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Family Law Issues for Immigrant, Refugee and Non-Status Women

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Family Law Issues for Immigrant, Refugee and Non-Status Women

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, it is recommended that you get legal advice as soon as possible to understand your options and to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem". You may also want to view our webinars on "Looking for a Family Law Lawyer" and on immigration issues. All of these resources are on our website at www.onefamilylaw.ca.

Family breakdown is a difficult and stressful time. If you or your partner came to Canada from another country, you may face both family law and immigration challenges when your relationship ends. For example, you will likely have to decide about financial support, make arrangements about your children and divide your family property. If you are not a Canadian citizen, your immigration status may be connected to your partner or other family member. You may worry about:

- whether you can stay in Canada;
- whether you will be separated from your children;
- how to support yourself if you were sponsored by your partner and you leave the relationship.

Rights in Family Court

Immigrant, refugee and non-status women have the same rights and responsibilities as Canadian-born women under family law. When you separate from your partner, you can go to Court to apply for child custody or access, child support, spousal support, and you can ask the Court to award you a share in your family property. You can go to Family Court no matter what your immigration status is.

You will have to identify yourself if you participate in the Court process. Although you have the same family law rights as any other woman, if you do not have legal status in Canada, you may come to the attention of immigration officials, and you could get deported. Your right to stay in Canada depends on your immigration status. To protect yourself and your children, you need to know your rights and options.

Relationship breakdown and immigration concerns

When your relationship ends, your right to stay in Canada depends on your immigration status. This area of law has become very complicated. If you think your immigration status may be at risk, it is very important to talk to an immigration lawyer right away to find out your legal options.

Permanent Residents

If your partner (including a same sex partner) sponsored you to become a permanent resident and your relationship ends **before** your permanent residence is granted, your immigration status could be at risk and you could be removed from Canada.

If you are already a permanent resident you cannot lose this status or be removed from Canada just because you separate from your partner. This is true even if your partner sponsored you to come to Canada.

If your partner sponsored you to become a permanent resident and your relationship with your sponsor ends, your sponsor is still financially responsible for you for 3 years after you are granted permanent residence. If your sponsor cannot or will not continue to support you during the 3-year sponsorship period, you can apply for social assistance to support yourself.

If you sponsored your partner and your relationship ends, be aware that you are the one who is financially responsible for your partner until the 3-year sponsorship period ends. If he or she goes on social assistance during the sponsorship period, even if you are no longer together, you will likely have to repay the government for this money.

Refugees and persons needing protection

If you are in Canada and you have been found to be a Convention Refugee or a person in need of protection, you cannot be removed from Canada just because your relationship has ended.

If you made your refugee claim with your partner and you want to end the relationship, you may be able to separate your claim from your partner before the refugee hearing. To do this you should get your own lawyer. You should tell your lawyer if you were abused by your partner, if you were forced to sign any documents, or if you fear your partner or family members in your home country.

If your refugee claim fails, you may be able to appeal the decision to the Refugee Appeal Division (RAD). There are very short timelines to file an appeal and submit all of your documents. Not all refugee claimants have access to the RAD. For example, you cannot appeal to the RAD if you are from a designated (Safe) Country of Origin (DCO).

The government developed a list of countries that they consider to be "safe" called **Designated (Safe) Countries of Origin (DCO)**. It is important to find out if you come from a DCO because the timelines for refugee claims from a DCO are very short and your options are limited if your claim fails. You should talk to an immigration lawyer about this as quickly as possible.

No legal status

You may be in Canada without legal status. This can happen if your Visa as a visitor or student has expired, if your refugee claim was denied, or because you entered the country illegally. Although you have the same family law rights as any other woman, you could be deported if you come to the attention of immigration officials. You may be able to get help from local women's organizations or women's shelters.

If you fear harm from your partner or family members in your home country, you should talk to a lawyer about the possibility of making a refugee claim.

Humanitarian and Compassionate (H and C) application

If you do not have legal status or your immigration status is at risk, one option to consider is making a **Humanitarian and Compassionate (H and C) application**. An H and C application is used in special circumstances to ask the government for permission to stay in Canada. Making an H and C application does not protect you from being deported. You should get legal advice as soon as possible. There may be other immigration claims available to you, depending on your situation.

If there was abuse in your relationship, you should tell what happened to you in your application. Some questions that are considered in an H and C application are:

- Do you have a strong connection to Canada?
- Are you able to financially support yourself?
- Would you face significant hardship if you returned to your home country?

Immigration officials must also consider all children affected by the H and C application, whether or not they were born in Canada.

You cannot make an H and C application if you are waiting for a decision about your refugee claim. If your refugee claim failed, you cannot make an H and C application for 12 months from the date of the decision that denied your claim, unless you can show that your life would be at risk because:

- your home country cannot give you adequate health or medical care; or
- your removal from Canada would have a negative effect on a child. This does not have to be your child – it can be a child you have a relationship with and who would be directly affected by your removal.

A lawyer can help you decide what the best option is for your situation.

Domestic violence and abuse

Relationships break down for many reasons. One of these reasons may be violence or abuse by your partner. If you tell immigration officials that you have experienced abuse by your partner or family member, they should consider this when they process your immigration application to stay in Canada.

For more information if your partner is violent or abusive, call the Assaulted Women's Helpline at:

416-863-0511

1-866-863-0511 (toll free)

1-866-863-7868 (TTY)

If you are in immediate danger, you should call the police (dial 911).

Involving the police

Woman abuse is against the law in Canada. If the police believe that your partner has assaulted you, they will lay a criminal charge against him or her. They will lay the charge even if you do not want them to. If the police believe that you assaulted your partner, you may also be charged.

Even if you are not charged, the police, the Crown Counsel (lawyer for the government), or another Court official could find out that you do not have legal status in Canada and tell immigration officials. If this happens, you could be detained and deported.

A criminal conviction can affect a person's immigration status and may lead to deportation, even if you are a permanent resident. Permanent residents can be deported if they are convicted of certain crimes. If your partner is deported and he or she was in the process of sponsoring you, your immigration status could also be at risk. If you are not a Canadian citizen, and you are involved with a criminal charge, you should get legal advice from both a criminal lawyer and an immigration lawyer right away.

Other family law issues for immigrant women

If you and your partner came to Canada from another country, family law issues can be more complicated when you separate, if either you or your partner decides to leave Canada.

You may face these common issues:

- moving with children
- travelling with children
- child abduction
- collecting financial support from someone living outside of Ontario

For more information about moving with children, travelling with children, or child abduction see our booklet on “Child Custody and Access”.

For more information about collecting financial support, see our booklets on “Child Support” and “Spousal Support”.



• *The views expressed in these materials are the views of FLEW and do not necessarily reflect those of the Province.*



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There is a greater risk of violence when an intimate relationship is ending. If you are in immediate danger, call 911. If you or someone you know is at risk, visit the FLEW website for information on getting support.

If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at www.onefamilylaw.ca or www.undroitdefamille.ca.

Family Law topics available in English*

1. Alternative Dispute Resolution and Family Law (ENG 001)
2. Child Protection and Family Law (ENG 002)
3. Child Support (ENG 003)
4. Criminal and Family Law (ENG 004)
5. Child Custody and Access (ENG 005)
6. Domestic Contracts (ENG 006)
7. Family Law Arbitration (ENG 007)
- 8. Family Law Issues for Immigrant, Refugee and Non-Status Women (ENG 008)**
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
11. Marriage and Divorce (ENG 011)
12. Spousal Support (ENG 012)

** This booklet is available in multiple formats and languages. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.*