

# Immigrant women and domestic violence

*This fact sheet is for people who work with immigrant women. It has important information about domestic violence and a woman's immigration status.*

*It also deals with some of the concerns that women may have. For example, a woman may be afraid that she and her children will be deported if she reports abuse by her spouse or sponsor. She may also be afraid of what could happen to the person who is abusing her.*

On June 29, 2010, the government passed a law to change the Immigration and Refugee Protection Act. There are new rules regarding applications to remain in Canada on humanitarian and compassionate (H&C) grounds. (The new rules do not apply to H&C applications filed before the law was passed.) Other changes, affecting refugee claimants, will be put into place no later than June 29, 2012. Whenever those changes take effect, some of the information in this fact sheet will no longer be accurate.

## Women with permanent resident status

A woman who has permanent resident status 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.

A permanent resident is an immigrant or a protected person (refugee) who has successfully applied to live in Canada permanently.

Every permanent resident receives a document from Citizenship and Immigration Canada (CIC) as proof of status. The documents that prove someone's permanent resident status are the Permanent Resident Card, the Record of Landing, or the Confirmation of Permanent Residence.

Permanent residents are sometimes referred to as "landed immigrants". They can apply to become Canadian citizens.

## Family class sponsorship

Many immigrant women arrive in Canada as family class relatives who have been sponsored by a spouse or partner. The sponsor must be a Canadian citizen or permanent resident, 18 years of age or older, and must meet other required conditions.

A woman who is sponsored from *outside* Canada arrives with a permanent resident visa and becomes a permanent resident when she enters Canada.

Alternatively, a woman may have received permanent resident status after coming to Canada because her spouse or partner applied to sponsor her from *within* Canada.

Below is an explanation of who can be sponsored as a spouse or partner in the family class.

**A spouse:** This is a person the sponsor is legally married to.

**A common-law partner:** This is a person of the same or opposite sex who the sponsor is living with in a conjugal (or marriage-like) relationship, and has lived with for at least one year. Or, this is a person who the sponsor has been in a conjugal relationship with for at least one year but could not live with because of persecution. For example, they might not have been able to live together in a country where common-law or same-sex relationships are against the law or where people are persecuted for being in these types of relationships.

**A conjugal partner:** This is a person of the same or opposite sex who lives outside Canada, and who the sponsor has been in a conjugal (or marriage-like) relationship with for at least one year. A conjugal relationship does not have to include living together.

**Note:** A spouse, or a common-law or conjugal partner must be at least 16 years old.

## Sponsorship breakdown

Sponsors agree to make sure that the people they sponsor have things such as housing, clothes, and food, or the money to pay for these things. A woman experiences “sponsorship breakdown” when the spouse or partner who sponsored her refuses or is unable to provide the financial support that she needs during the sponsorship period.

When a woman is abused by her sponsor, their relationship may reach the point where she cannot look to her sponsor for any kind of help. CIC does not expect an abused woman to remain silent about her partner’s violent behaviour or to live in danger.

Unfortunately, many women who are permanent residents or Canadian citizens believe that they have no rights during their sponsorship period. They believe that they must live with their sponsor throughout the sponsorship period. This is not true. They may also believe their sponsor’s threats to have them deported, even if they are permanent residents.

A permanent resident or a Canadian citizen can leave an abusive partner and her status in Canada will not be affected by that decision alone.

## Women without permanent resident status

Many women are in Canada without permanent resident status. They may have temporary status. For example, they may have work or study permits, or they may have been allowed to enter Canada as visitors and their status has not expired.

They may have no immigration status at all. They may be:

- women being sponsored by a spouse or common-law partner from within Canada,
- refugee claimants, or
- live-in caregivers.

Women who do not have permanent resident status and who leave an abusive situation can be at risk of being removed from Canada.

### **Women being sponsored by a spouse or common-law partner from within Canada:**

A woman who is already in Canada, with or without temporary status, may be eligible for permanent residence under a special category known as the “Spouse or Common-law Partner in Canada class”. The woman and her sponsor make this application and it is processed in Canada. It is sometimes called an “inland spousal sponsorship”. If the marriage or relationship is considered genuine and all other requirements are met, the woman will be given permanent resident status. A “conjugal partner” cannot be sponsored in this category.

A woman who does not have temporary status here may be facing removal for a violation of the Immigration and Refugee Protection Act. In this case, the spousal sponsorship application will not necessarily prevent her removal from Canada. But there may be legal steps she can take to stop the removal.

It is a good idea for women who do not have temporary status in Canada to get legal advice before an application is filed under the Spouse or Common-law Partner in Canada class.

**Sponsorship withdrawal:** Applications for permanent residence take time to process. Some women may stay in abusive relationships because they do not have permanent status in Canada. If a spouse or partner withdraws the sponsorship or the couple separates while the sponsorship application is being processed, the woman risks being removed from Canada. She will no longer be eligible for permanent resident status under the Spouse or Common-law Partner in Canada class. If she leaves the relationship, or is thinking about leaving, **she must get legal advice right away**. She may still be able to pursue an application to remain in Canada on humanitarian and compassionate (H&C) grounds.

