

# Immigration System: Legal Considerations for Women Who Have Experienced Violence

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Immigration System: Legal Considerations for Women Who Have Experienced Violence is part of a Manual published by Battered Women's Support Services (BWSS) titled:

**“Empowering Non-Status, Refugee and Immigrant Women Who Experience Violence – A woman-centred approach to managing the spectrum of needs from settlement to empowerment”**



## Immigration System: Legal Considerations for Women Who Have Experienced Violence

### Women with Permanent Resident Status

A permanent resident is an Immigrant or a protected person (Refugee) whose application to live in Canada permanently has been approved. They are sometimes referred to as “landed immigrants” (CLEO, 2009, p. 1). Citizenship and Immigration Canada (CIC) issues documents to permanent residents as proof of status. The documents that prove resident permanent status include the Permanent Resident Card, the Record of Landing, and the Confirmation of Permanent Residence (CLEO, 2009). Permanent residents can apply for citizenship after fulfilling the eligibility criteria for Canadian citizenship.

A woman who has permanent resident status will not lose her status or be removed from Canada only because she leaves an abusive relationship, even if her abuser is her sponsor (CLEO, 2009). Her spouse or partner cannot force her to leave Canada. She should contact a family lawyer to discuss access to child support and spousal support.

A woman with permanent resident status will not lose her permanent resident status if she applies for social assistance benefits (also known as income assistance or welfare), although she may be expected to try and get support from her sponsor, unless their relationship ended because of abuse. She should let her caseworker know if this is the case.

### Women Who Have Sponsored an Abusive Spouse or Partner

If a woman sponsored her spouse or partner and wants to withdraw her sponsorship, withdrawal can only occur before a final decision is taken, meaning:

- with respect to sponsorships of overseas cases, if a permanent resident visa has not been issued
- with respect to the spouse or common-law partner in Canada class, up to and prior to the moment the Confirmation of Permanent Residence status document is entered into FOSS, Field Operations Support System (CIC, 2008). FOSS is used to maintain electronic records of applications for permanent residency.

If her spouse or partner has been issued a permanent resident visa, or in the case of inland spousal sponsorship, a Confirmation of Permanent Residence status document has been entered into FOSS, she cannot withdraw her sponsorship and is financially responsible for her spouse or partner for three years. In the past the agreement was ten years and some people are still in a ten-year agreement. She can still get a divorce but her sponsorship obligations will remain.

Her financial responsibility for her spouse or partner will become an issue only if her spouse or partner collects welfare from the Ministry of Housing and Social Development (MHSD).

Sponsors, in signing their undertaking, acknowledge that any income assistance paid to their sponsored relative during the period of the undertaking becomes a debt the sponsor owes

to the provincial government. For spouses this period is for three years from the time the sponsored person becomes a permanent resident. If a woman receives a letter from the provincial government asking her to repay her abuser's welfare payments, she should see a lawyer to determine the best course of action and whether there is some way to challenge the debt given her particular circumstances.

## Women without Status

Women without permanent resident status may have temporary status or no immigration status at all (CLEO, 2009). Some examples of women who do not have status in Canada are:

- women who came into Canada with a temporary resident visa or a temporary resident permit and stayed beyond the expiration of their visas and/or permits;
- women who made refugee claims and were rejected and preferred to stay in Canada illegally rather than return to their country of nationality or country of former habitual residence for fear of an uncertain future, or even death;
- women who made claims for refugee protection based on their spouse or partner's fear or persecution and have separated from their spouse or partner and have difficulty succeeding with their claims; and
- women with inland spousal sponsorship applications in progress who separate from their sponsors because of abuse.

If you have temporary status, or you are a refugee claimant, or your application for permanent resident status is in progress, you should get legal advice right away, before making any decisions about leaving your partner as you may be at risk of being removed from Canada.

## Inland Spousal Sponsorship

A woman, who is in Canada, regardless of whether she has temporary status, can apply for sponsorship under the Spouse or Common-law Partner in Canada class (CLEO, 2009). Some women in Canada do not have the inland spousal sponsorship filed but are waiting for it to be filed. This type of application is processed in Canada and is also called an inland spousal sponsorship (CLEO, 2009). In order to make this application for sponsorship status, a woman needs her sponsor to sign the appropriate documents and agree to the sponsorship. An immigration officer needs to determine that the relationship she is in is genuine. Also, the sponsorship requirements and all other Canadian immigration requirements need to be met for the woman to be given permanent resident status (CLEO, 2009).

