



Charitable Registration
#119292464RR0001

WEST COAST LEGAL EDUCATION AND ACTION FUND (LEAF)
555 – 409 GRANVILLE STREET
VANCOUVER, B.C. V6C 1T2
TEL: (604) 684-8772
FAX: (604) 684-1543
E-MAIL: info@westcoastleaf.org
WEBSITE: www.westcoastleaf.org

Position Paper on Violence against Women without Immigration Status*

May 2012

Introduction

Lack of immigration status can leave women isolated, dependent, and vulnerable to abuse. Women without status and with precarious immigration status¹ are often forced to choose between remaining in an abusive relationship, deportation, and living without access to social services or the ability to work. They live under the constant threat of deportation, and are often unable to access help when an incident of domestic violence occurs. Non-status women are particularly vulnerable when experiencing abuse because they are not able to legally work, nor are they able to access income assistance or many other social services if they leave their abusive partners. Women with Canadian-born children are also often prevented from taking their children out of the country to return home with them.

As people without status are forced to live and work underground, it is difficult to estimate how many people are living in this situation in Canada. Estimates range from 20,000 to 200,000 across the country, with many agencies believing the number to be even higher.²

*West Coast LEAF wishes to thank the volunteers who make up the Law and Policy Committee for their work in researching, drafting and revising this position statement. West Coast LEAF also wishes to acknowledge the work of the YWCA on the issue of mothers without immigration status in Canada, and thanks lawyer Lobat Sadrehashemi for her valuable insights during the preparation of this paper.

Disclaimer: Although we do our best to keep all information up to date, since the law changes so often, West Coast LEAF cannot guarantee the legal accuracy or completeness of this document or its contents. This document provides general information only. It is not meant to be used as legal advice for specific legal problems. If you need legal help, please contact a lawyer or advocate.

¹ For the purposes of this paper, “women without status” or “non-status” women refer to women who were born in a country outside of Canada and who are now in Canada with no official immigration status. They do not have permanent residence, citizenship or any other visa permitting them to legally live and work in Canada on a temporary or permanent basis. Precarious immigration status refers to a woman who has been sponsored by a spouse or common-law partner for permanent residency in Canada, but who has not yet obtained that residency and whose application is depend on her sponsor.

² “Non-Status Women in Canada: Fact Sheet”, produced by the Rights of Non-Status Women Network, 2006, online: <http://www.womanabuse.ca/resources/show.cfm?id=7>

Women may find themselves in Canada without status for a number of reasons;³ however, the focus of this paper is on women who are dependent on their spouse⁴ for sponsorship in order to gain status in Canada, and who fear losing their status or have lost their status because they have fled an abusive relationship with their sponsor. These women are particularly vulnerable. Many women in this situation become trapped, and see no choice but to remain in the abusive relationship until their immigration status has been regularized. If they leave the relationship prior to gaining permanent residency, their sponsor may withdraw the application, leaving them without legal status in Canada.

Women without status deserve the same protection and rights as others in Canada. West Coast LEAF believes that substantive equality for women without status requires legislation and policy that allows women who have experienced domestic violence or abuse an independent means to regularize their status in Canada. Where women have lost status as a result of abuse and broken sponsorship promises, they must also be provided with a means to legally support themselves and provide for their basic needs and those of their children. Both the federal and provincial governments must take action to ensure the safety of women without status and their children through access to legal and social services, to help women flee abusive situations and bring abusers to justice.

The Problem: Violence Against Women in Sponsored Relationships

Women who have been sponsored by a spouse in Canada, but whose permanent resident status has not yet been confirmed, have a heightened vulnerability to abuse in the sponsorship relationship. A woman who has been sponsored is dependent on her spouse for her immigration status; she is also likely to be economically dependent on her sponsor given the restrictions imposed on her ability to work or access income assistance. Thus, a sponsored woman who finds herself in an abusive relationship may find herself trapped, with few options for supporting herself or regularizing her status without her abusive spouse.

