



THE CANADIAN
BAR ASSOCIATION

Service barriers for immigrant women facing domestic violence

By Archana Medhekar and Ivana Vaccaro

Canada is the dream destination for many immigrants. This is certainly not an overstatement, at least not according to what the federal government is reporting in its most recent statistics on the number of immigrants entering Canada. In 2012, with 257,515 immigrants entering Canada, we became the G8 country with the highest proportion of foreign-born population. Between 2006 and 2011, approximately 1.2 million immigrants entered Canada. So, naturally, we have to ask ourselves how Canada has responded to the influx of immigrants who made a choice to make Canada their home. Canada has and continues to adopt an ideology which, unlike its American counterpart, embraces "multi-culturalism" without imposing assimilation. It is this ideology that has allowed immigrants to infuse their presence in and diversify the Canadian mainstream, while proudly preserving their ethnicity, religion, cultural heritage, language, political beliefs and values (including those related to gender identity and roles).

Many family lawyers share the concern that simply recognizing and appreciating the existence of this Canadian mainstream of "multi-culturalism" does not assist in dealing with the extra layer of complexity it adds to an already complex family justice system. We have to appreciate that immigrants who enter Canada have, for the most part, no understanding of the family justice system and are confronted with serious barriers in gaining access to and learning how to navigate the system. Arguably, the single group of immigrants that face the greatest barriers are immigrant women who are victims of domestic violence.

In October 2012 the federal government introduced legislative changes to our immigration policies respecting permanent residency status in Canada to curb marriage fraud. It imposed a two year conditional permanent residence period for sponsored spouses and partners who have been in a relationship of two years or less with their sponsors, and who have no children in common. Under the new law, if the sponsored spouse or partner does not remain in a conjugal relationship and cohabit with their sponsor during the conditional period, their permanent residence may be revoked and they may be deported. There is an exception built into this condition for victims of abuse or neglect by their sponsors or related family members. However, this exception may be entirely ineffective if the federal government fails to inform the victims, in their native language, of the existence of the exception. To substantiate a claim of abuse or neglect, the victim must produce corroborating evidence. In most cases, domestic violence is not reported and there is no evidence other than the victim's testimony. Moreover, sponsors may use the new rule to continue to abuse and control their victim by threatening deportation. For immigrant women whose marriage to the sponsor was arranged, they will not be able to satisfy the two year relationship threshold, which presents another barrier. There may be a plethora of issues related to the new rule which will come to light over the next while.

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Immigrant women, often uprooted from their native countries, may find themselves trapped in abusive relationships without any means of emotional, financial or legal support. These women usually have no one to turn to for support other than the aggressor and/or his family. The aggressor will normally censor and limit the immigrant woman's communication with her family and friends back home to isolate her from her support network.

Unfortunately, many of these women do not speak either English or French and as such the communication of important information concerning the resources available to them, where they exist, presents yet another obstacle in gaining access to such resources and support.

Women, who are financially dependent on their aggressors, but wish to gain some economic independence, face the additional challenge in securing employment and training to join the paid workforce. When these women have an education or work-related skills, these attributes do not translate well, if at all, into the Canadian job market or educational institutions. The process for facilitating this transition is often too time consuming and costly for them.

Transportation itself can pose a problem for these women in so far as the lack thereof restricts their mobility and therefore their access to resources and support. Their spouses or partners maintain control of the family vehicle and restrict its use or insist on traveling with them to and from their desired destination, stifling their sense of independence and privacy. Restricted transportation means that these women will have difficulty finding a medical doctor, appropriate and affordable housing and employment or job training.

In many cases, these women have very young children for whom they alone are responsible. Within the relationship, these women assume the role of mother, wife and homemaker and can expect little to no assistance from their abusive spouses or partners who are traditionally the breadwinners. These women are confined to culturally acceptable gender-specific roles which they cannot escape. Instead, they become isolated, introverted and endure the domestic violence for as long as they can tolerate it or until the police are forced to intervene following an urgent call for help.

Family law lawyers routinely represent victims of domestic violence – a disproportionately large number of whom are foreign-born women. The data collected by Statistics Canada and reported recently in a *Juristat* Article on February 25, 2013 is gender-specific and depends largely on police-reported violence; acts caught by the *Criminal Code of Canada*; and voluntary participation in general social surveys (which are only conducted in English and French amongst households with a landline). Consequently, the statistics do not account for the many immigrant women who do not report to police, and who cannot disclose the domestic violence they are suffering by participating in surveys. We therefore cannot rely on these statistics to assess the occurrence and impact of domestic violence amongst immigrant women.

