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Immigration, Women and Violence: Making a Claim on Humanitarian and Compassionate Grounds

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Tamar Witelson, Legal Director, METRAC

Roxana Parsa, Program Lawyer, METRAC

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- a not-for-profit, community-based organization

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- in 14 languages, accessible formats, online and in print

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Presenters

Tamar Witelson
Legal Director, METRAC



Roxana Parsa
Program Lawyer, METRAC



Topics to be Covered

1. Introduction
2. What is an H&C Application?
3. Who Can Apply?
4. Possible Risks to Consider
5. What Makes an Application Successful?
6. Proof to Support your Application
7. How do I Apply?
8. Additional Resources

Accurate as of the date of this webinar presentation: March 28, 2019



Introduction

Introduction

- **Humanitarian and Compassionate (“H&C”) Applications** are a way for a person to apply to become a Permanent Resident in Canada
- H&C Applications are made by a person **inside of Canada** without valid immigration status
- A special option, asking the government of Canada to grant Permanent Resident status in special circumstances

Introduction

- H&C applications can be helpful to women in abusive situations:
 - partner or family abuse or gender-based violence in home country
 - partner or family abuse within Canada
- An important option for women caring for a child
- Immigration officers must take into account situations where a woman has left an abusive partner
- Survivors of intimate partner violence can ask for a Legal Aid Certificate for free legal assistance to make an H&C application

Example Situations for making an H&C application

1. Mitra, a young woman, is living in Canada in a common law relationship with a Canadian citizen. Her partner has sponsored her but the process is not complete. The relationship has become abusive.
2. Ana came to Canada one year ago, after fleeing her abusive husband in her home country. She arrived with her two teenage daughters. Ana's aunt and several cousins live in Canada as well. She applied for refugee status, which was denied.



What is a Humanitarian & Compassionate Application?

What is an H&C Application?

- An H&C application is an application for Permanent Residence from inside Canada
- An *exception* to the normal rules under immigration law (the *Immigration and Refugee Protection Act* “IRPA”)
- You need important reasons to prove that you should be allowed to stay in Canada
- Your individual facts and enough proof of the facts will affect whether your application is successful



Who Can Make an H&C Application?

Who can apply?

- A person who is a foreign national and living in Canada
 - not a citizen of Canada
 - not a Permanent Resident
 - does not have refugee status
- Someone who does not meet the legal requirements (under the *IRPA*) to get permanent residence
- And the person is not eligible to apply for PR status in another way:
 - family sponsorship
 - Live-in Caregiver Programs
 - as a Convention Refugee or Protected Person
 - temporary residence permit

Who cannot apply?

- A Canadian Citizen or Permanent Resident
- A person who:
 - has already submitted an H&C Application and a decision has not been made yet
 - has made a refugee claim and a decision has not been made yet
 - made a refugee claim that was rejected in the last 12 months (the “12-month bar”)
 - has withdrawn a claim for refugee protection before getting a decision, in the last 12 months
- A Designated Foreign National (DFN)
 - a person who has arrived in Canada in an “irregular” way and the government of Canada cannot determine if the person is admissible
 - applies for 5 years from the date that the government declares the person is a DFN

Exceptions to the “12-Month Bar”

- A person cannot make an H&C Application if their refugee claim was rejected or withdrawn in the last 12 months
- **Except if:**
 - you have a medical condition that puts your life at risk, or
 - the best interests of **any** child under 18 years old would be harmed by your removal

Other Factors

- An H&C application is less likely to succeed if the person is inadmissible because of:
 - criminal behaviour (in or outside of Canada)
 - misrepresentation (not truthful) on other immigration applications
 - financial reasons – ability to support yourself
 - health reasons – focus on cost
- The application may succeed if you can answer or resolve these issues
- It is important to talk to an immigration lawyer or consultant to know if these issues affect you