A woman who has been sponsored by an abusive spouse is forced to live in fear that her spouse will either not follow through with the sponsorship application or, if the application has already been made, that it will be withdrawn and she will be deported. It is well-documented that abusive sponsors prey upon the precarious immigration status of their partners to control their behaviour and stop them from reporting the violence or leaving the relationship.⁵ In a research

³ For example, women may come to Canada with a temporary resident permit or visitor's visa, and overstay their permit. Others may come claiming asylum and have their refugee application rejected, but prefer to stay illegally rather than return to a precarious situation in their home country.

⁴ For the purposes of this paper, spouse refers to both married and common-law relationships, as both are able to apply for sponsorship from within Canada.

⁵ For example, see the YWCA report for reports of emotional, financial, physical, and sexual abuse faced by sponsored women. Also see: *The Role of Canadian Immigration Laws and Policies in Relation to Women's Safety: A Lawyer's Compendium*, published by the Safety of Immigration Refugee and Non-Status Women Project. See also CCR: *Violence Against Non-Status, Refugee, Immigration Women*, accessed online at:

project documenting the experiences of mothers without status conducted by the YWCA, many of the women interviewed reported that their partners would cancel their sponsorship, then sponsor them again, constantly holding the threat of cancellation, and thus deportation, over their heads.⁶

In situations of abuse, many women without status are not able to access social services or the justice system for help. Women have reported being scared to call the police in situations of violence for fear of being deported. This fear is well-founded, as police have the authority to arrest and detain someone on behalf of Citizenship and Immigration Canada. The legal system can be confusing enough for people with English as their first language; a lack of information and resources in their own language can make accessing the legal system even more challenging for immigrant women. Isolation is also often a factor in abusive relationships, and this can be exacerbated for immigrant women who are new to Canada and lack critical support networks. Both of these factors can prevent women from knowing their rights and accessing social services that may be of assistance, such as women's organizations and transition houses.

There is no infrastructure in place to ensure that women without status are able to meet their basic needs and those of their children after leaving an abusive sponsor and applying for permanent residence.⁷ The inability to work legally or gain access to income assistance makes it difficult for non-status women to take care of themselves and their children. Most women without status are dependent on their abusive sponsors for financial support for basic needs such as food, shelter and clothing. Lack of basic medical and dental care is also an issue for women who are fleeing an abusive relationship.

Women who have Canadian-born children with an abusive sponsor are in a particularly precarious position. They are not allowed to leave the country with their children if there is a shared custody or access agreement in place, but they are also not automatically entitled to permanent resident status. Sponsored women may choose to remain in an abusive relationship in order to maintain custody of their children. Further, a mother's lack of status may disadvantage her during a child custody hearing if her former spouse suggests she has the capacity to abduct their children.⁸

The Law: Rights of Non-Status Migrants

The rights and obligations of Canadian citizens and permanent residents when sponsoring

⁶ YWCA Report p.13

⁷ Advocacy organizations have found that an application for permanent residency on humanitarian and compassionate grounds can take up to two and a half years (YWCA report p.5). Citizenship and Immigration Canada lists the current processing time for applications for permanent residency based on humanitarian and compassionate grounds at 20 months on their website. See: <http://www.cic.gc.ca/english/information/times/perm-other.asp>.

⁸ YWCA Report p.23

their spouse for residency are outlined in the *Immigration and Refugee Protection Act*⁹ (“*IRPA*”) and the *Immigration and Refugee Protection Regulations*¹⁰. This legislation governs the process by which a spouse can be sponsored to become a resident of Canada.

The *IRPA* lacks specific protection for non-status women fleeing violence. This is a major shortcoming of the *IRPA* that requires immediate attention.

A sponsor signs a contract with the Government of Canada agreeing to be financially and otherwise responsible for their sponsoree for a period of three years. The sponsor may change their mind about a sponsorship by revoking their application at any time up to the moment a permanent residence visa is issued. This places women in a particularly vulnerable position; if a woman leaves an abusive relationship before receiving permanent resident status, she is at risk of becoming non-status, and could be deported back to her home country.

