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# Immigration Status and Relationship Breakdown: What Women Should Know

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# METRAC

## **METRAC, Action on Violence**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

[www.metrac.org](http://www.metrac.org)

## **METRAC's Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

## **FLEW, Family Law Education for Women in Ontario**

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

<http://undroitdefamille.ca/>

# Presenters

## **Silmy Abdullah**

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## **Caitlin Maxwell**

Principal Lawyer, Equity Legal



# Topics to be Covered

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1. Different Kinds of Immigration Status in Canada
2. Common Immigration-Related Terms
3. Potential Risks to Immigration Status in Canada
4. What's New in Immigration Law?
  - Conditional Permanent Residence removed for sponsored spouses/partners
5. Options if Status is at Risk
6. Staying Safe
7. Additional Resources

*Accurate as of the date of this webinar presentation: May 29, 2017*

# Introduction: Leaving an Abusive Relationship

## Barriers

- Concerns about children and custody
- Fear of homelessness and poverty
- Controlling partners and other family members
- Attitudes of family, friends and community members
- Not knowing legal rights
- Fear of the legal system
- Not knowing about resources or how to find help
- Discrimination
- Immigration status or lack of status

# Introduction: Leaving an Abusive Relationship

**May involve multiple areas of the law:**

## **Family Issues**

Separation/divorce

Child/spousal support

Child custody

Child protection

## **Immigration Issues**

Loss of status

Deportation

## **Criminal Issues**

Possible assault charges

Possible protection order



# **Different Kinds of Immigration Status in Canada**

# Different Kinds of Immigration Status in Canada

- **Citizen**
- **Permanent Resident**
  - Through Sponsorship (Family Class or Spouse or Common-Law Partner in Canada Class)
    - Spouse or common-law or conjugal partner (including same-sex partners)
      - Application from abroad or in Canada
    - Parent or child



# Different Kinds of Immigration Status in Canada

- **Permanent Resident**
  - Economic classes (and their dependents)
    - Skilled workers and skilled trades
    - Canadian Experience Class
    - Investors
    - Entrepreneurs
  - Protected person category
  - Humanitarian and compassionate category
- **Protected Person**
  - Convention Refugee
  - Person in Need of Protection

# Different Kinds of Immigration Status in Canada

## Refugees

- **Convention Refugee**

- Well-founded fear of persecution in their country of origin based on:
  - Race
  - Religion
  - Political opinion
  - Nationality
  - Membership in a particular social group (such as women or LGBTQ)

### **AND**

- Government of country of origin cannot protect them

# Different Kinds of Immigration Status in Canada

## Refugees

### Convention Refugee

- Gender Based Refugee Claims

# Different Kinds of Immigration Status in Canada

## Refugees

### Person in Need of Protection

- Would likely face at least one of these things if they are forced to return to their home country:
  - Torture
  - Risk to life
  - Risk of cruel and unusual treatment

# Different Kinds of Immigration Status in Canada

- **Temporary Resident**

- Workers
- Students
- Visitors
- Refugee claimants

- **Non-Status Persons**

- Overstays
- Underground



# Common Immigration- Related Terms

# Common Immigration-Related Terms

- Immigration, Refugees and Citizenship Canada (IRCC)
  - Formerly known as, and sometimes still referred to as, Citizenship and Immigration Canada (CIC)
- Canada Border Services Agency (CBSA)
- Immigration and Refugee Board (IRB)
- Immigration Division (ID)
- Refugee Protection Division (RPD)
- Immigration Appeal Division (IAD)
- Admissibility/ Inadmissibility
- Detention
- Deportation



# Potential Risks to Immigration Status in Canada



# Potential Risks to Immigration Status in Canada

## Citizen

- Misrepresentation / lying / fraud

## Dual Citizens

- Member of an armed force or organized armed group engaged in an armed conflict with Canada;
- Convicted of treason, high treason, spying offences and sentenced to imprisonment for life; or
- Convicted of terrorism or an equivalent foreign terrorism and sentenced to jail for five years or more
  
- ***Change in law expected to come into effect soon.***
  - *Bill C-6 will remove parts of the Citizenship Act that result in dual citizens losing their citizenship on national security grounds;*

*Reminder: Information in this webinar does not include any changes in the law after May 29, 2017*

# Potential Risks to Immigration Status in Canada

## Permanent Resident

- Malicious accusations
- Misrepresentation/lying
- Not fulfilling residency requirement
- Criminal convictions

## Refugee

- Going back to home country
- Conditions in home country have changed

# Potential Risks to Immigration Status in Canada

## Application in progress

- Citizenship
- Permanent Residence
- Refugee Claim

## Non-status

- Always at risk
- Police involvement



# What's New in Immigration Law?

# Conditional Permanent Residence Removed for Sponsored Spouses/Partners

- On April 28, 2017, the government removed the Conditional Permanent Residence rule
- Applied to some sponsored spouses/partners

