



## **Safety of Immigrant, Refugee, and Non-Status Women**

### **Submission to the Public Commission on Legal Aid**

#### **Access to Justice Needed to Keep Immigrant Women Safe Written and Presented by Kamaljit Lehal, Project Supervising Lawyer October 2010**

#### **Background**

1. These submissions were made on behalf of Ending Violence Association of BC (EVA BC) to the Public Commission on Legal Aid on October 8, 2010.
2. These submissions pertain specifically to legal aid services for abused immigrant, refugee and non-status women.

#### **Reasons For This Submission**

3. As a result of a high number of murders in BC involving immigrant women in the past few years EVA BC was asked by the Law Foundation of BC to create and initiate a strategic plan on how to increase the safety of immigrant women. As part of the process leading to the development of the strategic plan, 5 focus groups were held across the province: in Vancouver, (2 focus groups were held in Vancouver) Victoria, Prince George, and Kelowna and with groups, organizations and front line workers involved with immigrant women who have been abused.
4. At the focus groups common themes and issues were identified that appeared to perpetuate and put women who were being abused at further risk. Such as:
  - a. Immigrant women feared leaving an abusive relationship because they felt their husband would take away their status or feared the spouse would stop his sponsorship of them and they would be deported. A number of examples were provided by focus group participants:

- i. There were women either on visitor's status or no-status that were in the process of being sponsored by a Canadian or Permanent Resident (PR). These women felt if they left or reported the abusive situation the spouse would report them and they would be deported.
    - ii. Their fears were real. There were actual accounts of non-status women being arrested and referred to immigration for having no status and deported, after they reported abuse.
    - iii. There are actual accounts of a trend, in Ontario, of immigration enforcement personnel entering transition houses and picking up non-status women for removal.
  - b. Our immigration system is focused on the removal of non-status women without any regard for ongoing custody issues involving Canadian-born children.
  - c. Non-status abused women who apply to stay in Canada on Humanitarian & Compassionate (H&C) grounds do not have any status while their application is being processed and thus have no ability to access essential benefits, like healthcare.
  - d. There were cases of women accruing huge sponsorship debts after an abusive spouse they have sponsored and from whom they have separated due to the abuse, went on welfare.
  - e. Women who had immigrated, been abused, and who wanted to sponsor their family living abroad to come to Canada, were unable to do so if they were on welfare. They could make an application, which would be rejected and then they would only be eligible to appeal the decision on H&C grounds. A complex situation.
  - f. There was a clear lack of coordination between the immigration system and family law system.
  - g. In addition to issues of isolation and no status, there was the common theme throughout the focus groups of the inability of these women to navigate the systems due to language barriers and a lack of interpreters to assist them.
5. The reason that EVA BC is making submissions here today is as a result of not only the critical concerns addressed above, but because of the consistent message we heard from the focus groups that abused immigrant, refugee and non-status women do not have access to legal aid and are therefore denied legal representation to assist in addressing complex issues and systems. This has the unfortunate effect that many of these women, rather than risk being removed from the country and separated from their children, make the difficult choice to stay in their abusive relationship. This undermines their and their children's safety.

6. Since 2002 legal aid funding and services have declined dramatically in B.C. Core funding has fallen from 88.3M in 2001/2002 to 66.5M in 2010/2011. These decreases have occurred in spite of significantly rising costs and significant increases in demand for legal aid services.

## **Lack Of Legal Aid Or Inadequacy Of Funding**

At present the legal aid being offered to immigrant women facing these complex situations is either inadequate or non-existent.

7. For instance, in the immigration realm:
  - a. If a woman is detained (due to her non-status, or in relation to a crime) she is provided with duty counsel while in detention. This is for the 48 hour review and not, necessarily, the subsequent mandatory 7 day and 30 day reviews.
  - b. Outside of detention, while facing removal hearings, there is no automatic provision for legal aid.
  - c. If a woman is a refugee claimant she is provided legal aid in bits and pieces. To complete the Personal Information Form (PIF) and then to complete the hearing. While other refugees face a similar bifurcation of legal aid services, for women who have taken the courageous step of getting out of an abusive relationship, this significant gap in legal aid services may result in the woman feeling that she has no other option that to return to the abusive context.
  - d. Currently the only way for a non-status woman to obtain some kind of status is to file an H&C application. For most of these women it will be too difficult to complete without legal assistance, and currently there is very little, if any, funding for a lawyer to file an H&C application on H&C grounds.
8. In addition, in the family law realm:
  - a. When a woman receives family law legal aid the amount of lawyer's time allocated is inadequate.
  - b. Cases involving abused immigrant, refugee, non-status women are particularly complex, not just in terms of the family issues but with the immigration issues as well. These cases require that two legal counsels be appointed, one to deal with the family law matters and one to deal with the immigration matters. That coordination just does not happen. As stated, the effect is women have been removed when they have ongoing custody battles in Canada. As a result, again, women fear leaving the abusive relationship.
9. Prevalent across the board, regardless of whether the legal matter involves immigration law, family law or both, is the fact that there is an almost complete

absence of funding for interpreters. Obviously having legal counsel with no ability to communicate with the client is rather pointless. The two have to be facilitated where the lawyer and the interpreter is provided in conjunction with one another in order to be effective.

10. Again, the net effect is that these women fleeing abuse, without the ability to access legal representation, are choosing to remain in the abusive relationship and further putting themselves and their children at risk. Thus, lack of legal aid not only denies justice to these women but puts them and their children at great risk. It is a dangerous but inevitable domino effect.

## **Charter And International Obligations**

11. A reminder that:

- a. By continuing to underfund legal aid it is arguable that the BC government is not meeting its obligations under: the Canadian Charter of Rights and Freedoms which obligates Canadian governments to address historical disadvantages; 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.
- b. In response to the Lee/Park Coroner's Report recommendation that all victims be provided with universally available advocacy services, the Government's *Domestic Violence Action Plan* cites the availability of legal aid services throughout BC. This is misleading. Serious underfunding over many years has made it increasingly difficult or impossible to obtain legal aid for many victims of domestic violence.

## **Summary**

12. The aim of the strategic plan developed by EVA BC is to ensure that at all times, the primary and foremost consideration, when it comes to dealing with immigrant women who have been abused, is to keep them safe. It is our objective to ensure that whatever needs to be done within the various systems to effect safety is done. That includes making sure that commissions, such as this one, are alert to the fact that further legal aid cuts cannot be tolerated, that in fact there has to be an increase in their funding to ensure that these women are able to find safety for themselves and their children, through effective legal representation.

For more information please refer to recommendations in our ***Provincial Briefing Document 1: Legal Aid for Abused Immigrant, Refugee, and Non-Status Women*** available on our website: [www.endingviolence.org](http://www.endingviolence.org).