, coordinated strategy to ensure that risk assessment and safety planning are integrated into all interventions by criminal justice personnel and victim service programs who address domestic violence. This should include the development of a system-wide tool for identifying risk indicators which allows for “red-flagging” of high-risk cases where a more thorough risk assessment and expedited processing is needed.

2. The Ministry of Attorney General (Criminal Justice Branch) and Ministry of Children and Family Development update their Guidelines on handing domestic violence cases and incorporate these Guidelines into policy or in the case of Crown counsel, a comprehensive handbook. Material should include information on risk assessment and how to manage high-risk cases in a coordinated way. Training on these Guidelines is also needed for child protection social workers.

3. The Ministry of Attorney General, in conjunction with the Victoria City Police consider utilizing a transcript of the evidence of Dr. Lori Haskell and the video-taped statement of Sunny Park as a training tool to assist police and Crown Counsel in analyzing the complexities of disclosures and statements provided by women in abusive relationships.

Specialized Expertise

Lack of training was an issue for many system-based responders in recognizing the high risk flags in the Lee case. Adequate funding for existing specialized programs and development of specialized units, where there is a partnership between community based programs with expertise in domestic violence and the justice system, could facilitate early identification of risk and attention to safety planning. The Jury may wish to consider the following recommendations:

4. The Ministry of Public Safety and Solicitor General work with police and community-based victim services to develop and fund specialized domestic violence units in communities where the population warrants such an approach. Such units should embody a coordinated police and community based partnership such as the
Vancouver and New Westminster Domestic Violence Units, who have extremely high success rates.

5. Ministry of Public Safety and Solicitor General funding should be increased for existing Community-Based Victim Services to meet current and growing service pressures, and funding should be provided for additional Community-Based Victim Services in communities without such a program. This would include lowering the community population requirement (currently at 20,000) to be eligible for a Community-Based Victim Service program.

6. While Sunny Park appeared to communicate well in English, there were times in her police interview where she communicated that she did not know the correct words in English for what she was trying to express. There were misunderstandings of her situation because of cultural factors and her lack of knowledge about the Canadian legal system. Adequate funding therefore should be provided for interpreter services to facilitate immigrant women's access to appropriate victim support services and cultural competency training for all responders.

7. The Ministry of Attorney General ensure that adequate funding is in place for domestic violence training of Crown in BC. In Ontario, all Crown prosecutors are required to take a one-week Crown Summer School on Domestic Violence within the first two years of starting in the Crown's Office. They also conduct joint training where Crowns and Victim Service personnel train together, focused on high-risk cases.

8. The Government of British Columbia should provide enhanced ongoing training to all domestic violence responders on challenging service delivery issues such as effective risk identification, safety planning, referral, intensive support for women who are fearful of proceeding in the criminal justice system, and meeting the needs of Aboriginal, Immigrant and Refugee women. Training should also include appropriate cautions about the limitations of using risk assessment tools alone without other coordinated interventions.

9. The Ministry of Attorney General should provide resources to encourage greater use of innovative and effective prosecution strategies and coordinated approaches by Crown counsel in domestic violence cases across the province, including:

   a. Specialized Crown counsel resource units on domestic violence, based on an understanding of the crucial role of community coordination,
   b. The development of practice bulletins and reference to the Ministry of Attorney General VAWIR Policy to provide background information for use by Crown counsel confronted with these cases,
   c. Enhanced professional development opportunities for Crown counsel, including an emphasis on particularly vulnerable domestic violence witnesses.
   d. Encouragement to engage in cross sector integrated case management approaches.
10. The Ministry of Children and Family Development be required to develop tools and training that focus on the safety of the mother being integral to the safety of the child. Tools and training should ensure that practices do not result in holding victims of domestic violence accountable for the offenders’ behaviors and which discourage victims of domestic violence from seeking help.

11. The Government of British Columbia should provide training on domestic violence for settlement workers and English language school instructors including risk identification, responding to initial disclosures and making effective referrals.

**Bail**

It is not clearly evident that information on Sunny Park’s fear or her level of risk was fully documented or adequately considered when consent was given by Crown Counsel to Peter Lee’s release from custody. The Jury may wish to consider the following recommendations:

12. The Ministry of Attorney General develop processes to ensure that concise, thorough and accurate information on risk is obtained, (perhaps in a single page summary) and is submitted to the court at bail hearings in domestic violence cases and that the risk information is revisited and updated at key stages in the development of the case.

13. The Ministry of Attorney General develop a Best Practice manual for Crown to assist them in an informed analysis of the disclosures of women in violent relationships and in prosecuting and managing domestic violence files.

