

FEDERAL BRIEFING DOCUMENT 3: EXECUTIVE SUMMARY

Citizenship and Immigration Canada Guidelines for Cases Involving Victims of Domestic or Sexual Violence

Citizenship and Immigration Canada (CIC) has acknowledged the vulnerabilities and needs of women who are victims of domestic or sexual violence in a number of ways, including in operations manual *IP 5. Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* and *Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution*. However, these documents do not adequately address the specific circumstances and needs of these women. While *Guideline 8, Guidelines on Procedures with Respect to Vulnerable Persons Appearing Before the IRB*, as currently written, clearly could include women who are victims of violence, it would better serve the safety needs of these women and their children if it included discussion of their particular vulnerabilities and potential remedies. Or, procedural guidelines could be included in a comprehensive domestic/sexual violence guideline.

Recommendations

Immediate

1. Any CIC guidelines relating to new refugee legislation should include a focus on the safety of claimants who have been victims of gender-based violence.

Medium-term

2. A detailed guideline should be developed for CIC officers for dealing with cases involving women and their children who are victims of domestic or sexual violence, comparable to *Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution Guidelines*. Two options should be considered:
 - This domestic/sexual violence guideline should address *both* substantive issues informing officials about the particular nature, dynamics, and impacts of domestic and sexual violence *and* procedural accommodations that should be made in cases involving domestic or sexual violence, similar to those included in *Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB*; *or*
 - This domestic/sexual violence guideline should address only substantive issues, informing officials about the nature, dynamics, and impacts of domestic and sexual violence, and be cross-referenced with *Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing before the IRB*, which should be revised to include specific reference to victims of domestic or sexual violence, including in the title.
3. The domestic/sexual violence guideline should be tailored to address the needs of all types of applicants, including immigrant, refugee, and non-status women and temporary foreign workers such as Seasonal Agricultural Workers and Live-in Caregivers.
4. The domestic/sexual violence guideline should be applicable to all types of hearings or other CIC matters in which abused women may be engaged.
5. The domestic/sexual violence guideline should include reference to any new legislation governing the refugee process, including the need for CIC officials to consider as a priority the safety of refugee claimants who are victims of gender-based violence.
6. Any additional procedural guidelines developed, whether included in a new domestic/sexual violence guideline or in existing procedural *Guideline 8*, should include reference to the need for interpreters, not only for CIC hearings, but for all official CIC matters.

FEDERAL BRIEFING DOCUMENT 3

Citizenship and Immigration Canada Guidelines for Cases Involving Victims of Domestic or Sexual Violence

ISSUE: There is a need for specific guidelines for CIC officials on handling cases involving immigrant, refugee, and non-status women¹ who are victims of domestic or sexual violence.

KEY POINTS

- There is a need for a specific guideline on the circumstances, vulnerabilities, and needs of victims of domestic or sexual violence, comparable to *Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution*.
- This domestic/sexual violence guideline should be applicable to all types of applicants, including immigrant, refugee, and non-status women and their children and temporary foreign workers.
- This domestic/sexual violence guideline should be applicable to all types of hearings in which abused women may be engaged, including applications for temporary resident permits (TRPs) and for permanent residence on Humanitarian and Compassionate (H&C) grounds for women who have lost their status or potential for sponsorship as a result of leaving an abusive spouse, and requests for a dependent immigrant or refugee application to be severed from that of the primary applicant husband because of abuse.
- This domestic/sexual violence guideline should include procedural accommodations as well as substantive issues or, alternatively, should be cross-referenced with *Guideline 8. Guidelines on Procedures with Respect to Vulnerable Persons Appearing Before the IRB*, revised to include specific reference to victims of domestic or sexual violence.
- While *Guideline 8*, as currently written, clearly could include women who are victims of domestic or sexual violence, it would better serve the interests of abused women and their children, including their safety interests, if it included discussion of the particular vulnerabilities of victims of domestic or sexual violence, as well as potential remedies.
- If *Guideline 8* is amended to specifically address the circumstances of abused women, the title should also include reference to victims of domestic or sexual violence.

