

Preventing and Responding to Domestic Abuse against Newcomer, Immigrant, Refugees and No Status Women

Legal Information Booklet 2017



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This booklet contains legal information from reliable sources. It is strongly recommended to consult with a lawyer to obtain legal advice for a woman's particular situation.

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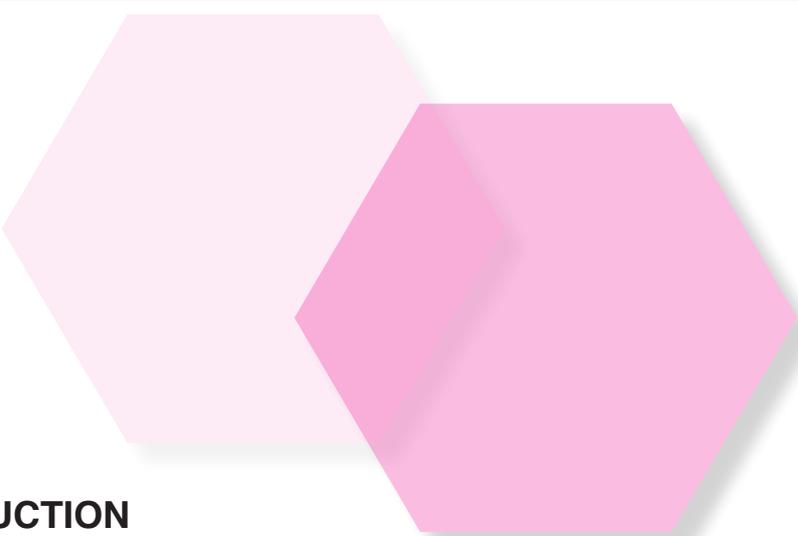
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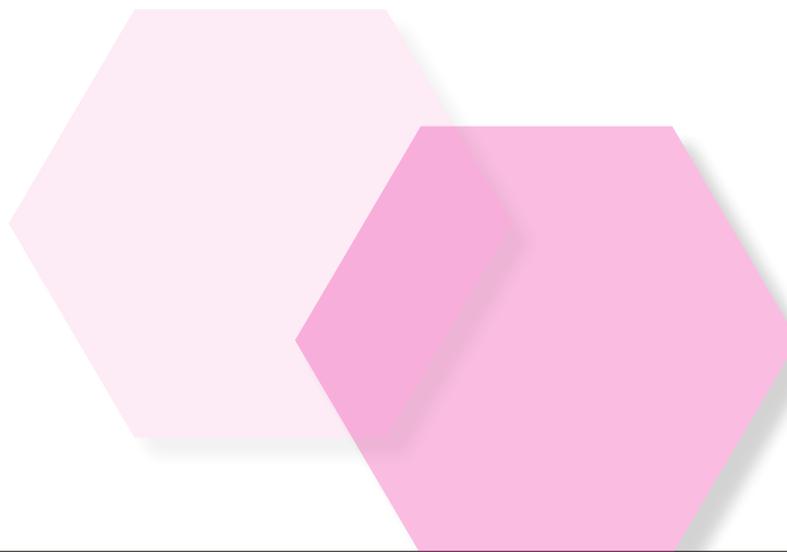
We deeply thank the Straits and Coast Salish peoples including Esquimalt, Songhees and WSNEC communities, for the opportunity to live and work on this territory.

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INTRODUCTION

This resource guide provides important information about domestic abuse and a woman's immigration status. It also includes some commonly asked questions about safety, how to seek help, and other important concerns about leaving an abusive relationship; this guide is not to be taken as legal advice. Rather, it's highly recommended to seek legal counsel for relevant and appropriate advice.

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SECTION 1

BARRIERS TO REPORTING DOMESTIC ABUSE

Although immigrant, refugee, and non-status women experience the same forms of violence in their intimate relationships as those experienced by Canadian-born women, they also face particular barriers. A newcomer woman abused by her spouse or partner may suffer forms of abuse unique to a newcomer's experience.

One form of abuse is the threat of reporting her to immigration authorities to have her deported. Many women fear deportation, even if they have the right to remain in Canada, because their partners may not have fully informed them of their legal rights as a resident of Canada.