# Conditional Permanent Residence Removed for Sponsored Spouses/Partners

## What is Conditional Permanent Residence?

- **The condition:**
  - Sponsored spouse/partner and sponsor have to live together in a conjugal (marriage-like) relationship for 2 continuous years after permanent residence is granted
  - Otherwise, permanent residence can be taken away

# Conditional Permanent Residence Removed for Sponsored Spouses/Partners

It only applied if:

- Sponsorship application was received **on or AFTER October 25, 2012**
- At the time sponsor sent in the application, the person was in a relationship with sponsor for **2 years or less**; and
- At the time the sponsor sent in the application, the person and your sponsor **did not have any children together.**

# What's New? Removal of Conditional Permanent Residence

There was an exception in the following situations:

- There was abuse, or
- The sponsor died

**It was the sponsored person's responsibility to show that the exception applied in her case.**



# What's New? Removal of Conditional Permanent Residence

## What happens now?

- Starting April 28, 2017, there is no condition attached to the permanent resident status of sponsored spouses/partners:
  - Even if application was started before April 28, 2017
  - Even if someone is already a conditional permanent resident
- Not at risk of losing permanent resident status just because of relationship breakdown
- **Can still lose permanent resident status** on the basis of:
  - Misrepresentation
  - Criminal activity

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# Options if Status is at Risk

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## Relationship Breakdown: Sponsored Permanent Residents

### Example:

- Zina is living in Canada and she is in a common law relationship with a Canadian citizen.
- Her partner sponsored her and she is a permanent resident. He has always been controlling and jealous, but their problems are getting worse and she can't take his abuse anymore.
- He's threatening to hurt her and have her deported if she leaves him.

# Options if Status is at Risk

## Relationship Breakdown: Sponsored Permanent Residents

- **If Permanent Residence has been granted:**
  - Permanent Resident status is not affected
  - Sponsor cannot withdraw
  - Government cannot remove her from Canada just because she leaves her sponsor
- **How she can get financial support:**
  - Sponsor's obligations
  - Social Assistance
  - Look for Work

# Options if Status is at Risk

## Relationship Breakdown: Sponsored Permanent Residents

**Zina's partner can try to get her into trouble by telling immigration officials she lied or committed a crime:**

- If the CBSA has sufficient reason to believe this is true, they might refer Zina to the Immigration Division for an admissibility hearing

**Important for Zina to:**

- Get legal advice from an immigration lawyer
- Gather evidence

# Options if Status is at Risk

## Relationship Breakdown: Sponsored Permanent Residents

### Example:

- Zina is living in Canada and she is in a common law relationship with a Canadian citizen.
- ***Her partner has sponsored her but the process is not complete, and she does not have legal immigration status here. She can't take his abuse anymore and wants to leave.***
- He's threatening to hurt her and have her deported if she leaves him.

# Options if Status is at Risk

## Relationship Breakdown: Sponsored Permanent Residents

### If Permanent Resident application in process / no status:

- Sponsor can withdraw **and** there is a risk of deportation

### Options:

- Possible application for Permanent Residence (PR) based on Humanitarian and Compassionate (H&C) grounds
- Possible refugee claim
- Possible avenues to PR through economic categories

### Considerations:

- Cannot make refugee claim and H&C application at the same time
- If refugee claim is refused, need to wait 1 year to apply for H&C unless the **best interests of a child** are directly affected or there is a **risk to life because of inadequate medical care** in country of origin
- Important to get legal advice



# Options if Status is at Risk

## Humanitarian & Compassionate (H&C) Applications:

- Made from within Canada
- No automatic stay of removal (may need to request stay from Federal Court)
- H&C can take into account:
  - Domestic violence
  - Best interests of the child
  - Establishment in Canada
  - Hardship in country of origin
  - Impact on others living in Canada

# Options if Status is at Risk

## Relationship Breakdown: Women Who Sponsor a Partner

### Example:

**Zina has sponsored her partner. He is abusing her, and she wants to leave.**

- She can leave the relationship
- If his application is in process, she can withdraw as sponsor
- If his permanent residence is granted, she must fulfill the sponsor's obligations (3-year undertaking for spouses)
- If he goes on social assistance, it is likely she will have to repay the government

# Options if Status is at Risk

## Relationship Breakdown: Refugee Claimants

### Example:

- Esther fled her home country and came to Canada seeking refugee protection. She is part of an ethnic and religious minority that is being persecuted in her home country.
- While she was waiting for her refugee claim to be dealt with, she started living with her boyfriend who is a Canadian citizen. He has a temper and is verbally abusive. She wants to leave him.

# Options if Status is at Risk

## Relationship Breakdown: Refugee Claimants

### Refugee Claim:

- Is not directly affected by her relationship or by leaving
- Esther's boyfriend could contact immigration officials to undermine information in her refugee claim

# Options if Status is at Risk

## Relationship Breakdown: Refugee Claimants

### Example:

- Esther and her husband fled their home country and came to Canada seeking refugee protection.
- **Their refugee claims are connected and her husband has been handling most of the details.**
- The stress has taken a toll on their relationship, and he gets very angry with her for small things. He is verbally abusive and threatens to hit her. She wants to leave him.