Possible Risks to Consider

Risks To Staying in Canada During an H&C Application

- If you are living in Canada without legal status, an H&C application could:
 - bring you to the attention of immigration officials
 - result in a removal order to deport you (make you leave Canada)
- If you already have a removal order (to deport you), an H&C application **will not stop** your removal from Canada
 - if you are removed from Canada while your application is in progress, there is less chance your application will be successful

Questions? Presenters

Tamar Witelson
Legal Director, METRAC



Roxana Parsa
Program Lawyer, METRAC





What Makes an H&C Application Successful

Key Factors

- An immigration officer will look at your application
- Three main factors are the focus to making a decision:
 1. Will you face **hardship** if you leave Canada?
 2. **Establishment** in Canada – are you connected to your community?
 3. If you have to leave Canada, will that affect the **best interests of a child?**

Factor: Hardship

- You must show that you will face hardship if you are forced to leave Canada
- The officer will consider if the hardship is “unusual, undeserved or disproportionate” (in the government guidelines for Immigration Officers)
 - your whole situation will be considered – you do not have to prove your situation is unusual **and** undeserved **and** disproportionate separately
- The Court has said the decision about your application must focus on the underlying **compassionate** need for you to stay in Canada

Examples of Hardship

- Returning to an abusive relationship
- Chance of family violence
- Danger of violence in home country
- Chance of living in poverty
 - economic conditions
 - inability to find work
- Lack of access to medical care
- Potential discrimination or harassment in home country
- Impact on family and close friends in Canada

Example Situation

Ana came to Canada one year ago, after fleeing her abusive husband in her home country. She arrived with her two teenage daughters. Ana's aunt and several cousins live in Canada as well. She applied for refugee status, which was denied.

Examples of Hardship to Ana

- Ana may face violence from her abusive spouse if she returns to her home country
- Her home country may not provide adequate protections to prevent partner abuse
- Her home country may not provide adequate medical, psychological or social support services for family violence, or for her daughter
- Her home country may have laws or conditions that cause social discrimination against former spouses, persons with disabilities or other social groups Ana is part of
- If daily life will be difficult because of social discrimination, this can be hardship even if Ana and her daughter cannot show they have been personally targeted

Factor: Establishment

- If you can show you have strong connections in Canada it will make your application more likely to succeed
- There is no strict rule about how to be connected to your community, and how many different connections you need
- More examples of establishment are better

Examples of Establishment in Canada

- How long you have been living in Canada
- Staying in one city or area
- You have family and friends here
- Education or training you got here
- Any jobs you have worked in Canada
- Any volunteer work you have done in Canada
- Taking classes to learn English
- Membership and activities with religious organizations

Example Situation

Ana came to Canada one year ago, after fleeing her abusive husband in her home country. She arrived with her two teenage daughters. Ana's aunt and several cousins live in Canada as well. She applied for refugee status, which was denied.

Examples of Ana's Establishment in Canada

- Ana may be an important support to her aunt and cousins who live in Canada
- Ana may have volunteered in the community, joined a religious community in Canada
- Ana may have been learning English or other skills while she has been in Canada

Factor: Best Interests of a Child

- An Immigration Officer **must** take into consideration the best interests of **any child directly affected** by your removal from Canada
- Child can be:
 - your child
 - your grandchildren or other children in your family you are close to
 - any children you have a close relationship with

Best Interests of a Child

- “Best interests” that must be considered include everything related to a child’s:
 - emotional wellbeing
 - physical health and safety
 - social and cultural wellbeing and development
- Can consider impact on child of being separated from you, or of returning to home country with you if you are forced to leave Canada
- Best interests of a child:
 - are not the **most** important factor
 - do not override other factors in the application

Examples Affecting Best Interests of a Child

- child's age
- closeness of the relationship between you and the child
- child's establishment in Canada
- weak link between child and country of origin
- conditions in the country of origin that could impact the child

Examples Affecting Best Interests of a Child

- psychological and emotional impact on child who goes with you, if you are forced to leave Canada
- psychological and emotional impact if the child is separated from you
- child's medical needs
- impact on the child's education

Example Situation

Ana came to Canada one year ago, after fleeing her abusive husband in her home country. She arrived with her two teenage daughters. Ana's aunt and several cousins live in Canada as well. She applied for refugee status, which was denied.

