



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

Canada	US	UK	Australia
<p>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.</p> <p>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.</p> <p>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</p>	<p>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.</p> <p>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.</p> <p>The self-petitioning spouse:</p> <ul style="list-style-type: none"> • 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 	<p>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.</p> <p>The requirements to be met by a person who is the victim of domestic violence and who is seeking <u>indefinite leave to remain in the UK</u> 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.</p> <p>In addition, the UK government's policy focus on human trafficking has primarily viewed women in these circumstances as illegal</p>	<p>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).</p> <p>Application of the FVP depends on eligibility criteria and proof of violence. Acceptable evidence may be judicially or non-judicially determined.</p> <p>Acceptable judicially determined claims include:</p> <ul style="list-style-type: none"> • 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

<p>police, if possible. If the abused woman is required as a witness in a criminal trial, this should also be mentioned.</p> <p>Women who <u>do not</u> 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.</p> <p>Women who <u>do not</u> have permanent resident status and who leave an abusive situation <u>can be at risk</u> of being removed from Canada. If she leaves the relationship, or is thinking about leaving, she must seek legal advice right away.</p>	<p>was terminated, within the two years prior to filing, by divorce related to the abuse.</p> <ul style="list-style-type: none"> • 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. 	<p>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.</p>	<p>dependants (or has recorded a finding of guilt against the spouse or partner).</p> <p>Acceptable non-judicially determined claims include both:</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ set out the evidence on which they have based their opinion that family violence has occurred ○ name the person alleged to have committed it.
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