¹ This document may also apply in situations where any other vulnerable person has been a victim of domestic or sexual violence. It may also apply to women who are in Canada as part of a temporary foreign worker program such as the Seasonal Agricultural Worker Program or the Live-in Caregiver Program who are being abused by an employer or fellow worker.

- Alternatively, guidelines regarding procedural accommodations could be included in the more comprehensive substantive domestic/sexual violence guideline.
- Abused ‘mail-order brides’², a term that refers to women who met their foreign spouse through an international introduction or ‘pen-pal’ agency, may have vulnerabilities and needs specific to their circumstances which should be acknowledged in any guidelines - substantive or procedural - regarding victims of domestic or sexual violence.
- Applicants who have been abused by other family members, such as seniors abused by a son or daughter, or women in Canada as part of a temporary foreign worker program such as the Live-in Caregiver Program who have suffered abuse by an employer, may be in need of similar protections as women who have suffered domestic or sexual violence.
- These domestic/sexual violence guidelines should address the same range of issues as *Guideline 4*.
- In addition, these domestic/sexual violence guidelines should include reference to: the provision of information to clients; the need for interpreters for all official Citizenship and Immigration Canada (CIC) business; and the need for coordination among various divisions and departments of CIC and between CIC and relevant provincial ministries and agencies, including child protection, the criminal and family justice systems, and Legal Aid.
- Cross-referencing of all CIC documents addressing the specific circumstances and needs of victims of domestic or sexual violence will ensure maximum safety.
- It is important that training of CIC officials include the implementation of any guidelines addressing the needs and circumstances of immigrant, refugee, and non-status women.

THE CONTEXT

- In focusing here on the needs of women who are victims of domestic or sexual violence, there is no intention to minimize the traumas that other applicants may have suffered.
- Proposed changes to Canada’s refugee system are to be welcomed if they increase support for refugees in need of protection and decrease delays in rendering final decisions on asylum claims. However, the Canadian Council for Refugees has put forward a number of concerns about Bill C-11 (proposed *Balanced Refugee Reform Act*) which have particular relevance for women refugees who have suffered gender-based violence. (Canadian Council for Refugees, 2010). These include:
 - The concept of “safe countries of origin” or “democratic countries with robust human rights records” for purposes of fast-tracking the return of failed asylum claimants, as countries otherwise considered “democratic” or “safe” may have poor records in terms of gender-based crimes;

² The controversy around the use of the term ‘mail-order brides’ is acknowledged. In the absence of another more ‘neutral’ term, the term ‘mail-order bride’ is used in this document. However, there is no intent to stereotype or stigmatize immigrant women who have married a Canadian as a result of an introduction or ‘pen-pal’ agency.

- The proposal to hold hearings within two months, which may be problematic for refugees who require time to build trust before they can testify openly, such as traumatized women who have been victims of sexual assault or sexual torture;
- A proposed bar on claimants receiving H&C consideration, which is an important avenue for abused women whose circumstances are not adequately addressed in the refugee system.
- Any guidelines for CIC officials relating to new refugee legislation should include a focus on the safety of refugee claimants who have been victims of gender-based violence.
- CIC has acknowledged the particular vulnerabilities and needs of women who are victims of domestic or sexual violence in a number of ways, including: the operations manual, *IP 5. Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds*, especially section 5.5, where domestic violence considerations are listed as a factor on which applicants may base their requests for H&C considerations, and section 12.7 *Family Violence*; and *Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution*.
- While *Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing before the IRB* clearly could apply to women who are victims of domestic or sexual violence, domestic and sexual violence is not listed as an example of a source of a person's vulnerability. Examples listed include experience or witnessing of torture and physical or mental illness.
- An abused woman who has obtained permanent status on the basis of false pretences, including a marriage entered into solely for the purpose of immigration, may have been a victim of intimidation or coercion on the part of the man, his or her family, or others. It is important that guidelines relating to investigations of such circumstances and subsequent action taken be informed by an understanding of the nature, dynamics, and risk factors inherent in violence against women.