Examples about Best Interests of Ana's Children

- Ana's teenage daughters will be affected if she is forced to leave Canada, and if they go with her. It may be in the best interests of her children for Ana to stay in Canada to provide emotional support and care.
- There may also be evidence that it is in the best interests of her daughters to stay in Canada for their health, safety and finish their education in Canada, especially if the same level of education would not be available in Ana's home country.



Proof to Support an Application

Evidence to Support an Application

- Evidence is the most important part of an H&C application
- Evidence gives support to show how and why you are claiming hardship, establishment in Canada and impact on the best interests of a child
- Keep a list of the documents you are collecting and make sure they are accurate and as recent as possible
- Documents must be in English or French
 - documents in another language must be translated into English or French
 - you also have to provide a copy of the original document and an affidavit (official statement) from the person who did the translation

Hardship: Examples of Documents

- News articles and reports about home country may show:
 - unsafe conditions
 - human rights concerns,
 - lack of resources for women if there is abuse or violence
- Medical report
 - explaining risk to your mental health if you return to home country
- Doctor's letter
 - explaining your need for medical care not available in home country
- Letters from friends or family about the impact on them or your children if you are forced to leave Canada

Hardship: Examples of Documents

Proving abuse

- Letters from friends or family
 - about potential partner or family abuse if you return to your home country
 - about their knowledge of partner abuse in Canada
- Hospital, doctor, other health professional records documenting abuse
- Police reports about partner abuse
- Court records or Court Orders
 - showing abuse in a family law case
 - a Restraining Order
 - a conviction or Peace Bond in a domestic assault case

Establishment: Examples of Documents

- Evidence of immigration documents in Canada
 - such as work permit, student visa
- Proof of employment
 - pay stubs, letter from your boss, bank account statements, tax statements
- Proof of education
 - certificate
 - diploma
 - letter from teacher or organization,
 - proof of enrollment or payment

Establishment: Examples of Documents

- Letters to show community involvement
 - religious organization
 - volunteer group
 - parent group
 - counselling group
 - sports team
- Letters from therapist or counsellor
- Photos with friends and family in Canada
- Letter from your child

Best Interests of a Child: Examples of Documents

To stay in Canada:

- Report cards, school enrollment
- Letters and photos about clubs, activities, sports
- Letters from friends and family
- Photos of child with friends and family
- Letters from the child about life in Canada and the impact of leaving
- Medical reports, letter from doctor about needs
- Documents about difficulties for children in home country (ie. lack of education, lack of healthcare)

Best Interests of a Child: Examples of Documents

For you to stay in Canada with child:

- Letter from adults about your relationship with the child
- Letter from child about your relationship
- Letter from child about the impact if child is separated from you
- Letter from medical professionals about impact on child if separated from you

Letters of Support

- Letters from friends and family can help show your community connections in Canada
- Letters from others should include:
 - the date
 - name of the writer
 - how they know you (the applicant)
 - proof of the writer's immigration status in Canada (such as photocopy of passport or permanent resident card)
 - the writer's signature

Letters of Support

- Letters of support should describe the writer's relationship to you (the applicant)
- Letters should be as detailed as possible
- Some things the letters can describe:
 - why you should stay in Canada,
 - the impact on other people if you leave
 - your involvement in your community
 - concerns about hardship to you

Writing Your Own Story and Reasons for Your Application

- You should also write an explanation of your situation,
 - describe why you would like to stay in Canada
 - explain your connections to Canada
 - describe what hardships you will face if you have to leave Canada
- A lot of detail is important and can make your application stronger
- An immigration lawyer or immigration consultant can give you more ideas, and help you put together your personal story

