

Canadian Immigration: Landscape & Overview

To see the complexities of experiences for women, we need to have an understanding of the Canadian immigration landscape. An understanding of the reasons why women leave their countries, how they enter Canada, and their status within Canada provides the foundation to work from a more informed position. In addition to intimate partner violence, many Non-Status, Refugee and Immigrant women (NSRIW) must also confront problems based on a potential lack of equal legal status in Canada.

In order to understand where Canadian immigration policy is today it is important to look back at the historical and ideological context of Canadian immigration policy. Looking at the history supports us in providing anti-oppressive services based on an analysis of the woman in the context of Canadian systems. The current foundations of Canadian immigration structures grew out of a history of classist and racially discriminatory policies throughout different historical eras.

The growth and expansion of colonialism intertwined with the evolution of capitalism in Canada and other parts of the world is the context for immigration to Canada today. With the exception of First Nations peoples, Canada is a country populated by Immigrants.

Due to the need to attract settlers, there were few systematic immigration policies before the late 19th century (Anderson and Frideres, 1981, p. 223). Immigration to Canada is generally broken down into five phases:

1. French era;
2. British era;
3. French, German-speaking, Slavic and Scandinavian groups;
4. Post-World War I with increasing restrictions based on arbitrary and racist determinants; and
5. Post-World War II with a greater number of Immigrants and increasing diversity.

The number of Immigrants from poor countries of the Southern hemisphere rose when immigration policies were liberalized in the 1960s and 1970s. At this time, policies such as the points system were introduced. However, the number of people of colour from the Southern hemisphere did not surpass the number of European Immigrants until 1976 (Jakubowski, 1997).

The immigration of people of colour from developing countries is regulated and influenced by the historical development of Canada as a colonized and capitalist country. Principally, the entry of poor and racialized Immigrants has been determined by Canada's labour needs. The class and racial bias of the history of Canada can be clearly shown through its immigration policies. Poor people and people of colour are only allowed into Canada to fulfill the country's need for cheap labour - Chinese labourers to build the railway, Eastern and Central European farmers to settle and develop agricultural land in the West and, more recently, women from developing nations to do domestic work.

"One's position in Canadian society is influenced by ethnic background. There is a clear and persistent relationship between social class and ethnic group of origin. The nation was founded in a tradition of conquest and the related definition of superiority and inferiority."

(The Canadian Class Structure, Dennis Forcese)

While Canada has encouraged immigration to fulfill its own labour needs, it tightens immigration in times of economic crisis. Tightening immigration regulations also serves the dual purpose of maintaining the predominance of the White status quo in the country. The examples of the Chinese head tax of 1903, the limits set on Japanese Immigrants in the late 1930s and 1940s, and the implementation of the "continuous passage" policy to exclude South Asian Immigrants in the early 20th century are clear examples of Canada's "closed door" policy for people of colour during times of economic crisis (Philippine Women Centre of BC, 2000).

Canada is now seeing more competitors in the field of recruiting Immigrants, as all developed countries are faced with aging and shrinking populations. Immigration currently accounts for about half of all population growth in Canada and it is projected that by the second decade of the new century all population growth will be the result of immigration (Statistics Canada, 2006). Immigration also serves to fill in short and long-term labour market shortages and will, therefore, be a key source of labour force growth in the future (CIC, 2007).

Canada is a relatively new country, and as a result, a formal immigration process has not been established for the length of time it has existed in similar countries, such as England or the United States. After 1947, domestic immigration law went through many major changes, most notably with the Immigration Act, 1976, and the current Immigration and Refugee Protection Act, 2002.

Objectives of the Immigration & Refugee Protection Act (IRPA)

Currently, Canada is known as a country with a broad immigration policy, which is reflected in Canada's ethnic diversity. According to the 2001 census by Statistics Canada, Canada has 34 ethnic groups with at least one hundred thousand members each, of which 10 have over 1,000,000 people and numerous others represented in smaller amounts. 13.4% of the population belonged to visible minorities: most numerous among these are Chinese (3.5% of the population), South Asian (3.1%), Black (2.2%) and Filipino (1.0%) (CIC, 2002).