Newcomer women also face particular barriers to accessing the justice system and community services. This is often due to a lack of information of their legal rights and recourse, as a result of isolation or language barriers. Newcomer women often fall through the cracks between women's organizations and settlement organizations due to a lack of awareness and training of front-line workers regarding the particular vulnerabilities and challenges they face¹.

How can a front-line worker at a women's shelter help?

You might be able to help by:

- » Letting her know how and where to get legal advice
- » Helping her to gather needed evidence to show that she should be allowed to stay in Canada

1. Canadian Council for Refugees. (September 2010). *Refugees and Immigrants: A glossary*. Retrieved from: <http://ccrweb.ca/en/glossary> and <http://ccrweb.ca/en/how-immigration-status-can-affect-women-situations-violence>

Evidence of abuse or neglect could include:

- » Police reports,
- » Court documents showing charges laid, bail conditions, probation orders, peace bonds and victim impact statements,
- » Letters from women's shelters or other services for women experiencing violence,
- » Medical reports,
- » Photographs,
- » Copies of email messages and recordings of voicemail messages,
- » Sworn statements from friends, family members, neighbours and co-workers giving details about what they know about the abuse or neglect.

How does immigration status affect women in situations of violence or abuse?

Women who are already in Canada may be threatened by their spouses that sponsorship will be withdrawn if they don't "behave". The sponsoring spouse does have the right to withdraw a sponsorship in process up to the moment that the woman is granted permanent residence. This form of control over the woman is often used by abusive spouses to make the woman stay in the relationship².

If a **Refugee-Claimant** woman is abused by her husband or partner during the refugee claim process, she has a right to separate her claim. Some women believe that they will be granted refugee status only if they stay with their abuser, particularly if their claims are based on similar circumstances. Often, a woman doesn't know she has the right to ask for her refugee claim to be reopened if she has

2. *Refugees and Immigrants: A glossary.*

been denied the opportunity to tell her story during the Immigration and Refugee Board hearing³.

Non-Status women are the most vulnerable because they have no legal immigration status in Canada. This often makes them more frightened to call the police in situations of violence because of the fear of deportation. Also, they won't access social services for fear of their non-status becoming known⁴.

Immigrant Women who have status in Canada may be manipulated by their partner in various ways unique to the newcomers' experience. For example, her partner may prevent her from: learning English/French, working, keeping her isolated in the home, threatening to take custody of the children, threatening to isolate her from their community by slandering her character saying she is a bad wife/mother, etc⁵.

Permanent Resident Status (PR): Women with PR status generally cannot lose that status or be forced to leave Canada because she has left an abusive relationship. This is true even if her abusive partner sponsored her application for PR.

A woman who has her **sponsorship withdrawn** while in the PR application process or a woman without immigration status has the right to remain in Canada on humanitarian and compassionate grounds. However, the woman will need a settlement worker or a lawyer to help her in gathering evidence, to understand the legal requirements she must meet, to prepare the application, and all other needed paperwork.

Humanitarian and compassionate grounds applications are not always accepted and there is no automatic protection from

3. *Refugees and Immigrants: A glossary.*

4. *Refugees and Immigrants: A glossary.*

5. *Refugees and Immigrants: A glossary.*

deportation while the application is being reviewed.

*On April 28th 2017, Immigration, Refugees and Citizenship Canada announced the elimination of conditional permanent residence. The condition was introduced in 2012 as a means to deter people from seeking to immigrate to Canada through non-genuine relationships. It required the sponsored spouse or partner to live in a conjugal relationship with their sponsor for two years. With this announcement, any case that was under investigation for non-compliance with the cohabitation condition has ceased⁶.

⁶ Government of Canada. (April 28, 2017). *Government of Canada Eliminates Conditional Permanent Residence for Spouses and Partners: Backgrounder*. Retrieved from: https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/04/eliminating_the_imbalanceforsponsoredspousesandpartnersbyremovin.html

SECTION 2

QUESTIONS IMMIGRANT WOMEN HAVE ABOUT SEEKING HELP

Should I call the police?