# Options if Status is at Risk

## Relationship Breakdown: Refugee Claimants

### Joint Refugee Claims

- She should get her own lawyer
- Ask previous lawyer for file regarding her claim
- Discuss domestic abuse with lawyer
  - Was she forced to agree or sign anything?
  - Does she fear husband or family in home country?
- May cooperate with husband in a joint hearing
- Her lawyer may ask for separate hearings



# Staying Safe

# Staying Safe

***Risk of violence escalates when an intimate relationship is ending.***

- **Assess safety:**
  - Make a safety plan
  - Ensure she and her children are safe
- **Abuse can be:**
  - Physical violence
  - Threats of harm
  - Treatment that causes emotional or psychological suffering
- **In most emergencies, call 911**



# Staying Safe

- **Assaulted Women's Helpline:** [www.awhl.org](http://www.awhl.org)
  - 24 hours/7 days; multiple languages
  - Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- **Ontario Coalition of Rape Crisis Centres:** <http://www.sexualassaultsupport.ca/>
- **Network of Sexual Assault/Domestic Violence Treatment Centres:** [www.sadvtreatmentcentres.net](http://www.sadvtreatmentcentres.net)

# Staying Safe

- **Barbra Schlifer Commemorative Clinic**
  - Specialized clinic for women experiencing violence
  - Free counselling, referrals, legal and interpreter services
  - Family and immigration law advice and representation; independent legal advice for survivors of sexual assault
  - Intake: 416-323-9149 x 234
- **Family Violence Authorization Program (Legal Aid Ontario)**
  - Free 2-hour emergency meeting with a lawyer
  - Offered through some shelters and community legal clinics
  - Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- **CLEO Safety Planning (Online Guide)**  
[http://www.cleo.on.ca/sites/default/files/book\\_pdfs/plan.pdf](http://www.cleo.on.ca/sites/default/files/book_pdfs/plan.pdf)



# Additional Resources

# Resources (Immigration)

- **Find a community legal clinic near you**
  - <http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>
- **Specialty legal clinics**
  - <http://www.legalaid.on.ca/en/contact/contact.asp?type=scl>
    - Centre for Spanish Speaking Peoples
    - Metro Toronto Chinese and Southeast Asian Legal Clinic
    - Refugee Law Office
    - South Asian Legal Clinic of Ontario
    - Barbra Schlifer Commemorative Clinic
- **FCJ Refugee Centre**
  - <http://www.fcjrefugeecentre.org/>
    - 416-469-9754
- **Settlement.org**
  - <http://www.settlement.org/index.asp>
    - Information and answers on settling in Ontario
- **211 Canada.ca**
  - <http://211canada.ca/>
    - Find available immigrant and refugee serving organizations in your area

# Resources (Immigration)

- **Immigration, Refugees, and Citizenship Canada (IRCC)**
  - <http://www.cic.gc.ca/english/index.asp>
    - Call Centre Toll-free: 1-888-242-2100
    - TTY: 1-888-576-8502
    - More Contacts: <http://www.cic.gc.ca/english/contacts/index.asp>
- **Ministry of Citizenship and Immigration (Ontario)**
  - <http://www.citizenship.gov.on.ca/>
    - Find information about citizenship and immigration in Ontario
    - General Inquiry: (416) 327-2422
    - Toll-free: 1-800-267-7329
    - TTY: 1-800-555-5559
- **Canadian Council for Refugees**
  - <http://ccrweb.ca/en/home>
    - Directory of immigrant and refugee serving organizations in your area:  
<http://ccrweb.ca/en/links>
    - Telephone: 514-277-7223

# Resources (Family)

- **Assaulted Women's Helpline:**
  - [www.awhl.org](http://www.awhl.org)
    - Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
    - Toronto: 416-863-0511
- **Legal Aid Ontario:**
  - <http://www.legalaid.on.ca/en/getting/default.asp>
    - Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
    - Toronto: 416-979-1446 (accepts collect calls)
- **Family Law Information Program (FLIP):**
  - <http://www.legalaid.on.ca/en/getting/flip.asp>
- **Family Law Information Centres (FLICs):**
  - [http://www.legalaid.on.ca/en/getting/type\\_familylawinformationcentre.asp](http://www.legalaid.on.ca/en/getting/type_familylawinformationcentre.asp)
- **Family Law Services Centres (FLSCs):**
  - <http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc>
- **FLEW (Family Law Education for Women):**
  - <http://www.onefamilylaw.ca/en/resources/>
- **Ontario Women's Justice Network (OWJN):**
  - [www.owjn.org](http://www.owjn.org)

# Resources (General)

- **Law Society of Upper Canada Lawyer Referral Service**
  - <https://www.lsuc.on.ca/lrs/>
    - Toll-free: 1-800-268-8326
    - Toronto: 416-947-3330
    - TTY: 416-644-4886
  
- **Ministry of the Attorney General**
  - <http://www.attorneygeneral.jus.gov.on.ca/english/>
    - Toll free: 1-800-518-7901
    - TTY: 1-877-425-0575