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Immigration, Women and Violence: Misrepresentation in Immigration Applications

October 2019

Roxana Parsa, Program Lawyer, METRAC
Silmy Abdullah, Staff Lawyer, SALCO

Funded by:

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CLEO's Steps to Justice website gives step-by-step information about common legal problems including partner abuse, family law, criminal law, housing and social assistance. Visit

www.stepstojustice for more information.



| Your Legal Rights



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| Your Legal Rights



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There will be time for Q&A and discussion at key points in the webinar. Please ask your questions using the “Ask a Question” feature and we will read them aloud. Your question **will only be seen by the presenters** and not other participants. If you are experiencing technical difficulties or have any questions specific to participating in the webinar, feel free to ask a question **by chat at any time** and we will respond in a private message back to you.

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<https://cleoconnect.ca/yourlegalrights>



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| Your Legal Rights



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METRAC

METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

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

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

www.undroitdefamille.ca

Presenters

Roxana Parsa

Program Lawyer, METRAC



Silmy Abdullah

Staff Lawyer, SALCO



Topics to be Covered

1. Immigration status, women and violence
2. Can permanent residents lose status?
3. What does it mean to be “inadmissible” to Canada?
4. “Misrepresentation” as a ground for inadmissibility
5. Misrepresentation and “marriage fraud”
6. How does a marriage fraud investigation affect women facing violence?
7. How can women protect themselves: Practical Tips
8. Additional Resources

Information is accurate as of October 30, 2019.



Introduction – Immigration Status, Women and Violence

Introduction – Immigration Status, Women and Violence

Barriers to leaving an abusive relationship:

- 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 – Immigration Status, Women and Violence

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

Introduction – Immigration Status, Women and Violence

Barriers to accessing the justice system:

- Not knowing legal rights
- Fear of the legal system
- Language barriers
- Lack of knowledge of resources or where to find help
- Poverty

Introduction – Immigration Status, Women and Violence

- Women are especially vulnerable when immigration status is tied to a spouse/partner
 - For example, when a spouse or partner sponsors them to become permanent residents of Canada (**focus of this webinar**)

Introduction – Immigration Status, Women and Violence

- When a woman tries to leave an abusive relationship, the spouse/partner or family members of the spouse/partner may try to put her immigration status at risk as a revenge tactic:
 - Not submitting the sponsorship application
 - Withdrawing sponsorship application
 - Reporting “fraud” to Immigration, Refugees and Citizenship Canada (IRCC) after sponsored spouse becomes PR (**focus of this webinar**)



Can permanent residents lose status?

Can permanent residents lose status?

Once you have your PR, cannot lose it just because relationship/marriage is over

- Reasons a woman can lose permanent residence:
 - Committing certain crimes
 - Not meeting residency obligations
 - **Misrepresentation** (providing false information or not giving information you should have while applying for immigration)

Can permanent residents lose status?

- When a woman tries to leave an abusive relationship, the spouse/partner or family members of the spouse/partner may try to put her immigration status at risk as a revenge tactic
- They can report misrepresentation to IRCC if she leaves the relationship
- The woman can become “**inadmissible**” to Canada – this can lead to loss of PR status and removal from Canada



What does it mean to be
“inadmissible” to Canada?

What does it mean to be “inadmissible” to Canada?

➤ Being “**inadmissible**” to Canada means you cannot enter or stay in Canada

➤ Immigration law:

➤ ***Immigration and Refugee Protection Act***

link: <https://laws.justice.gc.ca/eng/acts/i-2.5/>

➤ ***Immigration and Refugee Protection Regulations***

link: <https://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/>

What does it mean to be “inadmissible” to Canada?

- **What can make someone “inadmissible”?**
 - Security reasons (violence, terrorism, espionage) (s. 34)
 - Human or international rights violation- war crimes, crimes against humanity (s. 35)
 - Committing a crime (s. 36)
 - Taking part in organized crime (s. 37)
 - Health reasons: medical conditions that put public health or public safety in danger or causes excessive demand on health or social services (s. 38)

What does it mean to be “inadmissible” to Canada?