Call the police if necessary because this can be used as evidence against the abusive partner⁷. You should not be afraid of calling the police due to the fact that the Immigration authorities might deport you. In Canada, only Immigration, Refugees and Citizenship Canada (IRCC) can make the decision to deport someone, not the police.

A woman should know that if she has no legal status in Canada and she contacts the police, they may contact immigration authorities to see if she has an outstanding immigration warrant in her name. If this is true, front-line workers can help by contacting an immigration lawyer.

How can I apply for Permanent Residence without my husband's help?

A woman's status in Canada may be manipulated by her spouse if she is in an abusive relationship. It is highly recommended that she obtain legal advice through the help of a front-line worker.

My husband is threatening to take my children away if I leave him. What can I do?

If this is the case, don't hesitate to obtain a custody order. This is an order to prevent your spouse from removing the children from Canada. If the children are attending school, send a copy to their schools and notify their teachers, police and, most importantly,

⁷ *Domestic Abuse and Your Legal Rights*.

IRCC to prevent issuance of travel visas and passports.

Make sure to have recent photos of your children, passports, birth certificates. Keep a list of addresses and phone numbers of your spouse's friends and relatives in his home country.

How can I support myself and my children if I leave my husband?

It is highly recommended that you see a family lawyer or Duty Council, which can be arranged by a front-line worker or a domestic violence advocate, to find out how to obtain child support from your spouse/partner.

If you are a PR, you are eligible to work in Canada⁸. Refugees and other immigrants who don't have work visas must obtain one in order to be able to work in Canada. It is important to not obtain false papers to work in Canada as this will affect chances of any legal residency in Canada and could result in deportation.

I have Permanent Resident Status. Am I eligible to receive income assistance and healthcare?

As a Permanent Resident of Canada, you have a right to:

- » Access most social benefits that Canadian citizens receive, including health care coverage and income assistance,
- » Live, work or study anywhere in Canada,
- » Protection under Canadian Law, including the Charter of Rights and Freedoms.

I don't have a status in Canada. Am I eligible to receive income assistance and healthcare?

The Medicare Protection Act defines "resident" as a person who is a citizen of Canada or is lawfully admitted to Canada for permanent

8. YWCA Vancouver. (2009). *Mothers Without Status Guide*. Retrieved from: https://ywcavan.org/sites/default/files/resources/downloads/YWCA%20Mothers%20Without%20Legal%20Status_2010_web.pdf

residence, and makes his or her home in BC.

The Canadian Government has reinstated the Interim Federal Health Program (IFHP), which provides limited, temporary coverage of health-care benefits to people in the following groups who are not eligible for provincial or territorial health insurance:

- » Protected persons, including resettled refugees;
- » Refugee claimants;
- » Certain other groups.

The IFHP coverage includes:

- » In-patient and out-patient services,
- » Services from medical doctors, registered nurses and other licenced healthcare professionals in Canada, including pre and post-natal care,
- » Laboratory, diagnostic, and ambulance services,
- » Basic dental health.

According to the YWCA's Mothers Without Status Guide, before applying for income assistance, a woman without status should consult with an immigration lawyer because her humanitarian and compassionate application can be denied if she is receiving any form of income assistance from Canada⁹. A lawyer can help weigh the risks of this particular situation.

Are my Canadian-born children eligible for government benefits and healthcare?

Yes. In order to receive certain benefits from the BC Government, you must meet the following¹⁰:

- » You live with the child and the child is under the age of 18 years;
- » You are the person primarily involved in the care and upbringing

9. *Mothers Without Status Guide.*

10. *Mothers Without Status Guide.*

of the child;

- » You are a resident of Canada for tax purposes;

You or your spouse/partner are:

- » A Canadian citizen;
- » A Permanent Resident (as defined in the Immigration and Refugee Protection Act);
- » A protected person (as defined in the Immigration and Refugee Protection Act);
- » A temporary resident (as defined in the Immigration and Refugee Protection Act) who has lived in Canada for the previous 18 months, and who has a valid permit in the 19th month other than the one that states, “does not confer status”, or “does not confer temporary status”. If this is the situation, then do not apply before the 19th month.

Will I be deported if I seek help from the police, hospital or shelter?