After the initial period of British and French colonization, four major waves of immigration and settlement of non-Aboriginal peoples took place over a period of almost two centuries. The fifth wave is currently ongoing.

Immigration since the 1970s until the present has overwhelmingly been racialized people from Southern developing countries. This development began when restrictions on non-white immigration were altogether removed with the revised Immigration Act, 1967, during the time of Lester B. Pearson's government. This continued to be official government policy under his successor, Pierre Trudeau. During the Mulroney government of the 1980s, immigration levels were increased further and have been presently maintained with slight fluctuations at around 225,000–275,000 annually.

Many of the provisions to acquire, or lose, Canadian citizenship that existed under the 1946 legislation were repealed in 1977. For example, on February 15, 1977 Canada removed restrictions on dual citizenship. Also, in general Canadian citizens are no longer subject to involuntary loss of citizenship, barring revocation on the grounds of immigration fraud (Citizenship & Immigration Canada –Gov, 2002).

Immigration Levels

In 2006, a total of 251,649 people were admitted to Canada as permanent residents.

- 54.9% were economic immigrants and their dependants;
- 28% were in the Family Class;
- 12.9% were protected persons; and
- 4% were granted permanent resident status on H&C grounds.

Canada has 34 ethnic groups . . .

The following table, adapted from Citizenship and Immigration Canada's Facts and Figures 2006, provides more detailed breakdowns by immigration class/category.

Class/Category	Admitted	
	NUMBER	%
ECONOMIC CLASS		
Skilled Workers	105,949	42.1
Business Immigrants	12,077	4.8
Provincial/Territorial Nominees	13,336	5.3
Live-in Caregivers	6,895	2.7
Total Economic Class (including Dependants)	138,257	54.9
FAMILY CLASS		
Spouses, partners, children and others	50,500	20.1
Parents and Grandparents	20,006	8.0
Total Family Class	70,506	28.1
PROTECTED PERSONS		
Government-Assisted Refugees	7,316	2.9
Privately Sponsored Refugees	3,337	1.3
Protected Persons in Canada	15,892	6.3
Dependants Abroad	5,947	2.4
Total Protected Persons	32,492	12.9
Humanitarian and Compassionate Grounds / Public Policy	10,223	4.0
Permit Holders	159	0.1
Total Others	10,382	4.1
Category Not Stated	12	–
TOTAL	251,649	100

Immigration System: Legal Considerations for Women Who Have Experienced Violence

Women with Permanent Resident Status

A permanent resident is an Immigrant or a protected person (Refugee) whose application to live in Canada permanently has been approved. They are sometimes referred to as “landed immigrants” (CLEO, 2009, p. 1). Citizenship and Immigration Canada (CIC) issues documents to permanent residents as proof of status. The documents that prove resident permanent status include the Permanent Resident Card, the Record of Landing, and the Confirmation of Permanent Residence (CLEO, 2009). Permanent residents can apply for citizenship after fulfilling the eligibility criteria for Canadian citizenship.

A woman who has permanent resident status will not lose her status or be removed from Canada only because she leaves an abusive relationship, even if her abuser is her sponsor (CLEO, 2009). Her spouse or partner cannot force her to leave Canada. She should contact a family lawyer to discuss access to child support and spousal support.

A woman with permanent resident status will not lose her permanent resident status if she applies for social assistance benefits (also known as income assistance or welfare), although she may be expected to try and get support from her sponsor, unless their relationship ended because of abuse. She should let her caseworker know if this is the case.

Women Who Have Sponsored an Abusive Spouse or Partner

If a woman sponsored her spouse or partner and wants to withdraw her sponsorship, withdrawal can only occur before a final decision is taken, meaning:

- with respect to sponsorships of overseas cases, if a permanent resident visa has not been issued
- with respect to the spouse or common-law partner in Canada class, up to and prior to the moment the Confirmation of Permanent Residence status document is entered into FOSS, Field Operations Support System (CIC, 2008). FOSS is used to maintain electronic records of applications for permanent residency.