- **What can make someone “inadmissible”?**
 - Financial reasons: if you’re not able or willing to support yourselves and family members (s. 39)
 - **Misrepresentation (s. 40)**
 - Not complying with immigration law (s. 41)
 - Inadmissible family member (s. 42)

What does it mean to be “inadmissible” to Canada?

- Starts with an Investigation
- Inadmissibility report (“Section 44 Report”)
- If report is well-founded
 - removal order, or
 - referral to report to Immigration Division
- If referred to Immigration Division,
 - Admissibility hearing
 - Allowed to enter or remain in Canada, or
 - Removal order issued

What does it mean to be “inadmissible” to Canada?

- Investigations conducted by two immigration agencies:
 - Immigration, Refugees and Citizenship Canada (IRCC), or
 - Canada Border Services Agency (CBSA)

Questions? Presenters

Roxana Parsa
Program Lawyer, METRAC



Silmy Abdullah
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Misrepresentation as a Ground for Inadmissibility

Misrepresentation as a ground for inadmissibility

What is Misrepresentation?

In basic terms - *providing false information to IRCC or not giving information you should have given*

- **40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation
 - **(a)** for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;
 - **(b)** for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

Misrepresentation as a ground for inadmissibility

Applicants have to give information that is:

- Honest
- Truthful
- Complete

Misrepresentation as a ground for inadmissibility

No distinction between

- Innocent misrepresentation
- Misrepresenting on purpose

Misrepresentation as a ground for inadmissibility

What is Misrepresentation?

- A person is inadmissible to Canada for misrepresentation if they
 - Misrepresent or hide **material facts**
 - “**Material facts**” - information that affects or can affect the processing and result of someone’s immigration application.
- If giving false information or hiding information leads to a mistake in the processing of the application, or a mistake in the decision, then it is misrepresentation under the law.

Misrepresentation as a ground for inadmissibility

- **Examples of material misrepresentations (that could lead to a mistake) would be:**
 - Not declaring that you have been refused a visa for another country;
 - Providing a document that is found to not be genuine;
 - Not mentioning a family member;
 - A non-genuine marriage.
- **Examples of non-material misrepresentations (that could *not* lead to an a a mistake)**
 - Reversing the date and month of birth on an application;
 - Indicating being single when widowed; or
 - Providing correct and consistent information on multiple forms except one.

<https://www.bellissimolawgroup.com/inadmissibility/misrepresentation/>

Misrepresentation as a ground for inadmissibility

➤ **Applies to**

- Permanent Residents
- Foreign Nationals

Note: a foreign national is someone who is not a Canadian citizen or a permanent resident



Misrepresentation and “Marriage Fraud”

What is Marriage Fraud?

- Term used by the government
- Specific kind of misrepresentation
- Applies in sponsorship applications for spouses
- In cases where marriage not seen as “genuine” or when it is used solely to gain permanent residence in Canada

What is Marriage Fraud?

Understanding Sponsorship of Spouse/Common Law Partner/Conjugal partner:

- Permanent Resident or Citizen of Canada can sponsor
 - Their spouse, common law partner, conjugal partner, or dependent children to become permanent residents of Canada

What is Marriage Fraud?

Understanding Sponsorship of Spouse/Common Law Partner/Conjugal partner:

- **Spouse**
 - can be either sex and must be:
 - legally married to you
 - at least 18 years old

- **Common law partner:**
 - **isn't** legally married to you
 - can be either sex
 - is at least 18 years old
 - has been living with you for at least 12 consecutive months, meaning you've been living together continuously for 1 year in a conjugal relationship, without any long periods apart
 - Any time spent away from each other should have been
 - short
 - temporary

What is Marriage Fraud?