14. The Ministry of Attorney General ensure all Crown counsel are aware, either through policy or a handbook, of the importance of considering an adjournment of a bail hearing, pursuant to section 516 of the Criminal Code, when risk assessment information is incomplete.

15. The Ministries of Attorney General and Public Safety and Solicitor General explore the potential for using the electronic monitoring system at the bail stage on a voluntary basis for those charged with domestic violence related offences.

16. The Ministry of Attorney General ensure prosecution and/or victim assistance contact with the victim in domestic violence cases prior to bail hearings or consent release to ensure that important risk factors and conditions have not been overlooked and to address the implications of release with the victim.

17. The Ministry of Attorney General work with the Ministry of Public Safety and Solicitor General to develop specialized domestic violence prosecution units in medium to large sized Crown Counsel offices. Components would include a designated specially-trained Crown Counsel and police officer to:
a. Act as contacts for other Crown Counsel and police officers,
b. Provide strategic advice on bail hearings, and
c. Provide overall guidance in domestic violence prosecutions on recent social science literature, legal and case law developments.

18. The Ministry of Attorney General, as part of the responsibilities of domestic violence prosecution units, that they provide support to Crown in smaller communities across BC regarding domestic violence cases.

19. The Ministry of Attorney General support amendments to the Criminal Code proposed by other provinces to provide that, in certain circumstances, where an accused is arrested on charges related to domestic violence, the onus will be on the accused to establish why he does not pose a continuing danger and why he should be released on bail.

20. The Ministries of Attorney General and Public Safety and Solicitor General examine enhancement of Corrections programs to address problems related to “no fixed address”, and enhanced management and monitoring of high-risk offenders. This service should not be at the expense of existing and future services to women and children.

21. The Government of British Columbia investigate and consider the use of global positioning system monitoring technology to use for offenders on probation and accused on bail who are charged with domestic violence offences when they pose a risk of violence to children and their mothers.

Referral

Referral to the appropriate Victim Service Program is essential to ensure that victims/survivors are provided with safety planning, information and support throughout the justice system.

22. The Province of British Columbia ensure that all justice, health and social service personal be instructed to refer all victims and survivors of power-based crimes to community-based Victim Service Programs in an appropriate and timely manner. In cases where the police-based Victim Service Program is the first point of contact with the victim (e.g. at the crime scene), the police-based program refer the victims/survivors to the community-based program as soon as practicable.

23. In communities where there exist multi jurisdictions involving more than one police departments/detachments, a protocol be developed by police outlining that one agency will ensure that individuals seeking help and support are not only directed but are received by the proper agency that will follow through on the case.

Information Sharing
Beginning in May of 2003, there were many opportunities for intervention and safety planning for Sunny Park and her family. The failure to appreciate the risk involved, a lack of understanding of how privacy laws may permit information to be shared in high risk cases, and lack of continuity between staff in various agencies dealing with this case, meant that Sunny Park was not effectively referred to the support services in place for assistance with safety planning. Therefore Jury may wish to consider the following recommendations:

24. The Ministries of Attorney General and Public Safety and Solicitor General take the lead in developing a provincial information-sharing and case coordination framework for domestic violence cases, including the criminal and civil systems. These ministries should work in partnership with other concerned ministries, police and with relevant provincial organizations. This protocol should complement and not replace existing provincial policies such as the Violence Against Women in Relationships Policy and existing case coordination protocols at both the local and provincial levels. This framework should address;
   a. Definition of high risk
   b. Responsibility for risk assessment
   c. Need for proactive referrals
   d. Need for coordinated risk and safety planning
   e. Victim service access to key justice system databases

25. Consideration should be given to incorporating a requirement into the police data collection system (PRIME) that, if an incident is a “spousal”, it be noted as such on each entry and that the police member is required to enter information about risk and safety.

26. Consideration be given to ensuring that there is a coordinated radio system in the Capital Regional District whereby each police department and detachment could be afforded the same ‘alert tones’ for high-risk calls.

27. The Ministry of Labour and Citizens’ Services, in consultation with the Ministries of Attorney General and Public Safety and Solicitor General and the Federal Department of Justice, should review the BC and Federal privacy legislation and propose amendments to enable justice system personnel to proactively share information with the victim and victim-serving agencies in domestic violence cases.

**Enforcement of Breaches**

In the Lee case, there were no protective conditions in the bail order with respect to Christian (or his grandparents) as no adequate follow up occurred to determine the level of risk to them created by Sunny’s report to the police and the pending charges, in addition to the looming divorce proceedings. Research has shown that breaches of protective conditions in domestic violence cases and an escalation of violence are serious indicators of increased risk. Peter Lee violated his bail conditions and was not
The importance of the vigorous pursuit of breach charges on an expedited basis or revocation of the accused’s bail in appropriate cases, cannot be overestimated. The Jury may wish to consider the following recommendations:

28. Breaches by domestic violence offenders of peace bonds, bail or probation orders and/or no contact conditions be treated with the utmost seriousness and acted upon in an effective manner by Crown, Corrections and police.