When working with a woman living in an abusive relationship, it is important to know that many abusers use a woman's lack of status to control and manipulate her. It is not uncommon for an abuser to promise his partner that he will sponsor her. Some women remain in relationships for years waiting for the sponsorship application to be filed. In other cases, the sponsorship application is filed but then withdrawn before it is finalized, or he continually threatens to do so. Some women believe by simply being married to a Canadian citizen or permanent resident, they will have status in Canada - this is not true: a sponsorship still must be filed.

Women in these types of situations are incredibly vulnerable. Without status they cannot legally work in Canada. Often, they are relying on their abuser for financial support. They may also be worried about being deported without their children. Women in these situations must see an immigration lawyer as soon as possible to discuss their options to remain in Canada.

Inland spousal sponsorship applications take time to process. If a woman has not yet received permanent resident status she should get legal advice immediately if she leaves, or is thinking of leaving, her spouse or partner. If she separates from her spouse or partner, she needs to see an immigration lawyer to decide what options are available to her. For example, she may be able to pursue an application to remain in Canada on humanitarian and compassionate (H&C) grounds.

## Refugee Women

*In all of the type of cases discussed below, a woman needs to see a lawyer to discuss her legal options.*

Many women come to Canada because they are fleeing sexual and gender-based violence, like intimate partner violence, but do not know anything about the refugee system and assume their situation is not covered by the definition of refugee used by CIC. It is important that women in this situation be directed to see an immigration lawyer immediately to discuss their options. Women in these types of situations may be able to file a refugee claim if they were not able to obtain effective protection from their government to stop the violence.

Other women come to Canada and make a claim for refugee protection that is based upon that of their spouse or partner. If a woman has been found to be a Convention refugee then she is not at risk of removal when she separates from her spouse or partner, even if she has yet to receive permanent resident status. Her application for permanent residence will not be affected if she applies for and receives welfare benefits.

If a woman's refugee claim is still being decided by the Refugee Protection Division (RPD) and her claim is based on her spouse or partner's fear of persecution, she may have difficulty succeeding with her claim if she separates from her spouse or partner. Her lawyer may advise her to apply to the RPD to sever her claim and proceed independently. There is no guarantee that her application will succeed. She may argue that her grounds for fearing persecution have arisen during her time in Canada, that the breakdown of her marriage or relationship has created new grounds for fearing persecution in her country of origin.

## Women Who Are "Accompanying Dependents" Under the Entrepreneur Program

Entrepreneurs and their dependents are granted conditional permanent resident status when they enter Canada. They need to establish and actively manage a business in Canada within two years of arrival to fulfill the terms and conditions of landing.

If a woman was admitted into Canada as an accompanying dependent under the Entrepreneur Program, and she wishes to separate from her spouse before they meet the business requirements, she may be at risk of removal from Canada. Unless she is able to start a

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business on her own, she will not be able to fulfill the terms and conditions of landing and will therefore be at risk of removal from Canada.

She should get legal advice. She will need to contact CIC to acknowledge the changes in her circumstances. CIC has the discretion to refer the matter to an adjudicator for an admissibility hearing. She may lose her permanent resident status.

If she loses her permanent resident status, and she will encounter hardship if returned to her country of origin, she can pursue an H&C application to remain in Canada. It will be helpful if she starts the divorce process and negotiates child custody if there are children involved. She should get a lawyer.

### Live-in Caregivers

The Live-in Caregiver Program (LCP), a Canadian immigration program, brings mainly women of colour from developing countries – largely the Philippines – to work in Canada as live-in caregivers. It is a requirement of the LCP that a caregiver live in the employer's home. The LCP requires participants to complete at least two years of employment as live-in caregivers within the three-year period before they can apply for permanent residence in Canada. It is important to note that at this time, there are new regulations that have been proposed but are not yet enforced.

When a live-in caregiver is dismissed or leaves an abusive employer, she must find a new employer, have their offer of employment validated by Service Canada, and obtain a new federal work permit. This may take time, during which she may not work, as this is illegal. Periods of unemployment can delay the date on which she can apply for permanent residence and could cause her to exceed the three years (it is likely to be a 4 year period) within which she must complete two years of work.

For support and legal assistance, live-in caregivers can contact:

#### **West Coast Domestic Workers' Association**

302-119 West Pender Street  
Vancouver, BC V6B 1S5  
Telephone: 604-669-4482  
Toll-free: 1-888-669-4482

#### **Vancouver Committee for Domestic Workers and Caregivers Rights**

2150 Maple Street  
Vancouver, BC V6J 3T3  
Telephone: 604-874-0649

### Humanitarian and Compassionate (H&C) Applications

Immigration law requires people to apply for permanent residence from outside Canada (CLEO, 2009). If CIC is satisfied that there are sufficient humanitarian and compassionate reasons, then applications from within Canada are allowed to be made.