Understanding Sponsorship of Spouse/Common Law Partner/Conjugal partner:

Your conjugal partner

- isn't legally married to you or in a common-law relationship with you
- can be either sex
- is at least 18 years old
- has been in a relationship with you for at least 1 year
- lives outside Canada
- can't live with you in their country of residence or marry you because of legal **and** immigration reasons such as
 - their marital status (still married to someone else in a country where divorce isn't possible)
 - sexual orientation (for example, you are in a same-sex relationship, and same-sex relationships are not accepted, or same-sex marriage is illegal where they live),
 - persecution (relationship is between different religious groups which is not accepted and they may be punished legally or socially)

What is Marriage Fraud?

Understanding Sponsorship of Spouse/Common Law Partner/Conjugal partner:

Dependent children

- Children qualify as dependants if they meet **both** of these requirements:
 - they're **under** 22 years old
 - they don't have a spouse or common law partner
- Children 22 years old or older qualify as dependants if they meet both of these requirements:
 - they are unable to financially support themselves because of a mental or physical condition
 - they have depended on their parents for financial support since before the age of 22
- With the exception of age, dependent child must continue to meet these requirements until IRCC finishes processing the application.

What is Marriage Fraud?

Understanding Sponsorship of Spouse/Common Law Partner/Conjugal partner:

- To apply to sponsor your spouse, partner or child, there are 2 applications:
 1. You must apply to become a sponsor.
 2. Your spouse, partner or child must apply for permanent residence.

- Send both the sponsorship and the permanent residence applications **together at the same time.**

What is Marriage Fraud?

Two relevant provisions in Marriage Fraud:

Misrepresentation

- **40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation
 - **(a)** for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

Immigration and Refugee Protection Act

What is Marriage Fraud?

Two relevant provisions:

Bad faith

- **4 (1)** For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership
 - **(a)** was entered into primarily for the purpose of acquiring any status or privilege under the Act; or
 - **(b)** is not genuine.

Immigration and Refugee Protection Regulations



What happens in a “marriage fraud” investigation?

What happens in a “marriage fraud” investigation?

Typical scenario:

- Husband is a Canadian citizen/PR
- Goes to home country and marries
- Sponsors wife
- Wife lands in Canada as a permanent resident
- Relationship breaks down because husband is abusive
- Wife leaves (separates and/or in the middle of divorce proceedings)
- Abusive spouse/partner/in-laws call IRCC and says that sponsored spouse used them to come to Canada (revenge tactic)
- Reports “marriage fraud”
- Investigation begins

What happens in a “marriage fraud” investigation?

- Notification of the investigation through a letter from Immigration, Refugees & Citizenship Canada (“IRCC”)
 - The letter does not usually provide specific details of the allegations
- The letter gives the sponsored spouse 45 days to respond to the allegations. The individual has the right to a fair opportunity to respond.
- Can ask for extension

What happens in a “marriage fraud” investigation?

Example language of the letter:

“You were granted permanent residence status in Canada, based on an Application and Undertaking submitted by your sponsor. We have reason to believe that you may have misrepresented your relationship with **xyz** in order to gain status as a permanent resident of Canada. Information received alleges that you have separated from your spouse shortly after receiving permanent resident status.”

What happens in a “marriage fraud” investigation?

Letter will include the relevant law:

“It is alleged that you may be inadmissible to Canada under section 40 of the Immigration and Refugee Protection Act, specifically:

*40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;*

Regulation 4 of the Act states:

*4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or
b) is not genuine.”*

What happens in a “marriage fraud” investigation?

Letter will typically ask for the following:

- Details about what happened in the marriage (how and when they met, when they decided to marry, how did it end, what efforts did sponsored spouse make to save the marriage)
- Proof that the relationship was genuine before and after sponsored spouse became a PR
- If marriage has ended, date of separation and reasons for marriage breakdown
- Copy of full separation or divorce proceedings
- Details about children
- Any other information they may want to add

What happens in a “marriage fraud” investigation?

