



CCR concerns: Violence against Women

Submission to the House Standing Committee on the Status of Women for their study on Violence Against Young Women and Girls in Canada, November 2016

Our comments are focused on the impacts of immigration policies and practices on violence against women.

IMMIGRATION AND REFUGEE POLICIES

1. Conditional Permanent Residence

Conditional Permanent Residence for some sponsored spouse, introduced in 2012, increases the risk of violence for women and encourages them to remain in abusive relationships. Under the Conditional Permanent Residence rules, sponsored spouses subject to the condition may be stripped of their permanent residence and deported from Canada if they separate from their spouse within two years of receiving permanent residence. The rules include an exception for cases of abuse or neglect.

We are pleased that the government has committed to revoking Conditional Permanent Residence (pre-published in the [Canada Gazette, Part 1, October 29, 2016](#)), but in the meantime abuse is happening. The government is proceeding with pursuing cases where the condition may not have been met. According to the notice in the Canada Gazette, implementation is not expected until spring 2017.

In 2015, the CCR consulted over 140 settlement organizations, legal clinics, and women's shelters across the country on the impacts of Conditional Permanent Residence. Based on the results, the CCR concluded that the measure had increased the vulnerability of many sponsored newcomers, particularly victims of domestic violence.

The key findings¹ were:

Many organizations do not fully understand the implications of Conditional Permanent Residence and many are unaware of, or have wrong information about, the exception for victims of abuse or neglect.

- There are many practical and administrative barriers to accessing the exception, causing significant stress among those affected, and leading some to remain in abusive situations rather than apply for the exception.
- It is difficult to access the exception without the support of an advocate – a front-line worker or a lawyer. Many newcomers are isolated and do not have this crucial support.

¹ See the report, *Conditional Permanent Residence: Failure in Policy and Practice*, October 2015, at ccrweb.ca/en/conditional-permanent-residence-report-2015

- The process of applying for the exception has sometimes resulted in retraumatization, due to reported lack of sensitivity training of CIC officials, and long delays in processing.

The CCR is deeply concerned that women continue to fear loss of status and may remain in abusive situations during the coming months until the regulatory change. Other women who have left an abusive relationship face a potentially traumatizing process of asking for an exception or even being called in for possible loss of status.²

The CCR recommends that the government publicly commit to ceasing pursuing loss of status based on non-compliance with the condition.

2. Other spousal sponsorship issues

The CCR is also concerned about the vulnerability of women during long spousal sponsorship process. Members report situations where women stay in an abusive relationship in order to be able to obtain permanent residence and avoid deportation. In other cases, spouses threaten to, or actually withdraw the sponsorship application as a form of intimidation and abuse.

3. Trafficked persons

Trafficking in persons particularly affects women and girls. Although there is a policy guideline directing that trafficked persons be issued Temporary Resident Permits, there is no protection in law. The only reference to trafficked persons in the legislation is a provision in the *Immigration and Refugee Protection Regulations* which makes the fact that a person is being trafficked a factor in favour of immigration detention.³

The CCR recommends a legislative amendment to bring a permanent and fundamental change in policy so that trafficked persons in Canada are protected.⁴

4. PRRA and H&C bars

Since the 2012 changes to the *Immigration and Refugee Protection Act*, persons whose refugee claim has been refused, withdrawn or abandoned face a one year bar on applications for Pre-Removal Risk Assessment (PRRA) or for humanitarian and compassionate considerations (H&C). In the case of claimants from a Designated Country of Origin, the bar on PRRA applications is three years.

These bars have a particular impact on women in an abusive relationship. Not infrequently, a woman accompanying a spouse comes forward with information about the abuse she is suffering after the refugee claim

² According to the figures published in the Canada Gazette, 58,218 spouses and partners along with their children were admitted to Canada as conditional permanent residents in the first three years of the measure (2013–2015). In the same period 307 requests were made for an exception, 75% of which were made by women. Of the 260 requests decided, 79% were approved. The CCR has asked Immigration, Refugees and Citizenship Canada for statistics on loss of permanent residence or removals as a result of non-compliance with the condition but received the response that this cannot be provided “as this data is not tracked by IRCC’s system of record.”

³ *Immigration and Refugee Protection Regulations* s 245 (f).

⁴ CCR, Proposal for legislative amendment to protect trafficked persons, ccrweb.ca/en/proposal-legislative-amendment-protect-trafficked-persons

has been decided. This is often because she lacks a safe opportunity earlier to disclose information or knowledge that she has a right to be free from violence. However, because of the legislative bars, there is no longer a forum for her to bring forward this new information and seek protection from removal back to a situation where she would potentially face continued abuse.