If her spouse or partner has been issued a permanent resident visa, or in the case of inland spousal sponsorship, a Confirmation of Permanent Residence status document has been entered into FOSS, she cannot withdraw her sponsorship and is financially responsible for her spouse or partner for three years. In the past the agreement was ten years and some people are still in a ten-year agreement. She can still get a divorce but her sponsorship obligations will remain.

Her financial responsibility for her spouse or partner will become an issue only if her spouse or partner collects welfare from the Ministry of Housing and Social Development (MHSD).

Sponsors, in signing their undertaking, acknowledge that any income assistance paid to their sponsored relative during the period of the undertaking becomes a debt the sponsor owes

to the provincial government. For spouses this period is for three years from the time the sponsored person becomes a permanent resident. If a woman receives a letter from the provincial government asking her to repay her abuser's welfare payments, she should see a lawyer to determine the best course of action and whether there is some way to challenge the debt given her particular circumstances.

Women without Status

Women without permanent resident status may have temporary status or no immigration status at all (CLEO, 2009). Some examples of women who do not have status in Canada are:

- women who came into Canada with a temporary resident visa or a temporary resident permit and stayed beyond the expiration of their visas and/or permits;
- women who made refugee claims and were rejected and preferred to stay in Canada illegally rather than return to their country of nationality or country of former habitual residence for fear of an uncertain future, or even death;
- women who made claims for refugee protection based on their spouse or partner's fear or persecution and have separated from their spouse or partner and have difficulty succeeding with their claims; and
- women with inland spousal sponsorship applications in progress who separate from their sponsors because of abuse.

If you have temporary status, or you are a refugee claimant, or your application for permanent resident status is in progress, you should get legal advice right away, before making any decisions about leaving your partner as you may be at risk of being removed from Canada.

Inland Spousal Sponsorship

A woman, who is in Canada, regardless of whether she has temporary status, can apply for sponsorship under the Spouse or Common-law Partner in Canada class (CLEO, 2009). Some women in Canada do not have the inland spousal sponsorship filed but are waiting for it to be filed. This type of application is processed in Canada and is also called an inland spousal sponsorship (CLEO, 2009). In order to make this application for sponsorship status, a woman needs her sponsor to sign the appropriate documents and agree to the sponsorship. An immigration officer needs to determine that the relationship she is in is genuine. Also, the sponsorship requirements and all other Canadian immigration requirements need to be met for the woman to be given permanent resident status (CLEO, 2009).

When working with a woman living in an abusive relationship, it is important to know that many abusers use a woman's lack of status to control and manipulate her. It is not uncommon for an abuser to promise his partner that he will sponsor her. Some women remain in relationships for years waiting for the sponsorship application to be filed. In other cases, the sponsorship application is filed but then withdrawn before it is finalized, or he continually threatens to do so. Some women believe by simply being married to a Canadian citizen or permanent resident, they will have status in Canada - this is not true: a sponsorship still must be filed.

Women in these types of situations are incredibly vulnerable. Without status they cannot legally work in Canada. Often, they are relying on their abuser for financial support. They may also be worried about being deported without their children. Women in these situations must see an immigration lawyer as soon as possible to discuss their options to remain in Canada.

Inland spousal sponsorship applications take time to process. If a woman has not yet received permanent resident status she should get legal advice immediately if she leaves, or is thinking of leaving, her spouse or partner. If she separates from her spouse or partner, she needs to see an immigration lawyer to decide what options are available to her. For example, she may be able to pursue an application to remain in Canada on humanitarian and compassionate (H&C) grounds.

Refugee Women

In all of the type of cases discussed below, a woman needs to see a lawyer to discuss her legal options.

Many women come to Canada because they are fleeing sexual and gender-based violence, like intimate partner violence, but do not know anything about the refugee system and assume their situation is not covered by the definition of refugee used by CIC. It is important that women in this situation be directed to see an immigration lawyer immediately to discuss their options. Women in these types of situations may be able to file a refugee claim if they were not able to obtain effective protection from their government to stop the violence.

Other women come to Canada and make a claim for refugee protection that is based upon that of their spouse or partner. If a woman has been found to be a Convention refugee then she is not at risk of removal when she separates from her spouse or partner, even if she has yet to receive permanent resident status. Her application for permanent residence will not be affected if she applies for and receives welfare benefits.

