



## **PROVINCIAL BRIEFING DOCUMENT 3: EXECUTIVE SUMMARY**

### **Family Justice Issues for Abused Immigrant, Refugee, and Non-Status Women**

As needs of abused immigrant, refugee, and non-status women and their children may differ in important ways from those who are Canadian-born, it is essential that family justice initiatives in BC take account of this vulnerable population. Legal Aid funding cuts have meant that many women – including women who do not understand Canada’s legal system or their rights and who are not fluent in English – are forced to represent themselves against husbands who are well-represented by counsel. Barriers and risks faced by these women should establish this group as among the highest priorities for family law Legal Aid.

#### **Recommendations**

##### **Immediate**

1. As part of its *Domestic Violence Action Plan*, the Ministry of Public Safety and Solicitor General (MPSSG) and Ministry of Attorney General should ensure that the family justice process is included as an integral component of the Action Plan and that the Action Plan includes a specific focus on the needs and circumstances of abused immigrant, refugee, and non-status women and their children.
2. As part of the *Domestic Violence Action Plan*, MPSSG and the Ministry of Attorney General (MAG) should ensure that all family justice personnel are well-trained in the nature and dynamics of domestic violence against immigrant, refugee, and non-status women, including risk-factors. (ongoing)
3. The Ministry of Attorney General, in its review of the *Family Relations Act*, should include a specific focus on the needs of abused immigrant, refugee, and non-status women and their children.
4. As part of the updating of the *Violence Against Women in Relationships (VAWIR) Policy*, MAG and MPSSG should ensure both that the family justice process is included as an integral component of the policy and that the policy includes a specific focus on the particular needs and circumstances of abused immigrant, refugee, and non-status women and their children.
5. As part of the updating of the VAWIR Policy, MPSSG and MAG should work with police and Citizenship and Immigration Canada (CIC) to develop policy or protocols to address situations of domestic violence against non-status women. These should ensure that: women and children’s safety is a priority; any pending removal issues arising from women’s lack of status are put “on hold” until custody matters have been resolved; and women are aware of these protections.
6. The Ministry of Attorney General should take steps to ensure coordination between the family justice system and CIC, including Canada Border Services Agency, to make sure that an abused non-status woman is not removed from Canada while a child custody matter is still before the courts.

##### **Medium-term**

7. The Ministry of Attorney General should work with CIC to develop policy or protocols to coordinate the Humanitarian and Compassionate (H&C) process and family justice process related to child custody matters, including expediting the child custody process where an abused immigrant, refugee, or non-status woman is engaged in an H&C process to gain permanent status in Canada.
8. The Ministry of Attorney General, in its continuing efforts to improve the family justice process in BC, should ensure that any woman not fluent in English is provided with language interpretation by a qualified interpreter in all family law related matters, both within and outside of court.
9. The Ministry of Attorney General should ensure that psychological assessments as per s. 15 of the *Family Relations Act* are always undertaken with appropriately trained interpreters to allow assessments to be conducted in the language normally used within that family.



## **PROVINCIAL BRIEFING DOCUMENT 3**

### **Family Justice Issues for Abused Immigrant, Refugee, and Non-Status Women**

**ISSUE:** Abused immigrant, refugee, and non-status women face particular challenges in dealing with family justice issues in BC.

