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Debunking Common Myths in Immigration Law

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

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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

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Presenters

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Topics to be Covered

1. Introduction
2. Debunking the Myths: Non-Status People
3. Debunking the Myths: Refugee Law
4. Debunking the Myths: Sponsorships
5. Debunking the Myths: Immigration Law

Information is accurate as of March 16, 2020.



Introduction

Why Talk About Myths?

- Immigration law is very complex and is an area that is constantly changing.
- Many people often share information without knowing if it is true.
- This webinar will discuss some of the most common myths we see when talking about immigration law.

Key Terms

- **Immigrant**
 - People who have immigrated to Canada and have legal status
- **Permanent Resident**
 - Gives you certain rights in Canada
- **Temporary Resident Visa**
 - Document that shows that can stay in Canada as a temporary resident (a visitor, student or worker)

Key Terms

- **Refugee**
 - People who have fled their country of origin because of fear of persecution based on:
 - Race
 - Religion
 - Nationality
 - Political opinion or
 - Membership in a particular social group

Key Terms

- **Non-Status**
 - People living in Canada with no immigration status
 - Sometimes referred to as “undocumented”, “no status” or “illegal”
- Many women come to Canada with status (ie. through a job, spouse, family member) but lose their status while living here.
- It is important to be supportive of people living without status. It can be a very scary and stressful situation.



Debunking the Myths: Non-Status Issues

Myth #1

If someone doesn't have legal status, they don't have any rights.

- **This is not true. Even if someone does not have immigration status in Canada, they do have certain rights.**
- Human rights and Charter rights apply to every person in Canada, including non status people.

Myth #1

If someone doesn't have legal status, they don't have any rights.

- **Non-Status Peoples:**
 - can send children to school
 - access to some health clinics (ie. Access Alliance, Women's Health in Women's Hands)
 - access to legal clinics and legal aid
 - library services, child care, banks

Myth #2

If someone doesn't have status, there is no hope to stay in Canada.

- This is not always the case.
- A person without status is technically removable from the country, but there is sometimes an exceptional situation that may lead to permanent residence.
- They may be able to apply for a **Humanitarian and Compassionate** application.

Myth #2

If someone doesn't have status, there is no hope to stay in Canada.

- The Minister has the right to grant permanent residence if it believes that it is justified by **humanitarian and compassionate considerations**.
 - This means showing the hardship a person will face if they return, and the establishment they have in Canada.
 - If there are children involved the minister **MUST** take into consideration the best interests of the child.
 - These considerations are especially useful for women with children who are are trying to leave abusive sponsorships.

Myth #2

If someone doesn't have status, there is no hope to stay in Canada.

- Humanitarian and compassionate applications are complicated, and the applicant needs to show evidence to show they meet the criteria for the exception.
- Not everyone will be eligible.
- It is important to get a lawyer if you can to.
- Legal Aid Ontario provides certificates for these kinds of applications.

Myth #3

If someone loses their status, they cannot restore it.

- There are ways to restore immigration status. However, there are requirements:
 - apply within 90 days of having lost their status;
 - meet the initial requirements for their stay;
 - have not failed to comply with any other condition (e.g., working without being authorized to do so);
 - meet the requirements of the class under which they are currently applying to be restored as a temporary resident. (If they are a student they must continue their studies)

Myth #4

A person will lose custody of their children if they don't have legal status.

- Immigration status does not have legal bearing on rights to child custody and access, or ability to bring a claim in family court.
- However, starting a family proceeding or CAS contact could put someone at risk of deportation.



Debunking the Myths: Refugee Law

Myth #5

Anyone can make a refugee claim.

- **Not** everyone can make a refugee claim in Canada.
- Who is eligible?
 - Must show a link or “nexus” between their persecution and one of the five grounds enumerated in s 96

Myth #5

Anyone can make a refugee claim.

- Who might not be eligible?
 - Made a previous claim that was withdrawn or abandoned
 - Made a refugee claim in an “information-sharing country”
 - United States, Australia, New Zealand, and the United Kingdom
 - Have a removal order against them
 - Have refugee status in another country
 - Committed a serious crime
 - Arrived from the United States

Talk to a lawyer if any of these apply.

Myth #5

Anyone can make a refugee claim.

- Even if someone is eligible for a refugee claim, there is no guarantee that the claim will be successful.
- There needs to be enough evidence to prove to the IRB that there is subjective and objective fear of persecution based on a ground, in addition to:
 - Lack of State protection
 - No Internal flight alternative

Myth #5

Anyone can make a refugee claim.