RECOMMENDATIONS

1. A detailed guideline should be developed for CIC officers for dealing with cases involving women and their children who are victims of domestic or sexual violence, comparable to *Guideline 4. Women Refugee Claimants Fearing Gender-Related Persecution Guidelines*. Two options should be considered:
 - This domestic/sexual violence guideline should address *both* substantive issues informing officials about the particular nature, dynamics, and impacts of domestic and sexual violence *and* procedural accommodations that should be made in cases involving domestic or sexual violence, similar to those included in *Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB*; or
 - This domestic/sexual violence guideline should address only substantive issues, informing officials about the nature, dynamics, and impacts of domestic and sexual violence, and be cross-referenced with *Guideline 8. Guideline on Procedures with Respect to Vulnerable Persons Appearing before the IRB*, which should be revised to include specific reference to victims of domestic or sexual violence, including in the title.

2. This domestic/sexual violence guideline should follow approximately the same format as *Guideline 4*. It should:
 - Outline the nature and dynamics of violence against women and its impacts on women, including minimization, fear of disclosure, and fear of retaliation;
 - Outline factors to be considered in determining the validity of a claimant's allegation of domestic or sexual violence;
 - Assess the feared harm a woman who is a victim of domestic or sexual violence may face if she is not provided with temporary or permanent status in Canada;
 - Discuss evidentiary considerations;
 - Outline special problems at determination hearings faced by women claimants alleging domestic or sexual violence;
 - Provide a framework of analysis to guide decision-makers.
3. This domestic/sexual violence guideline should be tailored to address the needs of all types of applicants, including immigrant, refugee, and non-status women and temporary foreign workers such as Seasonal Agricultural Workers and Live-in Caregivers.
4. This domestic/sexual violence guideline should include reference to the particular vulnerabilities and needs of so-called 'mail-order brides'.
5. This domestic/sexual violence guideline should make reference to situations where an applicant has been abused by any other family member, such as a senior abused by a son or daughter.
6. This domestic/sexual violence guideline should be applicable to all types of hearings or other CIC matters in which abused women may be engaged.
7. This domestic/sexual violence guideline should include reference to any new legislation governing the refugee process, including the need for CIC officials to consider as a priority the safety of refugee claimants who are victims of gender-based violence.
8. This domestic/sexual violence guideline should address the fact that an abused woman who has obtained permanent status on the basis of false pretences, including a marriage entered into solely for the purpose of immigration, may have been a victim of intimidation or coercion on the part of the man, his or her family, an international agency, or others.
9. This domestic/sexual violence guideline should include reference to provision of information to clients, including ensuring that CIC officials make every effort to provide adequate, linguistically appropriate information to immigrant, refugee, and non-status women, including participants in temporary foreign worker programs, at all stages of the immigration, refugee, or employment process. Information should be provided on:
 - the nature, dynamics, and risks of domestic and sexual violence;
 - their rights in Canada;
 - relevant Canadian laws, including immigration, refugee, family, and criminal law;

- the particular vulnerabilities of ‘mail-order brides’ and participants in the various temporary foreign worker programs;
 - options and services available to them in Canada, including language training, settlement services, skills training, social assistance, cultural support services, legal advocacy, victim support services, and what to do if they need help.
10. Any additional procedural guidelines developed, whether included in a new domestic/sexual violence guideline or in existing procedural *Guideline 8*, should include reference to the need for interpreters, not only for CIC hearings, but for all official CIC matters.
 11. Any guidelines developed should include reference to the need for coordination among various divisions and departments of CIC and between CIC and relevant provincial ministries and agencies, including but not limited to child protection, the criminal and family justice systems, and Legal Aid.
 12. All CIC documents addressing the specific circumstances and needs of victims of domestic or sexual violence, including operations manuals and guidelines, should be cross-referenced in order to help ensure maximum accommodation of the needs of abused women and their children, including especially their need for safety.
 13. Training of CIC officials should address the implementation of any new domestic/sexual violence guideline.
 14. Any other CIC guidelines relating to new refugee legislation should include a focus on the safety of claimants who have been victims of gender-based violence.

See also *Suggested Actions* under *Federal Briefing Document 1. Needs of Women without Status as a Result of Leaving an Abusive Spouse*

CONTACT: Tracy Porteous, Executive Director
Ending Violence Association of BC
Telephone: 604-633-2506
E-mail: porteous@endingviolence.org

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