29. The Criminal Justice Branch clarify the Crown’s role in prosecuting breaches of Family Relations Act (FRA) orders, Supreme Court orders, and protective intervention orders under Section 28 of the Child, Family and Community Service Act (CFCSA). Any guidelines produced should be shared with members of the private bar and should also include reference to Crown counsel’s role in liaising with members of the family bar if there is a family law proceeding underway where domestic violence is involved. Such information will better enable members of the family bar to advise clients as to the enforceability of these orders and to coordinate with Crown counsel regarding breaches and safety issues.

30. The Ministry of Attorney General consider procedures for adding no contact provisions in protection orders to include children, family members and/or others, where information exists, to indicate they are also at risk in domestic violence cases.

**Coordination**

31. A senior inter-ministry coordinating body should be established, with an ongoing budget, to coordinate government initiatives to respond to violence against women including domestic violence. This body should have formal links with existing community coordinating initiatives, including Community Coordination for Women’s Safety, as well as with any bodies established to address the needs of Aboriginal, immigrant, or other marginalized victims of domestic violence. This senior government coordinating body should have the authority to develop policy, programs, protocols, and procedures; to undertake monitoring and evaluation activities; and to respond to concerns and take action on recommendations from other coordinating bodies. This body should also be charged with the responsibility for overseeing consideration and implementation of recommended actions in this report.

32. Domestic violence initiatives developed by the Ministries of Attorney General or Public Safety and Solicitor General should be developed in a collaborative fashion with all relevant justice system players, including community-based services.

33. Government ministries should jointly fund local domestic violence coordinating committees or working groups, to facilitate information-sharing, coordination, accountability, and problem-solving at a local level, and direct that representatives of each of the relevant sectors should attend and participate on a regular basis, including justice, health, child protection, organizations serving marginalized groups,
and other responders to women and their children who are victims of domestic violence.

34. Consistent with evidence that uniformly supports the importance of a coordinated response to domestic violence, the VAWIR Policy and the Crown Counsel Spouse Assault Policy should be amended to include a provision for each component of the justice system that it should work in coordination with the other components and should participate in local coordinating mechanisms.

**Criminal Justice Branch Policy**

35. Recognizing the serious nature of domestic violence, the pivotal role that Criminal Justice Branch plays in the justice system response to domestic violence cases and the significant effect that weakening one aspect of the response has on all other elements of the response, the Crown Counsel Spouse Assault Policy:

- should be revised to emphasize the seriousness of these offences and the foremost importance of protection of victims
- should include provisions for a standardized format for ‘Reports to Crown Counsel’ (RCCs) in domestic violence cases that address risk assessment
- should be included in the overall VAWIR policy to communicate willingness to engage in a coordinated approach, or at the very least, the Criminal Justice Branch Spouse Assault policy should reference the VAWIR policy.
- should ensure that children are also considered in all policy and best practice frameworks
- should be augmented by practice bulletins for use by Crown counsel, to be shared with others involved in a coordinated response to domestic violence.

**Civil and Family Law**

36. The Ministries of Attorney General and Public Safety and Solicitor General, identify risk assessment as a critical concern in family law cases.

37. The Ministries of Attorney and Public Safety and Solicitor General play a leadership role in identifying and piloting civil and family law processes to achieve a more coordinated approach. For example, this could include measures to help ensure:

a. appropriate information sharing between family law practitioners and Crown counsel, and in the circumstance where a women has no legal representation in a family law proceeding, criminal related information would be shared with the Family Court,

b. consistency of criminal and civil orders. (e.g. how to avoid conflict between a civil access order and a bail order with a no contact clause),
c. integrated approaches to enforcing protective conditions included in civil and criminal orders,
d. appropriate referrals to specialized community based support services where violence is indicated.

Assaultive Men’s Treatment

While the Ministry of Public Safety and Solicitor General policy addresses offender accountability and has developed guidelines for the delivery of court-ordered services to assaultive men, concern continues to be expressed throughout BC that current services for assaultive men are inadequate, unevenly delivered, and not consistently coordinated with services for women. While the Jury may wish to consider the following recommendations, these recommendations should not be at the expense of existing and future services to women and children.

38. Early access to voluntary and court ordered treatment should be provided to offenders.

39. Monitoring of offender compliance in court ordered programs should be mandatory with meaningful sanctions to hold offenders accountable, including escalating consequences for non-compliance.