Other Necessary Documents

Other documents which you *must* include in your application:

- Application forms
- Two passport sized photos of you and anyone else included in the Application
- Documents proving your identity
 - passport
 - birth certificates
 - marriage certificate
 - proof of immigration status in Canada

Resources and Ideas for Documents

- These are just examples
- Other documents can be helpful
- The evidence in your applications depends on your specific situation
- For a fuller list of potential supporting documents:
 - <https://schliferclinic.com/wp-content/uploads/2018/05/HC-Toolkit-2018-Update.pdf>
- An immigration lawyer or immigration consultant can give you more ideas, and help you collect documents to support your application

Scenario #1

- Mitra, a young woman, is living in Canada in a common law relationship with a Canadian citizen. Her partner has sponsored her but the process is not complete.
- The relationship has become abusive and she wants to leave with her 5 year old child. She does not have legal immigration status in Canada.
- Mitra has been in Canada for 2 years. She has been working as a house cleaner and attends English classes. Her son attends school.

Can Mitra make an application for Permanent Residence based on Humanitarian and Compassionate grounds right now?

Scenario #1

- Mitra, a young woman, is living in Canada in a common law relationship with a Canadian citizen. Her partner has sponsored her but the process is not complete.
- The relationship has become abusive and she wants to leave with her 5 year old child. She does not have legal immigration status in Canada.
- Mitra has been in Canada for 2 years. She has been working as a house cleaner and attends English classes. Her son attends school.

YES, Mitra can make an application for Permanent Residence based on Humanitarian and Compassionate grounds right now.

What could she say to help her case?

Facts to Help Mitra's Case

1. The best interests of her son, to stay in Canada and not be separated from her.
 - evidence about her son's school, friends, and any medical needs he might have, and letters about her close relationship with him
2. Hardship to stay in an abusive relationship to obtain Permanent Residence status.
 - evidence of domestic violence, police reports, doctor's notes, letter from a shelter
3. Establishment in the community
 - studies, volunteer work, community groups
 - Mitra has been working without status, but some decision makers consider this a negative factor - it is important to get legal advice about how to address this

Questions?

Presenters

Tamar Witelson

Legal Director, METRAC



Roxana Parsa

Program Lawyer, METRAC





How Do I Make an H&C Application?

Overview of the Process

Elements to an H&C application

- Forms
 - <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5291-humanitarian-compassionate-considerations.html#5291E3>
 - These forms must be filled out for every person included in the application
- Evidence (documents)
- Written submission – from each person in the Application

Cost to Make and H&C Application

- You must pay a fee to the government to file your Application
- Your Application will not be considered if you do not pay the fee
- There are no exceptions and no government loans to help pay the fee for an H&C Application

Cost to Make and H&C Application

- As of March 2019:
 - the application fee for a single adult: \$550
 - each dependent child (younger than 22 years old and not married) is an additional \$150
- Additional information about fees:
<http://www.cic.gc.ca/english/information/fees/result.asp?countrySelect=CA&lob=hc>
- an immigration lawyer or consultant can tell you if the fee has changed

Stages of an H&C Application

After you submit your Application, there are two stages:

1. Stage 1: Approval in Principle

- This means that you have been **approved to apply** for Permanent Resident status through the humanitarian exemption
- You get a letter that the exemption has been granted, if you meet all **admissibility requirements**
- After you receive Approval in Principle, you can **apply for a work or study permit**

2. Stage 2: Approved of Permanent Residence

- Your Application is successful
- You become a Permanent Resident in Canada

Admissibility Requirements

After a Stage 1 approval, you will be asked to complete several admissibility requirements:

- Criminal and security checks
 - you will need to get a police certificate from every country you have lived in for more than 6 months since the age of 18
- Medical Examinations
 - you and all of your family members (spouse, children) must do a medical exam. Instructions on how to do this will be sent to you
- Biometrics (fingerprint and photo identification)
 - You will be asked to go to a Visa Application Centre to take a photo and give your fingerprints for a government file

Timelines

- An H&C Application takes a long time to be completed. In March 2019, the official timeline stated by the government of Canada is 22-36 months, from the time you submit your Application
- Even if you receive a Stage 1 approval, it can take many more months to receive an approval at the second stage
- If you have new information or documents supporting your case, you can send them in at any point while your Application is being processed

Do I Need a Lawyer?