According to the victimization data, less than one third of female victims of spousal violence stated that the incident came to the attention of police. Moreover, only certain types of violence were likely to come to the attention of police. These included incidents where the woman was sexually assaulted or beaten (53%), choked or had a weapon used against her (60%). According to the police-reported data, approximately 173,600 women from the age of 15 and up were victims of violent crimes in 2011. From a national perspective, the rate of female victims of violent crimes is 1,207 for every 100,000 women in the population. Overall, men were responsible for 83% of the police-reported violence committed against women. Most commonly, the accused was the woman's intimate partner (spouse or boyfriend), acquaintances or friends and non-spousal family members. Within the three types of violent victimization measured by the General Social Survey on victimization, women were more likely to experience the most severe forms of self-reported spousal victimization, such as multiple victimizations and physical injuries.

Typically, women who survive domestic violence and come to lawyers for legal support, continue to experience severe emotional distress. Statistics Canada reports that 53% of women victimized by a spouse stated that most of their days were "quite a bit or extremely stressful." Moreover, more than one-quarter of spousal victims used medication to cope with depression, calm them down or help them sleep. When providing legal services to these women, it is important to acknowledge that these women have higher than usual stress levels; that they may be depressed and on prescription medication to cope or stabilize their emotions; and that they have special or heightened emotional needs as a client.

Representing these women involves more than simply legal representation. A family lawyer representing a victim of domestic violence must be able to connect these women with various community resources such as counsellors, support groups or other professionals, who can continue to provide them with multi-faceted support throughout their involvement with the family justice system. If the police intervened to remove the woman from the abusive relationship, then it is highly likely that immediate relief was provided to her and that she will continue to receive medical attention, housing or shelter, counselling and support, victim witness services and assistance from child protection agencies, if necessary.

Children are often the victims of domestic violence, whether by direct or indirect harm. These children are in need of the same level of support as their mothers. Incidentally, if mothers are denied access to services, owing to a language barrier or cultural differences, so too are their children.

The longer a woman or child is exposed to abuse, the longer it takes for them to heal. It is difficult to measure the emotional impact of domestic violence on women and children. To ensure that these women and children are not re-victimized by the family justice system, we as family law lawyers need to ensure that these women and their children are able to heal, while remaining sensitive to the differences in their ethnicity, religion, culture and language which may prolong this healing process. Moreover, the fact that these women did not respond to domestic violence in the traditional way should not prejudice their claims for custody, spousal support and restraining orders.

How can our awareness of the service barriers facing immigrant women who are victims of domestic violence translate into action?

- We need to be responsive as well as preventative in our approach to representing immigrant women who are victims of domestic violence.
- We need to teach women and children how to identify domestic violence and get the immediate assistance of counsellors, community organizations, shelters, etc., in order to safely escape the abusive relationship with their children. These immediate services should continue to provide support for the women and their children.
- We need to take an inter-disciplinary approach to resolving the family law issues, involving various qualified professionals.
- We need more lawyers, duty counsel and court support workers to assist women in court.
- Legal Aid Ontario needs to simplify the mechanism for issuing certificates to victims of domestic violence, and revise the criteria for financial eligibility by carving out appropriate exceptions.
- Many lawyers are providing partially or completely pro bono services to clients. If not, these women end up being self-represented and unable to effectively represent their interests at the court.
- We need to work hand-in-hand with gender, religious and culturally sensitive language interpreters, support counsellors and therapists, social workers, shelter and/or housing staff, victim services, police, teachers and medical professionals to provide comprehensive and responsive services for these women and their children.
- We must acknowledge that there is a social stigma attached to leaving the home within the woman's own ethnic, cultural and religious community.
- We must understand that these women face serious complications in reporting abuse to the police. For many women, police officers cannot be trusted. In their native countries, the police are often viewed as corrupt; carrying out the mandate of the political party in power; misogynous; patriarchal; biased and disinterested. These women need to feel that the police officer who is responding to their call for help will be sensitive to their needs. A female police officer should routinely be present for incidents of domestic violence.
- We must strive to ensure that immigrant women fleeing domestic violence can do so with their children. The role of the Family Law Bar, and the judges hearing family law cases involving immigrant women and domestic violence issues is crucial. "Western" values of the Canadian family, cannot be superimposed in decisions concerning the care and support of immigrant women and children generally and particularly in cases where there has been domestic violence.
- While there are common, trans-cultural threads linking all women and children who are victims of domestic violence, we cannot use cookie-cutter solutions in resolving the complex issues stemming from the breakdown of these inherently different families. We need to develop a deeper understanding of the victim and her ethnic, cultural, religious and language background to develop a comprehensive approach to identifying and resolving such issues.

On a final note, the current data suggests that as a community we bear the long-term cost of domestic violence. We should be eager to isolate it and remove both the women and children from an environment that promulgates violence and drains the system in doing so. We hope that with this preventive and sensitive approach, the family justice system will be successful in removing many barriers faced by the immigrant women, particularly the victims of domestic violence.

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