A woman in an abusive relationship will not be deported if she seeks help. However, if a woman has no current immigrant status in Canada this could affect her ability to legally stay in the country. Therefore, she must receive legal advice from a lawyer¹¹.

Domestic violence **is against the law**. Any person who abuses someone else is committing a crime even if that person is your spouse, partner, child or someone else that you are close to. The police can get involved when someone commits or is threatening to commit a crime¹².

When you talk to the police, you should give them as much information as possible. They need to know if:

11. Student Legal Services of Edmonton. (2015). *Domestic Abuse and Your Legal Rights*. Retrieved from: <http://www.slsedmonton.com/family/domestic-abuse/>

12. Government of Canada. (March 6, 2016). *Immigration and Citizenship: Family Violence*. Retrieved from: <http://www.cic.gc.ca/english/newcomers/before-rights-abuse.asp>

- » Your life is in danger,
- » You are injured,
- » Weapons are involved,
- » Drugs or alcohol are involved,
- » Children or other persons are in the home,
- » There is a history of violence.

You can have an Emergency Protection Order (EPO), Queen's Bench Protection Order (QBPO), restraining order or peace bond against your abuser.

If the police come to your home, they will need to ask questions about what has happened to make sure that everyone is safe. It is important to give the police complete, factual information so that they can work to protect you. The police will probably want to know the details of the violence and any injuries that you have suffered. If you already have an EPO, QBPO, peace bond or restraining order against the person who assaulted you, you should show a copy of it to the police¹³.

Will my partner be deported if I take action?

If you contact the police and your husband/partner is convicted of a crime, he may be deported. This depends on his immigration status in Canada and the seriousness of the crime. It is important that you keep yourself and your children safe. Contacting a women's shelter will not likely result in the deportation of your husband or partner¹⁴.

13. Student Legal Services of Edmonton. (2015). *Domestic Abuse and Your Legal Rights*. Retrieved from: <http://www.slsedmonton.com/family/domestic-abuse/>

14. Maitri. (April 21, 2017). *FAQS About Domestic Violence For Immigrant Women*. Retrieved from: <http://maitri.org/faqs-about-domestic-violence-for-immigrant-women/>

SECTION 3

GLOSSARY OF TERMS

Common Law Partner: a person is in a common-law relationship if they are not married; however, live in a marriage-like relationship at least for one year.¹⁵ This means that your affairs are intertwined. For example, shared bank accounts; declare yourself as common-law spouse on tax forms. However, these are just a few examples and more documentation or evidence may be required to prove a common-law relationship.

Conjugal Relationship: A person outside Canada who has had a binding relationship with a sponsor for at least one year but could not live with their partner¹⁶. This type of relationship can be difficult to prove. But what it means is that both are committed to being together even though they are not married. The relationship has to look like a marriage. The term refers to both opposite-sex and same-sex relationships¹⁷.

Deportation Order: A removal order issued by either a Canada Border Service Agency (CBSA) officer or the Immigration and Refugee Board. It requires the person to leave Canada due to serious offences or serious violations of Canada's immigration law. Before a deportation order is issued a **departure order** is given. The person named on a **departure order** must leave Canada within 30 days. If they do not, a departure order becomes a deportation order¹⁸.

15. Government of Canada. (January 23, 2017). *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide*. Retrieved from: <http://www.cic.gc.ca/english/information/applications/guides/5289ETOC.asp>

16. *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide*.

17. *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide*.

18. *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide*.

Humanitarian and Compassionate Grounds: People who would normally be eligible to become permanent residents of Canada may be able to apply on humanitarian and compassionate (H&C) grounds. H&C grounds apply to people with exceptional cases. Factors that include: how settled the person is in Canada; general family ties to Canada; the best interests of any children involved and; the degree of hardship that the applicant would experience if the request is not granted and they must leave Canada in order to apply for permanent residency¹⁹.

Immigrant: A person who has settled permanently in another country.

Immigration and Refugee Board (IRB): This is the administrative tribunal which is responsible for making decisions on immigration and refugee matters. The IRB decides who is in need of refugee protection among the thousands of applications that are received²⁰.