- You can complete the H&C Application by yourself or with help
- An H&C Application includes many documents and is based on the strength of your evidence
- It is a good idea to get legal help to be sure to include all important details
- There are immigration lawyers and immigration consultants who may be able to assist you in an H&C application

How to Find Legal Assistance

- **Legal Aid Certificate**

- 16 hours of free legal representation for an H&C application
- survivors of domestic violence are eligible
- eligibility test for others with low income
- Legal Aid does not pay the fees to file your Application

http://www.legalaid.on.ca/en/getting/type_immigration.asp

- Community Legal Clinic or Student Legal Aid Service Society (free)

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

<http://www.legalaid.on.ca/en/contact/contact.asp?type=slass>

- JusticeNet list of lawyers who will work for a reduced fee

https://secure.justicenet.ca/directory/search/action/categoryList/profession_id/2/subprofessions/74/location/toronto/

- Find an immigrant consultant

<https://icrc-crcic.ca/find-a-professional/>

Scenario #2

- Ana came to Canada one year ago, after fleeing her abusive husband in her home country. She arrived with her two teenage daughters. Ana's aunt and several cousins live in Canada as well.
- Ana made a refugee claim when she arrived in Canada. The claim was denied 5 months ago.
- Since her arrival, Ana has been attending a support group at a local refugee shelter. She sees her aunt every weekend. Her daughters, 13 and 15, are attending school and are involved in extracurricular activities. Her youngest daughter has been having health issues which have required regular appointments with a doctor.

Can Ana make an application for Permanent Residence based on Humanitarian and Compassionate grounds right now?

Scenario #2

- Ana came to Canada one year ago, after fleeing her abusive husband in her home country. She arrived with her two teenage daughters. Ana's aunt and several cousins live in Canada as well.
- Ana made a refugee claim when she arrived in Canada. The claim was denied 5 months ago.
- Since her arrival, Ana has been attending a support group at a local refugee shelter. She sees her aunt every weekend. Her daughters, 13 and 15, are attending school and are involved in extracurricular activities. Her youngest daughter has been having health issues which have required regular appointments with a doctor.

Yes, Ana make an application for Permanent Residence based on Humanitarian and Compassionate grounds right now?

What could she say to help her case?

Facts to Help Ana's Case

- Even though Ana's refugee claim was denied 5 months ago, the 12 month bar does not prevent her from making an H&C application now. She can apply for an exception to the 12 month rule, based on concerns about the best interests of her two children.
- Ana should gather documents related to her children's school, activities, and how their education would change if they went with Ana if she has to leave.
- Her daughters could each write a letter about their relationship with their mother, and the impact of being separated from her, or of returning with her to her home country.
- Ana should also get medical documents related to her one daughter's medical condition, and how it would be affected if either Ana or she and her daughters left Canada.

Facts to Help Ana's Case

- Ana's relationship with her aunt and cousins is also important to show her connection to community and also the possible hardship to her and her family members, if she and her daughters are forced to leave Canada.
- Her aunt and cousins can all provide letters of support describing Ana's role in their lives.
- Ana can also seek a letter of support from a refugee shelter and news or international reports about woman abuse in her home country and what she could face if she returns to her home country.
- Ana could try to get a letter of support from someone in her home country about the abusive relationship, and what might happen if she returns to where her former partner and family are.

Questions?