- Sponsored Spouse has to show proof that:
 - Marriage was genuine
 - Marriage ended because of abuse
- Provide submissions along with supporting document and affidavit and send to IRCC
- If IRCC is convinced, Permanent Resident status is safe and the file is closed
- **If IRCC is not convinced:**
 - **Inadmissibility report (“Section 44 Report”)**
 - **If report is well-founded**
 - **removal order, or**
 - **referral to report to Immigration Division**

What happens in a “marriage fraud” investigation?

Inadmissibility Report

- If report is well-founded
 - removal order, or
 - referral to report to Immigration Division

What happens in a “marriage fraud” investigation?

Referred to Immigration Division

- Admissibility hearing:
 - Allowed to enter or remain in Canada,
or
 - Removal order issued

Questions? Presenters

Roxana Parsa
Program Lawyer, METRAC



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Staff Lawyer, SALCO





How do marriage fraud investigations impact women?

How do marriage fraud investigations impact women?

- Can trap women in abusive relationships
 - Fear of loss of PR status
- Women are forced to re-live their trauma and abuse and “prove” it to IRCC to safeguard immigration status.

How do marriage fraud investigations impact women?

- No details of allegations, so women don't know the case to meet
- To show genuineness of marriage, have to submit the same evidence she provided at the time of the application, such as wedding photos, proof of money transfer, etc.
- Hard to obtain this evidence, because in most cases the original application is put together by the sponsor and the information is already with IRCC. A lot of the supporting documents used for the application is retained by the sponsor and no longer with the sponsored person after she leaves the relationship.
- Removal to home country can expose them to further violence and isolation by family members due to stigma of divorce



How Can Women Protect Themselves: Practical Tips

How Can Women Protect Themselves: Practical Tips

Responding to the Initial Letter:

- She can ask for an extension beyond 45 days to respond to IRCC's letter
- Seek legal advice/help
- Lawyer can draft an extension letter and fax to Niagara Falls IRCC
- IRCC does not respond to letter
- Assumed that the extension has been granted

How Can Women Protect Themselves: Practical Tips

Responding to the Initial Letter:

- Gather evidence to show that
 - Marriage is genuine
 - Marriage broke down only because of abuse (no other option but to leave the marriage)
 - tried everything to make marriage work
 - She is taking steps to build her life in Canada
- Talk to a lawyer

How Can Women Protect Themselves: Practical Tips

Proof:

- Marriage is genuine
 - Photos of wedding ceremony, outings before or after marriage
 - Evidence of communication
 - Support letters

- Marriage broke down only because of abuse
 - Police reports
 - photographs
 - Support letters from shelter, community service agencies
 - Evidence of verbal abuse
 - Support letters

- She is taking steps to build her life in Canada
 - Employment letter
 - Proof of volunteer work
 - Proof of courses (transcripts, acceptance letters, certificates)
 - If taking counseling, letter from counselor

How Can Women Protect Themselves: Practical Tips

- Her story is the most important part
- Have her lawyer draft a very strong affidavit which details what happened
- Lawyer will submit affidavit, lawyer's submissions and supporting documents

How Can Women Protect Themselves: Practical Tips

Inadmissibility Report:

- In some cases, she may be given a chance to reply
- Connect her to a lawyer so that she can get help in preparing her response

How Can Women Protect Themselves: Practical Tips

Admissibility Hearing at the Immigration Division (ID):

- She can
 - testify at the hearing
 - submit documents/proof (at least 5 days before hearing)
 - call witnesses

- She should get a lawyer to represent her

How Can Women Protect Themselves: Practical Tips

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

Questions? Presenters

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Additional Resources

Additional Resources

- **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>

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

- **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>

Additional Resources

- **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>

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)
-
- for low income people
 - 20 minutes Summary Legal Advice

Additional Resources

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)



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