Once an application for permanent residence has been approved at the first stage of the process, a woman can apply for a work permit.

Applications to CIC can be made in English or in French.

**Refugee claimants:** Some women who make claims for refugee protection base their claims on their spouse or partner’s fear of persecution. In these cases, a woman may have difficulty succeeding with her claim if she separates from her abusive spouse or partner.

A woman in this situation should get legal advice from her **own** lawyer.

Sometimes, it is possible for a woman to base a refugee claim on her fear of being abused in her own country. She must also show that she cannot get protection from the government there. For example,

she might be from a country where the police do not lay charges against men who physically abuse their wives. If a woman is thinking about making a refugee claim based on fear of domestic violence, she should get legal advice.

A woman can choose to have her claim processed in English or in French. If she does not speak either official language, an interpreter will be provided. CIC does not charge a fee to someone who makes a refugee claim.

A woman facing an admissibility hearing should not wait until the hearing to make a refugee claim because once a removal order is made against her, it is too late for her to claim refugee protection. An admissibility hearing is held before a member of the Immigration Division of the Immigration and Refugee Board (IRB). The hearing takes place after a report that states that the woman is not admissible to Canada because she did not follow immigration rules. For example, if she came to Canada as a visitor and did not renew her status after it expired, she will have broken an immigration rule. In most cases, she will be able to apply for a pre-removal risk assessment (PRRA). There is more information about PRRA on page 6. She can also make an H&C application. There is information about H&C applications later on this page.

**Live-in caregivers:** A foreign domestic worker who has come to Canada under the Live-In Caregiver Program (LCP) is dependent on her employer. She has to complete the required amount of full-time employment before she can apply for permanent resident status. This takes at least 22 months. If she is in an abusive situation, she may be afraid to leave.

Live-in caregivers should know that if they leave their current employer and find other full-time, live-in domestic employment, they can ask CIC to issue them a new work permit.

If a live-in caregiver loses her job and cannot find another one, she can be sent home. But there may be steps she can take to stay in Canada. A woman in this situation should get legal advice.

### **Staying in Canada after leaving an abusive situation: the H&C application**

In general, immigration law requires people to apply for permanent residence from outside Canada. An exception to this rule allows applications from **within** Canada to succeed if CIC is satisfied that there are sufficient humanitarian and compassionate reasons.

It is always best to get advice from a lawyer or a community legal clinic about preparing an H&C application.

CIC policies on H&C applications specifically address domestic violence and sponsorship withdrawal. CIC officers must take into account situations where a woman has left an abusive spouse or partner.

An application for permanent resident status on H&C grounds can be made in English or in French and 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 police, if possible. If the abused woman is required as a witness

---

in a criminal trial, it is important to mention this. This can be a reason for allowing her to stay in Canada at least until she has testified at the trial.

If there is a child who could be directly affected by the decision, CIC must consider the best interests of the child. For example, this could include the woman's own child born in Canada or elsewhere, the woman's child living in her country of origin, or a child in Canada with whom the woman has a close relationship.

The application must show how established the woman is in Canada. This is important to the success of the application. It can take time to get the application ready and for CIC to make a decision. So, it is important that the woman try to create a stable situation for herself. She may need help improving her skills or finding work, housing, or child care.

To prove that she is established, her application could refer to such things as:

- her employment history in Canada,
- job references,
- her level of education,
- any skills updating or training she has received,
- any volunteer work she has done in Canada,
- whether she can speak French or English,
- how long she has lived in Canada,
- letters of support from friends and religious, community, or other groups,
- whether she has children here and whether they were born in Canada,
- whether she has any relatives here who are willing and able to help her,

- what type of assets or savings she has here, and
- whether she has had to rely on social assistance.

If she has relied on social assistance, she should explain why this was necessary. It is very important that she not be on social assistance when she makes her application. If this is not possible, it may help if she has a plan for getting off assistance in the future.

An H&C application should also include information about the hardship a woman would face if she had to return to her country. She should give as much detail as possible about what would happen to her there. It can be helpful if she includes information about the customs and culture in her country. Under the new rules for H&C applications made since June 29, 2010, factors that are considered in deciding whether someone is a refugee are not supposed to be considered in an H&C application. The new rules are not clear, so it is important to get legal advice about the meaning of hardship in an H&C application.

If her removal would have an impact on others living in Canada, such as family members or an employer, she should explain this.

The application must include a thorough and detailed summary of the woman's experience and situation in Canada. CIC may interview the woman about her application but often this does not happen. So, the application may be her only opportunity to tell CIC about her case.

It is also important that she let CIC know about any changes in her situation. Because it can take a while to get a decision, a woman's circumstances may change significantly.

If a woman is facing an admissibility hearing, she should not wait until the hearing to make an H&C application. An IRB member conducting an admissibility hearing does not have to delay the hearing to allow time for CIC to consider and decide an H&C application. And the member does not have the power to let a woman stay for H&C reasons.