If a woman's refugee claim is still being decided by the Refugee Protection Division (RPD) and her claim is based on her spouse or partner's fear of persecution, she may have difficulty succeeding with her claim if she separates from her spouse or partner. Her lawyer may advise her to apply to the RPD to sever her claim and proceed independently. There is no guarantee that her application will succeed. She may argue that her grounds for fearing persecution have arisen during her time in Canada, that the breakdown of her marriage or relationship has created new grounds for fearing persecution in her country of origin.

Women Who Are "Accompanying Dependents" Under the Entrepreneur Program

Entrepreneurs and their dependents are granted conditional permanent resident status when they enter Canada. They need to establish and actively manage a business in Canada within two years of arrival to fulfill the terms and conditions of landing.

If a woman was admitted into Canada as an accompanying dependent under the Entrepreneur Program, and she wishes to separate from her spouse before they meet the business requirements, she may be at risk of removal from Canada. Unless she is able to start a

Many women come to Canada because they are fleeing sexual and gender-based violence, like intimate partner violence, but do not know anything about the refugee system and assume their situation is not covered by the definition of refugee used by CIC.

business on her own, she will not be able to fulfill the terms and conditions of landing and will therefore be at risk of removal from Canada.

She should get legal advice. She will need to contact CIC to acknowledge the changes in her circumstances. CIC has the discretion to refer the matter to an adjudicator for an admissibility hearing. She may lose her permanent resident status.

If she loses her permanent resident status, and she will encounter hardship if returned to her country of origin, she can pursue an H&C application to remain in Canada. It will be helpful if she starts the divorce process and negotiates child custody if there are children involved. She should get a lawyer.

Live-in Caregivers

The Live-in Caregiver Program (LCP), a Canadian immigration program, brings mainly women of colour from developing countries – largely the Philippines – to work in Canada as live-in caregivers. It is a requirement of the LCP that a caregiver live in the employer's home. The LCP requires participants to complete at least two years of employment as live-in caregivers within the three-year period before they can apply for permanent residence in Canada. It is important to note that at this time, there are new regulations that have been proposed but are not yet enforced.

When a live-in caregiver is dismissed or leaves an abusive employer, she must find a new employer, have their offer of employment validated by Service Canada, and obtain a new federal work permit. This may take time, during which she may not work, as this is illegal. Periods of unemployment can delay the date on which she can apply for permanent residence and could cause her to exceed the three years (it is likely to be a 4 year period) within which she must complete two years of work.

For support and legal assistance, live-in caregivers can contact:

West Coast Domestic Workers' Association

302-119 West Pender Street
Vancouver, BC V6B 1S5
Telephone: 604-669-4482
Toll-free: 1-888-669-4482

Vancouver Committee for Domestic Workers and Caregivers Rights

2150 Maple Street
Vancouver, BC V6J 3T3
Telephone: 604-874-0649

Humanitarian and Compassionate (H&C) Applications

Immigration law requires people to apply for permanent residence from outside Canada (CLEO, 2009). If CIC is satisfied that there are sufficient humanitarian and compassionate reasons, then applications from within Canada are allowed to be made.

Immigration policies specifically address intimate partner violence and sponsorship withdrawal. CIC officers take into account situations where a woman has left an abusive spouse or partner. A woman should get advice from a lawyer if she is thinking about making an H&C application. An application for permanent resident status on H&C grounds should include, but should not be limited to, the following (CLEO, 2009):

- history and details about the abuse
- when the abuse began and incidents (e.g. date, details, witnesses)
- escalation of abuse, level of fear and risk
- reports from transition houses, shelters, community or women-serving agencies
- reports from medical professionals, hospitals, clinics
- police incidence reports
- court information regarding charges or convictions
- if she is required as a witness in a criminal trial
- best interest of a child
- if there is a non-removal order for a child then separation would cause hardship
- substantial connection to Canada
- if she will be able to support and establish herself in Canada
- hardship she would face if she returned to her country of origin
- customs and culture in her country of origin
- lack of support of relatives and friends in her country of origin
- hardship her children will endure
- if the abuser will have access to her in her country of origin
- political unrest or war in her country of origin
- hardship to any Canadian citizen or permanent resident, such as an elderly person, if she is removed

Pre-removal Risk Assessment

If a woman has been issued a removal order, she may be able to apply for a pre-removal risk assessment (PRRA) (CLEO, 2009). The PRRA officer will assess the risks she would face if she were returned to her country of origin. Risks assessed must be risks of persecution, torture, cruel and unusual punishment or risk to life (CLEO, 2009). The PRRA officer must then decide if she meets the definition of a Convention Refugee or a person in need of protection.