Immigration, Refugees and Citizenship Canada (IRCC): The Immigration, Refugees and Citizenship Canada facilitates the arrival of immigrants, provides protection to refugees, and offers programming to help newcomers settle in Canada. It also grants citizenship, issues travel documents to Canadians, and promotes multiculturalism²¹.

Medicare Protection Act: The purpose of this Act is to preserve a publicly managed and fiscally sustainable health care system for British Columbia in which access to necessary medical care is based on need and not an individual's ability to pay²².

19. *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide.*

20. *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide.*

21. *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide.*

22. Canada Revenue Agency. (July 2016; June 2017). *Canada Child Benefit and Related Provincial and Territorial Programs*. Retrieved from: <http://www.cra-arc.gc.ca/E/pub/tg/t4114/t4114-16e.pdf>

Non Status: A person who has not been granted to stay in a country, or has stayed after their visa has expired. This term also includes people who have fallen through the cracks of the system, such as a refugee claimant whose application to stay has been denied but not removed from Canada because of a risk that may exist in their country of origin²³.

Permanent Resident: A Permanent Resident is someone who has been given permanent resident status by immigrating to Canada, but is not a Canadian citizen. Permanent Residents are citizens of other countries²⁴.

Refugee Claimant: A person who has fled her country and is asking for protection in another country. We don't know if a claimant is a refugee or not until their case has been decided²⁵.

Sponsor: A sponsor is a person who agrees to a legal “undertaking”, promising to provide financial support, food, shelter and basic needs for a spouse, partner, or child. It is a legal undertaking because by doing so, a sponsor will not need to ask the government for financial support²⁶.

Spouse: In section 3(1) of the Family Law Act defines a person as a spouse as if they are legally married; or has lived with another in a marriage like relationship for at least 2 years; and/or has a child with that person. This term includes both opposite and same sex relationships but does not include common-law partnerships²⁷.

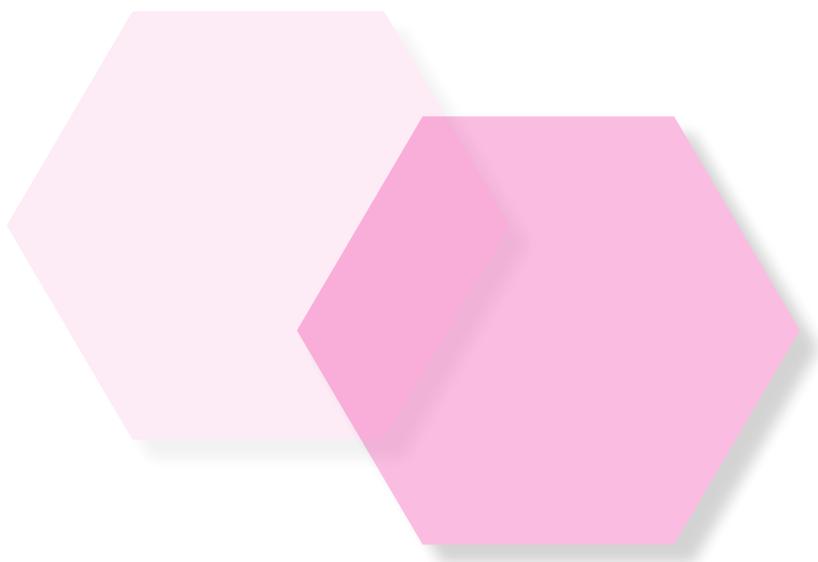
23. Canadian Council for Refugees. (September 2010). *Refugees and Immigrants: A glossary*. Retrieved from: <http://ccrweb.ca/en/glossary>

24. Government of Canada. (April 21, 2017). *Understand permanent resident status*. Retrieved from: <http://www.cic.gc.ca/english/newcomers/about-pr.asp>

25. Canadian Council for Refugees. (September 2010). *Refugees and Immigrants: A glossary*. Retrieved from: <http://ccrweb.ca/en/glossary>

26. Government of Canada. (January 23, 2017). *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide*. Retrieved from: <http://www.cic.gc.ca/english/information/applications/guides/5289ETOC.asp>

27. *Sponsor your spouse, common-law partner, conjugal partner or dependent child: Complete Guide*.



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