**Making an H&C application does not automatically stop a woman's removal from Canada.**

## Pre-Removal Risk Assessment

Almost anyone who is in Canada and who has been ordered removed can apply for a pre-removal risk assessment (PRRA). This is an assessment of the risk a person would face if sent back to her country. If a PRRA application is made within the time limit, the applicant cannot be removed until there is a negative PRRA decision. To be accepted, a woman must meet the definition of Convention refugee or person in need of protection. The application can be made in English or in French. CIC does not charge for a PRRA application.

CLEO's publication called *Pre-Removal Risk Assessment (PRRA)* gives more information. To order a copy or to look at it online, please see the contact information at the bottom of [page 8](#). Some community legal clinics help people with PRRA applications.

## What can happen to an abuser

If a woman contacts the police, the police could charge the abuser with a criminal offence. If the abuser is not a Canadian citizen, a criminal conviction can lead to the abuser being removed from Canada. In most cases, a permanent resident who is ordered deported has a right to appeal that decision to the Immigration Appeal Division of the IRB.

A person who is convicted of an offence that results in "bodily harm" against a member of their family, or their spouse or partner's family, cannot sponsor anyone. This is also true if they are convicted of attempting or threatening to commit this kind of offence.

Often, when a marriage breaks down, a sponsor will refuse to continue supporting the spouse. Sponsors who are unable or unwilling to meet their sponsorship obligations are usually not allowed to sponsor anyone else in the future. And, if someone they sponsored received social assistance, the government will take steps to get the money back from the sponsor.

## Getting legal help

If an abused woman's stay in Canada is at risk, she should get legal advice before she goes to CIC. There may be legal issues affecting her situation that she is not aware of. For example, she may be from a country that Canada is not sending people back to because of the human rights situation there.

She should speak to a family lawyer, especially if she has children. In some circumstances, if there is a court order

under family law that deals with the children, her removal from Canada might violate the order.

If she wants to make an H&C application, she should get legal advice about the application. She should also know that if she does not have status in Canada and she contacts the police, they may decide to contact immigration authorities. The police computer will show if there is an immigration warrant in her name.

For legal advice, a woman can contact a community legal clinic or a lawyer. Community legal clinics give free legal advice to people with low incomes, but not all clinics deal with immigration issues.

To find the nearest community legal clinic go to the Legal Aid Ontario web site at <[www.legalaid.on.ca](http://www.legalaid.on.ca)>. Click on "Contact LAO" then "Community legal clinics". Or you can call Legal Aid Ontario at:

- Toll-free ..... **1-800-668-8258**
- Toll-free TTY ..... **1-866-641-8867**
- Toronto area TTY ..... **416-598-8867**

CLEO produces a booklet called *Getting legal help: Community Legal Clinics in Ontario*. To order a copy or view it online, please see the contact information on [page 8](#).

## Resources for abused women

For information about shelters, the police, and medical, legal, or counselling services, women can contact the Assaulted Women's Helpline.

The Helpline gives free, confidential crisis counselling by telephone and is available 24 hours a day, seven days a week. Friends

and family members of abused women and service providers who work with abused women can also call the Helpline.

The Helpline can help women find groups or services in the language they prefer, including sign language.

### Assaulted Women's Helpline

Greater Toronto Area: **416-863-0511**  
Toll-free (Ontario): **1-866-863-0511**  
Toronto TTY: **416-364-8762**  
Toll-free TTY (Ontario): **1-866-863-7868**  
Web site: [www.awhl.org](http://www.awhl.org)

French-speaking women can also call Fem'aide. This helpline offers support, referrals, and information on woman abuse, including sexual assault, to Francophone women in Ontario. It is available 24 hours a day, seven days a week.

### Fem'aide

Toll-free: **1-877-336-2433**  
Toll-free TTY: **1-866-860-7082**  
Web site: [www.femaide.ca](http://www.femaide.ca)

CLEO produces *Do you know a woman who is being abused? A Legal Rights Handbook*. To order a copy or view it online, please see the contact information on [page 8](#).

CLEO also has an online project called CLEONet, which is for community workers and advocates who work with low-income and disadvantaged communities. CLEONet has hundreds of resources on legal issues, including materials dealing with violence against women. To view resources on CLEONet, go to <[www.cleonet.ca](http://www.cleonet.ca)>.

This publication contains general information for people in Ontario. It is not a substitute for getting legal advice about your particular situation.

**Produced by:** CLEO (Community Legal Education Ontario/Éducation juridique communautaire Ontario)

**With funding from:** Legal Aid Ontario and the Department of Justice Canada

**Thanks to:** the Refugee Law Office and the Inter-clinic Immigration Working Group for their collaboration on this series

This fact sheet is part of CLEO's Immigration and Refugee series. CLEO has free publications on other legal topics as well.

We revise our publications regularly to reflect changes in the law. Our Discard List tells you which publications are out of date and should be thrown away.

For a copy of our current Order Form, Discard List, or to view our publications online, please visit our web site at <[www.cleo.on.ca](http://www.cleo.on.ca)> or call **416-408-4420**.

 **CLEO** February 2011