Presenters

Tamar Witelson

Legal Director, METRAC



Roxana Parsa

Program Lawyer, METRAC





Additional Resources

Immigration and Refugee

Legal Aid Ontario

If you are making an immigration claim that involves partner violence:

www.legalaid.on.ca/en/getting/default.asp

- 416-979-1446 (Toronto)(accepts collect calls)
- 1-800-668-8258 (toll free)
- 1-866-641-8867 (TTY)

Refugee Law Offices

<https://www.legalaid.on.ca/en/contact/contact.asp?type=refugee>

Immigration and Refugee

- **Find a community legal clinic:**

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

- **FCJ Refugee Centre:** <http://www.fcjrefugeecentre.org/>

- **Canadian Association of Refugee Lawyers:**

<http://www.carl-acaadr.ca/>

- **Refugee Law Office:**

http://www.legalaid.on.ca/en/getting/type_immigration.asp

- **Canadian Council for Refugees:**

<https://ccrweb.ca/en/home>

Immigration and Refugee

- **Immigration, Refugees and Citizenship Canada:**
<https://www.canada.ca/en/services/immigration-citizenship.html>
 - Call toll free: 1 888 242 2100
 - TTY: 1-888-576-8502
- **Making a Humanitarian & Compassionate Application:**
 - Barbra Schlifer Commemorative Clinic – H&C Toolkit
<https://schliferclinic.com/wp-content/uploads/2018/05/HC-Toolkit-2018-Update.pdf>
 - FCJ Document Gathering Guide: <http://www.fcjrefugeecentre.org/wp-content/uploads/2018/08/HC-guide-ENGLISH-.pdf>
 - Government of Canada Guide: <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5291-humanitarian-compassionate-considerations.html>

Domestic Violence and Abuse

- **Family Violence Authorization Program (Legal Aid Ontario)**
 - Free 2-hour emergency meeting with a lawyer for family cases with partner abuse
 - Offered through some shelters and community legal clinics
 - Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- **Assaulted Women's Helpline** 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.
- **Victim Services Directory** www.justice.gc.ca/eng/pi/pcvi-cpcv/vsd-rsv/index.html
- **Barbra Schlifer Legal Clinic**
 - Toronto: 416-323-9149 x278 (legal intake) TTY: 416-3231361
 - Free counselling, referral, legal and interpreter services to survivors of violence (Family, Criminal and Immigration law)

Online Legal Information

Ministry of the Attorney General

www.attorneygeneral.jus.gov.on.ca/english/

- 1-800-518-7901 (toll free)
- 1-877-425-0575 (TTY)

Family Law Information Program (FLIP)

www.legalaid.on.ca/en/getting/flip.asp

Family Law Information Centres (FLICs)

www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

www.legalaid.on.ca/en/contact/contact.asp?type=flsc

Family Law Education for Women (FLEW)

www.onefamilylaw.ca

www.undroitdefamille.ca

Ontario Women's Justice Network (OWJN)

www.owjn.org

Looking for a Lawyer

Legal Aid Ontario

www.legalaid.on.ca/en/getting/default.asp

- 416-979-1446 (Toronto)(accepts collect calls)
 - 1-800-668-8258 (toll free)
 - 1-866-641-8867 (TTY)
-
- for low income people
 - 20 minutes Summary Legal Advice

Looking for a Lawyer

Legal Aid Ontario

- **If your partner is violent or abusive**

- Family Violence Authorization Program
- free 2-hour meeting with lawyer
- offered through some shelters and community legal clinics
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

Looking for a Lawyer

- ask for a free first consultation
- discuss cost of fees and disbursements

JusticeNet

- not for profit service
- reduced legal fees

www.justicenet.ca/professions

Canadian Family Law Lawyers Network (National)

www.cfln.ca

Law Society of Ontario Lawyer Referral Service

www.lsuc.on.ca/with.aspx?id=697

- 416-947-3330 (Toronto)
- 1-800-268-8326 (toll free)
- 416-644-4886 (TTY)