5. Parental consent for family reunification

Women who have been accepted as refugees or permanent residents in Canada and who are seeking family reunification with their children overseas are required to produce a signed consent from the father, or a custody order if the parents have separated. This applies even if the woman was accepted as a refugee by the Immigration and Refugee Board on the grounds that she is a victim of spousal abuse and that the state is unwilling or unable to provide protection. Even if the courts in the country of origin would give the woman a fair hearing, how is she supposed to present her case while she is in Canada and in many cases without the financial means to pay a lawyer in the home country?

The CCR recommends that the government find alternative solutions, which correct gender imbalance and respect the best interests of the child, in such cases.

6. Overall analysis of policies

In 2014 CCR urged IRCC (then CIC) to develop a policy on violence against women and to conduct an analysis of policies and practices from the perspective of violence against women. CCR offered to contribute to such an analysis. The Department did not pursue this suggestion.

The *Immigration and Refugee Protection Act* requires that the Minister's annual report to Parliament contain "a gender-based analysis of the impact of this Act." In the past CCR was in close communication with the GBA Unit in the department and had opportunities to give input to its analysis.

In its most recent report to Parliament⁵, IRCC outlines the measures it has implemented or planned to address "GBA+". Issues of violence against women are not addressed.

The CCR recommends that IRCC consult with NGOs, including the CCR, in developing its plans for the application of GBA+ at IRCC.

IMMIGRATION ENFORCEMENT POLICIES

CCR has asked the Canada Border Services Agency (CBSA) to develop a policy on violence against women. The CCR understands that CBSA is responsible for enforcing the immigration legislation and that CBSA does not have the mandate to grant immigration status in Canada. However, CBSA has an obligation, within the overall government responsibility, to fight violence against women. There are many actions that can be taken within CBSA's mandate to protect the rights of women and to minimize the retraumatization of women who have been victims of a crime of violence. Without a policy, CBSA is in some cases compounding the victimization of the woman and can even be complicit in the abuse (most directly when CBSA arrests and deports a woman on the denunciation of an abusive spouse).

⁵ www.cic.gc.ca/english/resources/publications/annual-report-2016/index.asp#s4

CCR has been informed that CBSA is undertaking some work to explore the possibility of a policy on violence against women and looks forward to developments in this area.

The following is a non-exhaustive list of situations that could be covered by a CBSA policy on violence against women.

Situations of violence within a spousal/conjugal relationship

- Conjugal violence leads to intervention of police. Woman's abusive husband is arrested. Woman is found to be without status in Canada. Woman and child are detained (because there was no space immediately available in a shelter).
- Woman leaves home after enduring abuse for a long time. Her husband had promised to sponsor her but never filed the papers. He also took her identity papers away. She goes to a shelter but she has no status and no papers. What will happen if she goes to CBSA to sort out her situation?
- Abusive spouse kicks the woman out of the home: she has no status in Canada.
- Abusive spouse withdraws pending spousal application and woman faces deportation.
- Abusive spouse contacts CBSA to say that their spouse is in Canada without status. Based on tips provided by the spouse, CBSA finds and arrests the woman.
- CBSA goes to a women's shelter to arrest a woman. All the women in the shelter are traumatized.

Situations of family violence where children involved

In many cases of family violence, there are children involved. Unless custody has already been decided in favour of the mother with no order for access to the other parent, she cannot return to her home country with her children. Similarly, she will be separated from her children if she is removed when a court order prevents her children leaving Canada. The children would have to remain in Canada with a violent parent and have little or no contact with their mother. In some cases, the mother's deportation would leave the children in the foster care system.

- Spousal relationship breaks down; woman has no status in Canada (abusive spouse never filed the sponsorship, or filed it and then withdrew it); one or more children involved. The woman cannot return to her home country with the children as that would be against the law. In some cases CBSA defers removal until custody is resolved, but it is not systematic and sometimes deferral is only granted after initially being refused.
- Spousal relationship has broken down because of violence; a family court order prevents the removal of the children from Canada (even though the woman may have custody of the children). The woman is scheduled for removal.

Enforcement activities

In conducting enforcement activities, CBSA officers may come into contact with women who are victims of a crime of violence. It will not always be immediately apparent. Investigating violence against women should be prioritized over checking a woman's status.

- CBSA conducts a raid on a massage parlour. A large number of CBSA officers are present. The level of CBSA enforcement seems disproportionate to the risk presented. Some of the women present may have experienced violence and may be re-traumatized by the way the raid is carried out.

Communications

Inconsistent information is sometimes given out by officials in response to questions about possible accommodations, including for women victims of violence. Having a clear CBSA policy on violence against women would help to ensure clearer and more consistent messaging.