#### **KEY POINTS**

- As needs of abused immigrant, refugee, and non-status women and their children may differ in important ways from those of Canadian-born women and children, it is essential that any family justice initiatives in BC, including the Review of the *Family Relations Act*, specifically take account of this particularly vulnerable population.
- Cuts to Legal Aid funding in BC since 2002 have meant that many women in desperate need of legal advice and representation, including abused immigrant, refugee, and non-status women, cannot access it, even when it may mean losing custody of their children. Women – including women who do not understand Canada’s legal system or their rights and who do not have fluency in English – are being forced to represent themselves against husbands who are well-represented by counsel.
- The barriers and risks faced by abused immigrant, refugee, and non-status women should establish this group as among the highest priorities for family law Legal Aid to assist them to address serious family law matters, including retaining custody of their children.
- It is particularly crucial that Legal Aid be provided to abused non-status women facing removal from Canada, especially while a child custody matter is still before the courts.
- It is important that family justice personnel be well-trained in the particular circumstances of abused immigrant, refugee, and non-status women, including risk factors.
- It is essential that all non-English-speaking women, including abused immigrant, refugee, and non-status women, are provided with a qualified language interpreter for family law matters, both within and outside the court.
- It is important that language interpreters used to assist abused immigrant, refugee, or non-status women in family law matters are trained in the nature and dynamics of domestic violence and the particular impacts such violence may have for these women.
- It is important that psychological assessors conducting assessments as per s. 15 of the *Family Relations Act* be highly knowledgeable about the nature and dynamics of domestic violence and specific pressures facing abused immigrant, refugee, and non-status women.

- In order to maximize safety for immigrant, refugee, and non-status women, it is important that the family justice system response to domestic violence against immigrant, refugee, and non-status women be coordinated with other provincial service providers responding to domestic violence as well as with Citizenship and Immigration Canada (CIC), including the Canada Border Services Agency (CBSA).
- Lack of coordination between CIC and BC's family justice system regarding non-status women with unresolved custody issues involving Canadian-born children may result in her being removed from Canada while a custody case is still in progress, leaving children in the custody of a father who has been violent towards their mother. Such a situation may compromise the "best interests of the child". It may also put the mother at risk as she may choose to stay in the abusive relationship rather than risk having to leave her children.

## THE CONTEXT

- The Representative for Children and Youth in her report *Honouring Christian Lee* following the Lee/Park murders in Oak Bay in 2007, recommended:

That the Ministry of Attorney General undertake a review and enact necessary changes to improve administration of justice in family law matters in domestic violence cases, to better protect the safety of children and their mothers, and to ensure that the perspective of the child is considered. (Representative for Children and Youth, 2009)
- The Ministry of Attorney General is conducting a comprehensive review of the *Family Relations Act* to assess whether and how it could more effectively address domestic violence (Ministry of Public Safety and Solicitor General, 2010a).
- As part of its *Domestic Violence Action Plan*, the Province is updating the *Violence Against Women in Relationships Policy* to ensure a coordinated approach across all components of the justice system, setting out roles and responsibilities of all service providers who respond to domestic violence (Ministry of Public Safety and Solicitor General, 2010b).
- Cuts to Legal Services Society (LSS) family law services impact women significantly more than men, as women are the primary users of family law Legal Aid and most female Legal Aid applicants are applying for family law services.
- It is indisputable that women – especially marginalized women such as immigrant and refugee women – are being denied access to justice in BC. By continuing to seriously underfund Legal Aid, it is arguable that the BC Government is not meeting its obligations under the *Canadian Charter of Rights and Freedoms*, which creates an obligation on Canadian governments to address historical disadvantages, or under the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women* or the *United Nations International Covenant on Economic, Social and Cultural Rights*.
- Abused immigrant, refugee, and non-status women face multiple barriers to accessing justice. These may include: the isolating, damaging dynamics of abuse; lack of any or of permanent status in Canada; language barriers; cultural pressures from extended family and other community members to stay with an abusive spouse and to not disclose the abuse to authorities; poverty resulting both from leaving an abusive spouse and from being

unable to work in Canada; sponsorship debt; continuing risks to themselves and their children; and lack of awareness of rights, options, and services.