In the event that a woman leaves an abusive relationship prior to receiving permanent resident status, she can apply to remain in Canada on humanitarian and compassionate grounds.¹¹ However, this is a difficult process to navigate alone, and many non-status immigrant women cannot afford legal assistance. Language barriers, social isolation and a lack of awareness of their rights are also potential roadblocks. Applications for residency on humanitarian and compassionate grounds are not always accepted, and a woman could still be deported for lack of status while her application is being considered.¹²

The situation for a woman without status is further complicated if she has children with her abusive sponsor. Regardless of their immigration status, **the law entitles** women fleeing an abusive partner to take their children with them when they leave, as well as anything that their children need and that belongs to them.¹³ The law also allows women without status to apply for guardianship, custody and access of their children.¹⁴ However, unless a woman without status is able to access resources to hire a lawyer or be appointed one through legal aid, the family law system is virtually inaccessible. Additionally, her former spouse may apply for custody or access of her children, initiating a process in court that she must attempt to navigate. Not able to take her children with her out of the country, a woman without status

⁹ *Immigration and Refugee Protection Act*, 2001, c.27, s. 13.

¹⁰ *IRPA Regulations*

¹¹ The costs and logistics of this application can be quite prohibitive. The current cost for filing a humanitarian and compassionate grounds application is \$550 per adult and \$150 per child. The current processing time listed on the Citizenship and Immigration website for such an application is 20 months; however, the experience of many women has been longer waits, including up to 24 months or longer. Note that a woman can also claim refugee status if she thinks this application may have a chance at succeeding.

¹² For more details, see: <http://www.cic.gc.ca/english/information/applications/guides/5291ETOC.asp>. If a woman has a removal order against her, she may also apply to the Federal Court to stay the removal until there has been a decision on her humanitarian and compassionate grounds application; however, the outcome of this application for stay is by no means guaranteed.

¹³ LSS

¹⁴ YWCA p.9 (service providers)

must often choose between staying in the country illegally and leaving her children.

Canadian Charter of Rights and Freedoms

Everyone in Canada, regardless of their immigration status,¹⁵ enjoys rights protected by the *Canadian Charter of Rights and Freedoms*.¹⁶ Rights protected by the *Charter* include the right to non-discrimination and security of the person. These guarantees are far from the reality for sponsored women in abusive relationships, who are unable to access many of the services available to women who are Canadian citizens, permanent residents, or those in the process of applying for refugee status in Canada.

International Law

Numerous international human rights documents protect the rights of migrants in states in which they lack status.

The *International Covenant on Civil and Political Rights*¹⁷ and the *International Covenant on Economic, Social and Cultural Rights*¹⁸ both guarantee that all persons, regardless of status, are equal before the law and are entitled to the equal protection of the law. The Human Rights Committee that monitors the implementation of the *International Covenant on Civil and Political Rights* has further articulated that the rights enshrined by the Covenant must be guaranteed without discrimination between citizens and non-citizens.¹⁹

The United Nations Committee that oversees the implementation of the *Convention on the Elimination of All Forms of Racial Discrimination*²⁰ adopted a general recommendation in August 2004, encouraging States parties to remove obstacles to non-citizens' enjoyment of economic, social and cultural rights, notably in education, housing, employment and health.²¹ Further, the Committee has noted that states must avoid different standards of treatment of citizens and non-citizens that might lead to the unequal enjoyment of these rights, and has

¹⁵ The 1985 Supreme Court of Canada case of *Singh v Minister of Employment and Immigration*, [1985] 1 S.C.R. 177 confirmed that basic *Charter* rights apply to non-citizens in Canada.

¹⁶ *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter].

¹⁷ ICCPR. Canada acceded to the ICCPR on May 19, 1976. See in particular Articles 2(1) and 26.

¹⁸ ICESCR. Canada acceded to the ICESCR on May 19, 1976. See in particular Articles 2(1), 6 (the right to work), 9 (the right to social security and social insurance), 10 (protection and assistance for the family), 11 (the right to an adequate standard of living, including adequate food, clothing and housing), 12 (the right to the highest attainable standard of physical and mental health, including the right to health care), and 13 (the right to education).

¹⁹ See general comment No. 15 (1986), accessed online at: <http://www.unhcr.ch/tbs/doc.nsf/0/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument>. The Committee noted the following two exceptions: of Article 25 (voting) and Article 12(1) (freedom of movement)

²⁰ CERD. Canada ratified the Convention on October 14, 1970.