- If a woman entered Canada with her partner and made a refugee claim together, and is now experiencing violence and wants to leave the relationship, she has the right to **separate** her refugee claim.
 - She does not have to stay with her abuser just for the refugee application.
- Must make an application to separate claims as early as possible.

Myth #6

A person cannot claim refugee status if they've been in Canada for a while.

- Sometimes, people come to Canada and stay for a while before deciding to make a refugee claim.
- This can be based on a change in circumstances in their home country that now causes them to fear persecution or danger.

Myth #6

A person cannot claim refugee status if they've been in Canada for a while.

- **It is possible to make a claim after being here for a while.**
- If someone feels that they might face danger, torture, a risk to their life or a risk of cruel and unusual punishment if they return, they may be able to seek refugee protection.

Myth #6

A person cannot claim refugee status if they've been in Canada for a while.

- A person can make an **inland refugee claim**
 - By going to an IRCC office
 - Need to fill out a series of documents with information about all family members, as well as the basis of the refugee claim
- Staying in a Canada for a long time before applying might be seen negatively by the IRB.

Myth #7

If a woman experienced abuse from their partner, this is not a basis for refugee status.

- **In Canada, women can make refugee claims based on gender based violence.**
 - Gender-based persecution, such as domestic violence is recognized by the Canadian government as a ground for granting protection under s.96.
- Must show that home government is unable to protect you.
 - For example, the police will not take domestic violence claims seriously, or are not safe to contact
- Must show that moving to another part of the country would not keep the woman safe from the abuser.

Questions?

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Debunking the Myths: Sponsorships

Myth #8

A refugee can sponsor a family member right away

- **This is not true.**
- A refugee must become a **permanent resident** before applying to sponsor a family member.
- People who can sponsor family members are:
 - Citizen
 - Permanent Resident
 - Person registered in Canada under the Indian Act
 - **AND** must be at least 18 years old.

Myth #8

A refugee can sponsor a family member right away

- The process to become a Permanent Resident can take a long time.
- After a refugee claim is successful, a person must apply for PR and wait for the result before beginning a sponsorship application.

Myth #8

A refugee can sponsor a family member right away

- A person can only sponsor **certain** family members:
 - Partner
 - Dependent Child
 - Sometimes, parents or grandparents
- Can only sponsor other relatives (like siblings) in very specific situations.

Myth #9

A person can only apply for a spousal sponsorship if they are legally married.

- You **do not** have to be married to apply for a spousal sponsorship. However, you do have to be in a **genuine relationship**.
 - Will need to give proof showing that it is a genuine relationship.
- This includes same sex relationships

Myth #9

A person can only apply for a spousal sponsorship if they are legally married.

- A person can sponsor their **common law partner**. This means:
 - isn't legally married
 - can be any gender
 - is 18 or older

Myth #9

A person can only apply for a spousal sponsorship if they are legally married.

Common Law Partners:

- Have been living together for at least 12 consecutive months, meaning:
 - Living together continuously for one year, without any long periods apart
 - If either of you left your home, it was for:
 - family obligations
 - work or business travel
- Any time spent away from each other must have been:
 - Short and temporary

Myth #10

Marrying a Canadian citizen automatically gives a person citizenship.

- **This is not true!**
 - Marrying a citizen **does not** automatically give someone citizenship, and there is no special process for spouses of citizens.
- Anyone who wants to apply for citizenship must meet the same requirements:
 - Be a Permanent Resident
 - Be physically present in Canada for at least 1095 days during the previous five years

Myth #10

Marrying a Canadian citizen automatically gives a person citizenship.

- If you marry a Canadian citizen and do not have permanent status, they can sponsor you to become a Permanent Resident.
- This process can take several years to complete.

Myth #11

If someone is sponsored by a spouse and leaves the relationship because of abuse, she will be deported.

- This is not always true. There are different options available to survivors of family violence who are in the process of a sponsorship.
- It will depend on what stage the sponsorship is in.

Myth #11

If someone is sponsored by a spouse and leaves the relationship because of abuse, she will be deported.

- **Temporary Resident Permits** for people experiencing family violence
 - **Fee exemption:** survivors of violence can apply for TRP without paying the normal fees (usually \$200)
 - TRP and work permit given for a minimum of 6 months
 - Allows you to legally remain and work in Canada temporarily while figuring out your next steps
- Must be living in Canada and experiencing abuse from their partner **and**
- Seeking permanent residence through a spousal sponsorship or application where it is necessary to remain in the relationship
- Dependent children are eligible to be included

Myth #11

If someone is sponsored by a spouse and leaves the relationship because of abuse, she will be deported.

- The immigration officer will consider:
 - Your ties to Canada
 - Child custody or family law issues
 - How much time you might need to figure out immigration status
 - Time to rebuild life

Depending on situation, you may be able to renew the TRP. You can also apply for an **open work permit**.