- When a woman receives family law Legal Aid, the amount of lawyers' time allocated for family law cases is inadequate, even if her cases qualify for extended family services. Cases involving abused immigrant, refugee, or non-status women are particularly complex and time-consuming, involving not only family issues but also immigration and refugee issues, as well the need for language interpretation. In such cases, there should be both a family law referral and an immigration law referral.
- Front-line workers have described cases of non-status women being threatened with criminal charges if they leave the country with their children before a custody matter has been resolved. There have also been reports from workers of non-status women being removed from Canada while custody matters are still before the courts.
- There have been anecdotal reports from women and service providers that those conducting psychological assessments as per s. 15 of BC's *Family Relations Act* do not always have an adequate understanding of the dynamics of family violence.
- There is also anecdotal evidence that psychological assessors are sometimes not accompanied by adequate interpreter services, thereby forcing the assessment to be conducted in English. In such circumstances, women who usually communicate with their children in their own language are required to relate to their children in English, with the result that reports assess the women's relationship and interaction with their children as "stilted" or "limited", or "without open communication".

## RECOMMENDATIONS

1. The Ministry of Attorney General (MAG), in its review of the *Family Relations Act*, should include a specific focus on the needs of abused immigrant, refugee, and non-status women and their children.
2. As part of its *Domestic Violence Action Plan*, the Ministry of Public Safety and Solicitor General (MPSSG) and Ministry of Attorney General (MAG) should ensure that the family justice process is included as an integral component of the Action Plan and that the Action Plan includes a specific focus on the needs and circumstances of abused immigrant, refugee, and non-status women and their children.
3. As part of the updating of the *Violence Against Women in Relationships Policy*, the MAG and MPSSG should ensure both that the family justice process is included as an integral component of the policy and that the policy includes a specific focus on the particular needs and circumstances of abused immigrant, refugee, and non-status women and their children.
4. As part of the updating of the *Violence Against Women in Relationships Policy*, MPSSG and the MAG should work with police and Citizenship and Immigration Canada (CIC), including Canada Border Services Agency (CBSA), to develop policy or protocols to address situations where domestic violence is perpetrated against non-status women. These should ensure that: women and children's safety is a priority; any pending removal

issues arising from women's lack of status are put "on hold" until custody matters have been resolved; and women are aware of these protections.

5. The Ministry of Attorney General should take steps to ensure coordination between the family justice system and CIC, including CBSA, to make sure that an abused non-status woman is not removed from Canada while a child custody matter is still before the courts.
6. The Ministry of Attorney General should work with CIC to develop policy or protocols to coordinate the Humanitarian and Compassionate (H&C) process and family justice process related to child custody matters, including expediting the child custody process where an abused immigrant, refugee, or non-status woman is engaged in an H&C process to gain permanent status in Canada.
7. As part of the *Domestic Violence Action Plan*, MPSSG and the MAG should ensure that family justice personnel are well trained in the nature and dynamics of domestic violence against immigrant, refugee, and non-status women, including risk factors.
8. As part of its *Domestic Violence Action Plan*, the BC Government, working with Legal Services Society (LSS), should ensure that abused women who have legitimate needs for legal representation on serious family matters and cannot afford to pay for it are able to obtain legal representation through Legal Aid.
9. The BC Government should provide sufficient funds to LSS to pay for qualified interpretation services for those not fluent in English, for the Legal Aid application and intake process, interviews, and court appearances related to family law matters.
10. The Ministry of Attorney General, in its continuing efforts to improve the family justice process in BC, should ensure that any woman not fluent in English is provided with language interpretation by a qualified interpreter in all family law related matters, both within and outside of court.
11. The Ministry of Attorney General should ensure that psychological assessments as per s. 15 of the *Family Relations Act* are always undertaken with appropriately trained interpreters to allow assessments to be conducted in the language normally used within that family.
12. The Ministry of Attorney General should make every effort to ensure that language interpreters used to assist abused immigrant, refugee, and non-status women in family law matters, including psychological assessments, are trained in the nature and dynamics of domestic violence and the particular impacts of such violence for immigrant, refugee, and non-status women and their children.

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This document is one of a series of eight provincial and six federal Briefing Documents produced by the Ending Violence Association's Community Coordination for Women's Safety Program as part of its Safety for Immigrant, Refugee, and Non-Status Women Project.