40. The Ministry of Public Safety and Solicitor General should have in place concrete, ongoing strategies to ensure that assaultive men’s treatment providers, both within the Ministry and in the community, are adequately trained and supervised, including appropriate contract requirements and accountability and evaluation mechanisms. Providing treatment to abusive, manipulative and violent men is complex and therefore services should be carefully considered and contracts negotiated with only those who adhere to accepted provincial guidelines pertaining to women’s safety and with those with proven histories of coordinating services with the field of responders.

41. Links should be maintained on an ongoing basis between assaultive men’s treatment programs, probation services to ensure compliance with treatment conditions and women’s services.

Implementation

As services and responses for women and children who are victims of violence struggle with significant service pressures, training and policy development needs, $47 million has accumulated in an account the Government of British Columbia has called the Victim Surcharge Special Account. This is an earmarked account specifically for initiatives to address the needs of victims of crime. The $47 million in this fund would go some way towards meeting the urgent needs of women who are victims of violence.

42. An implementation committee should be established by the Government of British Columbia, consisting of government and non-government representatives, to
oversee the implementation of the recommendations in the Inquest into the deaths of Christian Thomas Lee, Yong Sun (Sunny) Park, Kum Lea Chun, Moon Kyu Park and Peter Hyun Lee, as well as the recommendations arising out of the report by the Critical Components Projects Team titled "Keeping Women Safe: Eight Critical Components of An Effective Justice Response to Domestic violence."

a. Implementation Committee representation be made up of those in government with authority to implement new policy and practice as well as those community based provincial organizations with expertise on issues of domestic violence.

b. that the work of the Implementation Committee be funded and not time limited, and that it continue until the Committee is satisfied that all recommendations have been implemented across the province.

43. An amendment to the Coroner’s Act is required so that all ministries and public authorities receiving recommendations resulting from an inquest, inquiry or domestic violence panel would be required to publicly release their planned course of actions.

44. The Government of British Columbia should consider following the lead of Ontario, Manitoba and New Brunswick and establish a death review panel for BC for cases of domestic violence. Any approach adopted should involve experts from community-based anti-violence organizations, including those specifically focused on immigrant and Aboriginal populations.

45. Statistical collection and analysis and production of statistical reports on justice system processing of domestic violence cases should be established as an integral part of the operations of the Ministries of Attorney General and Public Safety and Solicitor General, both as routine practice and to examine specific issues and time periods. Routine statistics should be made publicly available in an accessible format on a regular (monthly or quarterly) basis.

Prevention

46. The Government of British Columbia should embark on a province-wide public awareness campaign related to the building of awareness of violence against women and children, including what the risk factors are, where to access services, how to talk to people who have been abused or those who may be abusing and what to do to seek help. Such a campaign should consider the broad public appeal and parallels in terms of caseload and public monies spent on the Drunk Drivers Counter Attack.
Section 7: Conclusions & Recommendations
Conclusions and Recommendations

The Safety of Immigrant, Refugee, and Non-Status Women Project has met and exceeded the objectives relating to legal education, legal research, and legal aid through its research, construction of informational resources, drafting of briefing documents, and workshops with legal advocates, counsellors, support workers, police and others working in the anti-violence and settlement sectors.

The IWP project has improved understanding of the law and the administration of justice for immigrant, non-status, and refugee women affected by violence. It has improved public access to legal aid, made the justice system more accessible and has created a greater understanding of the issues and barriers faced by these women and children.

The knowledge gained as part of this project informs all the work done by EVA BC on the issue of violence and will continue to foster outcomes in legal education, legal research and legal aid. EVA BC will continue to develop and update its informational resources and continue its practice of consultation with service providers, and encouragement of cross-sector communication and collaboration. As one government representative stated, “I hope that they will do ongoing studies that, if they’re producing papers or other briefing notes with helpful information, will continue to educate the policy makers, to educate the bureaucrats, and educate the public on what we can do in our system to strengthen what we have.”

Representatives from all sectors acknowledge that reform of legislation and policy can take many years. The IWP has met the objective of promoting law reform, but much has yet to be achieved in this area. The IWP has already resulted in several law reform outcomes and will produce further reforms in law, policy and administration of justice as EVA BC continues work on the issues affecting immigrant, refugee, and non-status women who experience violence.

The IWP has succeeded in researching the current legal context by consulting with frontline service workers about the legal and policy gaps they have identified in their work with immigrant, refugee, and non-status women. The project drafted a set of realistic, achievable, short-term and long-term reforms for both provincial and federal governments, in hopes that the IWP will continue to inform those involved in making law and policy beyond the life of the project itself.

All the materials and resources, including the ongoing work of the project, are available on the EVA BC website at www.endingviolence.org.