²¹ General Recommendation XXX, Committee on the Elimination of Racial Discrimination, 2004, accessed online at: <http://www.unhcr.org/refworld/docid/45139e084.html>

recommended that governments take progressive measures to protect the rights of all residents, regardless of citizenship, to an adequate standard of living including adequate food, clothing, housing, and education.²² Despite these international obligations, women without status in Canada lack equal access to the social services available to those with legal immigration status in Canada.

Canada is under an international obligation to guarantee equality between citizens and non-citizens in the enjoyment of their civil, political, economic, social and cultural rights to the extent recognized under international law. This is far from the reality for women without status, who are unable to work or access social services that are guaranteed to provide a safety net for other Canadian citizens and residents. Canada may be in breach of its international law obligations by failing to uphold the principles enshrined in these treaties.

West Coast LEAF's Position: Supporting women without status

All women living in Canada, regardless of immigration or citizenship status, have a right to live free from violence. No woman, regardless of her immigration status, should be at risk of removal from Canada or separation from her children because she leaves an abusive domestic relationship. Women's safety and security should be of paramount concern in developing immigration and refugee legislation, as well as other law and policy that affects them.

All existing and proposed immigration and refugee statutes, regulations, and practices should be subjected to a gender audit whereby they are assessed to ensure that they do not have a disproportionately negative impact on women and children attempting to apply for status or whose applications for status are pending. In particular, the following issues must be addressed.

Access to Income and Social Services

As sponsored women without status are at increased risk of abuse, women seeking status should be permitted access to safe, legal and sufficient sources of income and other social services to protect their health and safety. Access to income should be available independent of a sponsor and a sponsor's social network where a woman has left an abusive relationship. These benefits should be available without elevated risk of deportation or other state sanction.

Access to the following sources of income and social services are necessary to protect the health and safety of non-status women and their children fleeing an abusive sponsor, and should therefore be available while their applications are pending:

a. Ability to work

²² UN Document: p.25

A temporary work visa may be the most helpful aid to non-status women in precarious situations. In addition to providing a means of subsistence, the ability to earn an income can provide esteem, and a workplace can provide a network of relationships outside the home that help to protect women and children from their abusers. Women fleeing abusive sponsors should be issued work permits while they await the results of their permanent residency applications, as recommended by the YWCA.²³

b. Access to income assistance

The ability to access income assistance can help non-status women bridge the financial gap between leaving an abusive relationship and finding work or obtaining permanent resident status. Income assistance is critical to allow non-status women to meet their immediate needs for food, clothing and housing. Current policies denying women without permanent residency status access to income assistance when they flee their abusive sponsors must be abolished. Further, a woman's reliance on income assistance must not be used as a reason to deny her permanent residency status.

c. Access to housing

Safe and affordable housing (including transitional housing) is the most urgent need of non-status women in peril. When affordable housing is available, a non-status woman has the ability to get away from an abusive situation and protect her children during a very vulnerable time. Women without immigration status who have children and are fleeing domestic violence should be given priority for temporary and transitional housing due to their vulnerable situation. Further, housing should be available to women independently of their sponsor and their sponsor's social networks.

d. Access to health care

Access to affordable health and dental care should be available to non-status women and their children. In BC, women without status and their non-Canadian children cannot apply for Medical Services Plan (MSP) coverage. Mothers with Canadian-born children can obtain MSP coverage for their children, but cannot apply for premium assistance until one year after receiving permanent resident status. The lack of basic health and dental care for women without status is unacceptable; no woman should be prevented from seeking medical treatment due a lack of immigration status. Women without status, and their children, must be eligible for basic health and dental care while they wait for a decision on their immigration applications. Currently, refugees, protected persons²⁴ and refugee claimants and their dependents not covered by a provincial health plan in Canada are able to apply for free medical care through the Interim Federal Health Program.²⁵ The same should be available to

²³ YWCA p.34 MORE DETAILS ON THIS

²⁴ ?

²⁵ <http://www.cic.gc.ca/english/refugees/outside/arriving-healthcare.asp>

women who have lost their status due to fleeing an abusive relationship.

e. Access to education

Children who are residents of BC attend school for free, whereas non-residents must pay international student fees to the BC Ministry of Education. It is up to school boards to define who is a “resident” of BC, and because of this, some women without status have reported difficulty sending their children to public school for free.²⁶ Women without status who have fled abusive sponsors should not face economic barriers to sending their children to public school.