Immigration policies specifically address intimate partner violence and sponsorship withdrawal. CIC officers take into account situations where a woman has left an abusive spouse or partner. A woman should get advice from a lawyer if she is thinking about making an H&C application. An application for permanent resident status on H&C grounds should include, but should not be limited to, the following (CLEO, 2009):

- history and details about the abuse
- when the abuse began and incidents (e.g. date, details, witnesses)
- escalation of abuse, level of fear and risk
- reports from transition houses, shelters, community or women-serving agencies
- reports from medical professionals, hospitals, clinics
- police incidence reports
- court information regarding charges or convictions
- if she is required as a witness in a criminal trial
- best interest of a child
- if there is a non-removal order for a child then separation would cause hardship
- substantial connection to Canada
- if she will be able to support and establish herself in Canada
- hardship she would face if she returned to her country of origin
- customs and culture in her country of origin
- lack of support of relatives and friends in her country of origin
- hardship her children will endure
- if the abuser will have access to her in her country of origin
- political unrest or war in her country of origin
- hardship to any Canadian citizen or permanent resident, such as an elderly person, if she is removed

### Pre-removal Risk Assessment

If a woman has been issued a removal order, she may be able to apply for a pre-removal risk assessment (PRRA) (CLEO, 2009). The PRRA officer will assess the risks she would face if she were returned to her country of origin. Risks assessed must be risks of persecution, torture, cruel and unusual punishment or risk to life (CLEO, 2009). The PRRA officer must then decide if she meets the definition of a Convention Refugee or a person in need of protection.

This application must be offered to a woman by a Canada Border Service Agency (CBSA) officer before removal arrangements can be finalized.

For more information on PRRA see Legal Services Society's Guide to Pre-removal Risk Assessment Applications (available in Chinese, English, and Spanish)  
[http://www.lss.bc.ca/publications/pub.aspx?p\\_id=94](http://www.lss.bc.ca/publications/pub.aspx?p_id=94).

## Legal Assistance

Legal Services Society (LSS) provides a range of free services that may help you if she has a legal problem. LSS is a non-profit organization that provides legal aid to British Columbians. You do not have to have any legal status in Canada to obtain legal aid services.

LSS will pay for a lawyer to represent her if her problem is covered by the legal aid rules, if she meets the financial guidelines and if she has no other way of getting legal help. Legal problems that may be covered by legal aid include criminal charges, mental health and prison issues, serious family problems, child protection matters and immigration problems.

For more information and/or to apply for legal aid:

- Immigration/refugee law
- Child protection law
- Family law
- Criminal law
- Human rights law
- Housing law

### Legal Services Society Call Centre

Lower Mainland: 604-408-2172

Outside the Lower Mainland, toll free:

1-866-577-2525

<http://www.lss.bc.ca>

### Jane Doe Legal Network

The Jane Doe Legal Network serves women and girls whose lives have been impacted by violence and/or abuse. Free legal consultations are available in the following areas:

For more information, you can contact:

#### Pivot Legal Society

678 East Hastings Street

Vancouver, BC

V6A 1R1

Tel: 604-255-9700

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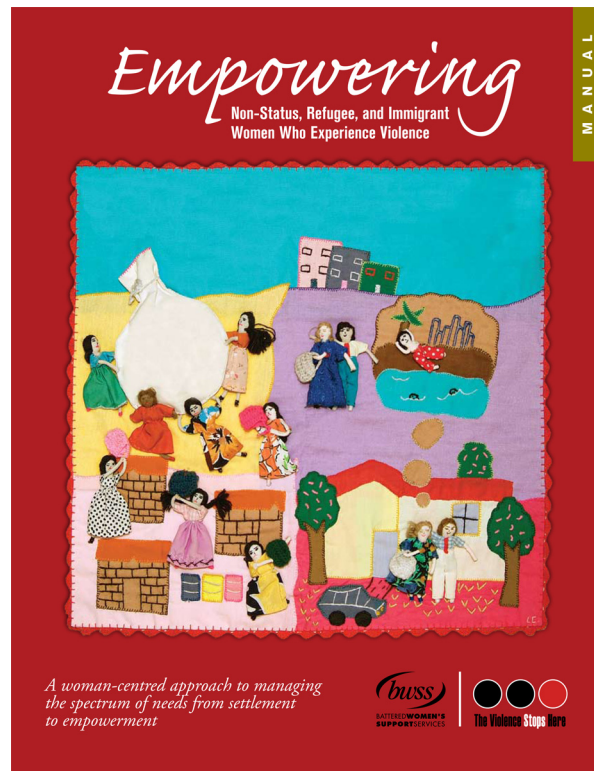
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