Myth #11

If someone is sponsored by a spouse and leaves the relationship because of abuse, she will be deported.

- **Other options for survivors of family violence:**
 - extending or renewing their existing temporary status (work permit, study permit, or visitor status or record) if they have status in Canada
 - [restoring their status](#) if they are out of status, as they may be eligible
 - submitting an economic class application
 - applying for a general TRP
 - obtaining a stay or deferral of removal
 - applying for permanent residence under H&C considerations
 - claiming refugee protection and applying for a pre-removal risk assessment (PRRA), if applicable

All of these options depend on the specifics of the situation.

Myth #12

If someone is experiencing abuse and the relationship ends, they must leave the country.

- If there is an ongoing spousal sponsorship, it can be changed to a Humanitarian and Compassionate application based on the abuse.
- A lawyer can write a letter saying the sponsorship relationship doesn't exist anymore, and ask for H&C. The file may get a priority date.

Myth #13

A woman's Canadian citizen partner is threatening to have her deported. Is this possible?

- **Only the government can make the decision to deport someone.** Someone's partner cannot have them deported.
- The CBSA Border Watch Toll-Free Line does exist and people can call and report issues like false marriage, false information on application, etc.

Myth #13

A woman's Canadian citizen partner is threatening to have her deported. Is this possible?

- **If someone is reported to CBSA, they may do an investigation.**
 - There is an opportunity to respond to the investigation with evidence of abuse in a relationship.
 - If a woman believes their partner has falsely reported them to CBSA, contact a lawyer immediately.

Questions?

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03/16/2020

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Debunking the Myths: General Immigration Law

Myth #14

If someone gives birth to a child in Canada, the parents will automatically receive citizenship.

This is not true.

- Children born in Canada are automatically registered as citizens.
- This does **not** entitle parents to citizenship.
 - If the child is over 18, they may be able to sponsor their parent.
 - Otherwise, the parent needs to find their own pathway to citizenship depending on the situation (ie. Sponsorship, H&C)

Myth #15

If a child was born in Canada, the parents have the right to stay here legally.

- Even when a child is born, it does not mean that parents can automatically stay in the country.
 - It is possible that the parent will have to return to their country with their child.
- Humanitarian & Compassionate Applications are a good option here. They are based on:
 - Hardship
 - Establishment in Canada
 - Best interests of the child

Myth #16

Once you have Permanent Resident status, you cannot lose it.

This is not true

- There are ways to lose your permanent residence status.
 - For example, if your original application had false information
 - If you have not lived inside Canada for the length of time required (at least two years in a five year period)
 - You have given it up for residency in another country
 - If you have been convicted of a serious crime.

Myth #17

If someone comes to Canada as a foreign worker and is abused or exploited at work, they cannot change their job.

- If a foreign worker is *abused* or *at risk of being abused* through their job, they may be eligible for an **open work permit for vulnerable workers**.
 - Lets you work for almost any employer in Canada
 - Exceptions: cannot work for listed “bad employers” or sex work

Myth #17

If someone comes to Canada as a foreign worker and is abused or exploited at work, they cannot change their job.

- **Criteria for Open Work Permit:**

- Be in Canada
- Have a valid employer-specific work permit that has not expired
- Are being abused or at risk of being abused in the job

Myth #17

If someone comes to Canada as a foreign worker and is abused or exploited at work, they cannot change their job.

- Open work permit can protect a worker's rights by helping them leave an abusive situation
- Temporary solution
 - There is an expiry date and no renewal
 - Gives time to look for a job and apply for a new work permit

Myth #17

If someone comes to Canada as a foreign worker and is abused or exploited at work, they cannot change their job.

- Examples of workplace abuse that can be reported:
 - Physical harm
 - Sexual touching a person did not agree to
 - Unwanted sexual comments
 - Controlling where a person goes
 - Stealing from the employee
 - Threats and insults
 - Intimidation
 - Forcing employee to commit fraud



Conclusion

Conclusion

- It is important to have all the right information about how immigration laws might affect a case. There are strategic ways a lawyer can help resolve immigration issues.
- It's always important to try to find a lawyer you can trust.
 - Legal Aid
 - Community clinics and organizations
 - Law Union of Ontario

Questions?

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Please complete the survey, we appreciate your feedback.

<https://www.surveymonkey.com/r/RWVW9RM>



Additional Resources

Additional Resources

- **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)

Additional Resources

JusticeNet

- not for profit service
- reduced legal fees

www.justicenet.ca/professions

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)

Additional Resources

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)

• Refugee Law Office

- (416) 977-8111 (Toronto)