Legal Assistance

Access to legal services for women without status must be a priority. The accessibility of legal aid in BC for family and immigration cases has been deeply eroded in the last 10 years, and current funding levels are insufficient to meet the need. In addition to increased funding and availability of legal aid, access must also be prioritized for those that are the most vulnerable and in need of assistance.

Children and family law

Governments must ensure that women living within Canadian borders without permanent resident status do not experience their lack of status as a liability in Canadian family law decisions, specifically with respect to custody, access and guardianship. Collaboration between the immigration and family law systems could help to ensure that women are not forced to choose between living in Canada illegally and losing their children.

As sponsorship and the threat of deportation adds another layer to the gendered power dynamics of domestic violence, women without status who experience violence must have access to adequate legal aid in order to pursue their custody cases in court. Further, unless women with pending status applications are granted access to income assistance and temporary work visas, the courts must exclude financial considerations and prioritize emotional and physical care in decisions on custody and access.

In situations where children witness or experience abuse, women without status may become involved with the BC Ministry of Children and Family Development.²⁷ In these cases, it is essential that Ministry staff receive training on the unique issues women without status face in relation to child protection and apprehension services.

Regularizing immigration status

Processes that allow women without status to apply for residency outside of their sponsor’s application must be simplified and made more accessible. A lack of income or other

²⁶ YWCA p.32. International student fees can be up to \$12,000 per year.

²⁷ YWCA p.12 (practical info)

necessities should not prevent abused women from staying in Canada and making an application for residency on humanitarian and compassionate grounds, nor from keeping their children with them during the process. Special consideration should be given to applications from women whose sponsorship relationship has broken down and women with Canadian-born children.

The fee for filing an application on humanitarian and compassionate grounds or converting a sponsorship application into a humanitarian and compassionate application is prohibitive and unreasonable for women without status, who often have no income or resources available to them after fleeing an abusive sponsor. This fee should be waived in the case of women who have experienced violence.

Humanitarian and Compassionate applications filed on behalf of women who have suffered domestic abuse in Canada should be reviewed by a dedicated group of immigration officers trained in the dynamics of violence against women. Such practice has precedent in other jurisdictions; in the United States, for example, permanent residency self-petitions filed pursuant to the *Violence Against Women Act*²⁸ are reviewed solely by immigration officers trained in issues related to domestic violence and abuse. Further, all Citizenship and Immigration officials should receive training on the way abuse can manifest itself in a sponsorship relationship, and the way women may be particularly vulnerable to abuse in a sponsorship situation.

West Coast LEAF Recommendations:

Access to social services and protection is paramount to women's safety and freedom from violence. Women without status require formalized protection in immigration and citizenship policies and regulations, as well as access to social services and networks of support in order to quickly and effectively respond to abusive spouses.

All existing and proposed immigration and refugee statutes, regulations, and practices should be subjected to a gender audit whereby they are assessed to ensure that they do not have a disproportionately negative impact on women and children attempting to apply for status or whose applications for status are pending. In particular, the following issues must be addressed.

Our recommendations for improving women's safety are as follows:

1. Ensure that women without status who have fled an abusive spouse have access to a temporary work visa and income assistance.
2. Ensure that safe and affordable housing, including transition housing, is available for women feeling violence.

²⁸ VAWA

3. Increase provincial funding for legal aid and ensure that sufficient hours are allocated to immigration and family law cases.
4. Ensure that other essential social services are accessible to women fleeing an abusive sponsor, including health care and education for themselves and their children, in the same manner as if they had remained in the sponsorship relationship.
5. Streamline processes to allow abused women to regularize their status, including fee waivers for humanitarian and compassionate applications and giving priority for residency to women with Canadian-born children.
6. Publicize available support services and resources for women fleeing violence in a variety of different languages, including information on the rights of women and mothers to live free of violence, as well as basic family law issues. This information should be provided to every newcomer to Canada.
7. Provide training to service workers and Citizenship and Immigration officials on the unique circumstances of women in abusive sponsorship relationships.