This application must be offered to a woman by a Canada Border Service Agency (CBSA) officer before removal arrangements can be finalized.

For more information on PRRA see Legal Services Society's Guide to Pre-removal Risk Assessment Applications (available in Chinese, English, and Spanish)
http://www.lss.bc.ca/publications/pub.aspx?p_id=94.

Legal Assistance

Legal Services Society (LSS) provides a range of free services that may help you if she has a legal problem. LSS is a non-profit organization that provides legal aid to British Columbians. You do not have to have any legal status in Canada to obtain legal aid services.

LSS will pay for a lawyer to represent her if her problem is covered by the legal aid rules, if she meets the financial guidelines and if she has no other way of getting legal help. Legal problems that may be covered by legal aid include criminal charges, mental health and prison issues, serious family problems, child protection matters and immigration problems.

For more information and/or to apply for legal aid:

Legal Services Society Call Centre
Lower Mainland: 604-408-2172
Outside the Lower Mainland, toll free:
1-866-577-2525
<http://www.lss.bc.ca>

- Immigration/refugee law
- Child protection law
- Family law
- Criminal law
- Human rights law
- Housing law

Jane Doe Legal Network

The Jane Doe Legal Network serves women and girls whose lives have been impacted by violence and/or abuse. Free legal consultations are available in the following areas:

For more information, you can contact:

Pivot Legal Society
678 East Hastings Street
Vancouver, BC
V6A 1R1
Tel: 604-255-9700

Reference List

- Anderson, A. & Frideres, J. (1981). *Ethnicity in Canada: Theoretical perspectives*. Toronto: Butterworths.
- Canada. (2001). *Immigration and Refugee Protection Act, 2001, c.27*. 30 June 2008. <http://laws.justice.gc.ca/en/I-2.5>.
- Canada. (2002). *Immigration and Refugee Protection Regulations, SOR/2002-227*. 30 June 2008. <http://laws.justice.gc.ca/en/I-2.5/SOR-2002-227/index.html>.
- Canada, Citizenship and Immigration Canada (CIC). (2008a). *Application to Sponsor and Undertaking*. IMM 1344 A (05-2008) E.
- _____. (2008b). *Home Page*. 30 June 2008. www.cic.gc.ca.
- _____. (2008c). *IP2 Processing Applications to Sponsor Members of the Family Class*. 2008-06-02.
- _____. (2008d). *Sponsorship Agreement*. IMM 1344 B (05-2008) E.
- _____. (2007a). *Annual Report to Parliament on Immigration 2007*. Ottawa: Minister of Public Works and Government Services Canada.
- _____. (2007b). *Facts and Figures 2006 Immigration Overview: Permanent and Temporary Residents*. Ottawa: Minister of Public Works and Government Services Canada.
- _____. (2007c). *Strengthening Protection and Assistance for Victims of Human Trafficking*. 30 June 2008. <http://www.cic.gc.ca/english/information/applications/trp.asp>.
- _____. (2004). *Criminal Justice and the Immigration and Refugee Protection Act*. 30 June 2008. <http://www.cic.gc.ca/english/resources/publications/justice.asp>.
- Canada, Statistics Canada. (2006). *Social and Aboriginal Statistics Division. Women in Canada: A Gender-based Statistical Report*. Ottawa: Ministry of Industry, no. 89-503-XPE.
- Canadian Research Institute for the Advancement of Women (CRIAOW). (2003). *Immigrant and Refugee Women. Fact Sheet. No. 5-2003*.
- Forcese, D. (1975). *The Canadian class structure*. Toronto: Ryerson