

Women, family violence, and immigration

Making a humanitarian and compassionate (H&C) application



This information is for front-line workers and advocates working with women who have experienced family violence and who have questions about their immigration status in Canada.

Immigration law in Canada is complicated. It is easy to make a serious mistake. It is important that a woman with concerns about her immigration status try to get legal help.

This fact sheet explains:

- what a humanitarian and compassionate (H&C) application is
- what Immigration, Refugees & Citizenship Canada (IRCC) considers in deciding an H&C application
- what kind of evidence can support the application

This information may be important for women who want to stay permanently in Canada, and are thinking of making an H&C application.

How can front-line workers help?

As a front-line worker you may be able to help a woman who wants to stay permanently in Canada and is thinking of making an H&C application by:

- letting her know when and where to get legal advice
- explaining what IRCC will consider when they decide an H&C application
- helping her gather evidence she needs to show that she should be allowed to stay in Canada for humanitarian and compassionate reasons

A woman without immigration status experiencing family violence may be able to get a **Temporary Resident Permit (TRP)** from IRCC.

The TRP allows a woman to live in Canada for at least 6 months while she decides what to do next.

A woman can apply for a **work permit** at the same time as she applies for the TRP and she will not have to pay a fee for either permit.

She can apply for the TRP before, after, or at the same time as she makes an H&C application.

A woman who speaks **French** has the right to communicate in French with immigration authorities. If she is making an application to Immigration, Refugees & Citizenship Canada she has the right to apply in French. To find out more about her French language rights, she should contact a lawyer or a community legal clinic.

What is an H&C application?

An H&C application is an application for permanent residence in Canada. In general, people must apply for permanent residence from outside Canada. In some cases, it is possible to ask IRCC to make an exception to this rule. An H&C application asks IRCC to allow the applicant to apply for permanent residence in Canada for humanitarian and compassionate reasons.

There are 2 stages of approval. A successful applicant will be:

1. allowed to apply for permanent residence in Canada for humanitarian and compassionate reasons (“approval-in-principle”), and
2. approved for permanent resident status in Canada.

An applicant who is approved at the first stage could still be refused at the second stage if they do not meet the requirements for permanent resident status.

What are humanitarian and compassionate reasons?

An H&C applicant can give **any** reasons that they believe will support their application.

Anything that makes others feel compassion and want to help can be the basis for a successful H&C application. For example, the hardship an applicant will face if they have to return to their home country is often a reason that is used.

And if there is a child who would be directly affected if the applicant had to return to their home country, this is an important factor. IRCC **must** consider what is in the **child’s best interests**.

Some of the things that an applicant might give as reasons include:

- how established or settled they are in Canada
- their ties to Canada, including family ties
- what would happen if family members were separated
- their physical health or mental health concerns
- the impact on their lives of family violence they have experienced or will experience if they have to return to their home country
- hardship or difficulties they might face if they were sent back to their own country

The decision on an H&C application is “discretionary”. This means that

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immigration officers have a lot of freedom in deciding these applications. But they must base their decisions on the evidence and they must consider **all** of the evidence **as a whole** when deciding whether the application is strong enough.

Because there is usually no interview, it is important to:

- send the best possible evidence to support the application, and
- explain all of the reasons to stay in Canada.

If there are mistakes in the application or the supporting evidence is not strong, the application may be denied.

Hardship

In many cases, an H&C application is based on the hardship the applicant would face if they had to leave Canada.

Examples of hardship or difficulties that an applicant might face in their own country could include:

- a lack of adequate health care
- poverty
- discrimination based on religion, gender, or something else
- laws, practices or customs in a woman's home country that might put her at risk of abuse or social stigma

IRCC cannot look at risks in the same way the Immigration and Refugee Board does when it decides a refugee

claim. But the same situation that puts someone at risk may also be a reason for a successful H&C application.

For example, a woman who is at risk because of an abusive spouse in her home country may also be able to show H&C reasons she should not be forced to return to that country.

An immigration lawyer may be able to present her case in a way that shows H&C reasons rather than risk.

Best interests of a child

IRCC must consider the best interests of any child under the age of 18 who could be directly affected by the decision on the application. This could include:

- the woman's own child, no matter where the child was born or where they live, whether in Canada or elsewhere
- a child in Canada who is not the woman's child but with whom she has a close relationship

In some situations, this could include a child who is 18 or older.

Some of the things that could have an impact on the best interests of a child include:

- the child's age
- the relationship between the child and the woman or between the child and others – for example, if the child is forced to leave with the woman, this could affect the child's relationship with others in Canada

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- how long the child has been in Canada
- the child's ties to the woman's country of origin
- any medical issues or special needs
- impact on the child's education
- issues relating to a child's gender – for example, customs that girls and women in the woman's country of origin have to follow

IRCC must pay close attention to the child's interests when it decides whether the reasons to accept an H&C application are strong enough. Some things may have a much greater impact on a child than on an adult. So the same facts might make an H&C application stronger if a child would be affected.

Establishment in Canada

Being established or settled in Canada increases an applicant's chances of success.

To show that she is established, a woman's application could refer to such things as:

- how long she has lived in Canada
- why she has been living in Canada
- her work history in Canada
- her level of education
- her skills and training
- volunteer work done in Canada
- her ability to speak English or French
- any children born in Canada

- family members here who are willing and able to help her
- any assets or savings she has in Canada

A woman who got social assistance should explain why she needed it.

Evidence in support of an application

An H&C application will not succeed without supporting evidence. The kind of evidence needed depends on the facts of the case. A lawyer preparing the H&C application can suggest what evidence is useful and how a front-line worker can help a woman collect the evidence she needs.

Here are some examples of documents that might be helpful.

Letters

Supporting letters from the following people might help support an H&C application:

- **family members** who are Canadian citizens or permanent residents – include how they are related to the applicant, why the applicant should be allowed to stay, and the impact on the family if she is forced to leave Canada
- **employers** – include the applicant's job title and the nature of the work, work history with the employer, rate of pay, and any positive comments that the

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employer can make about the applicant

- **schools or training programs** – for example, to show attendance and progress at school
- **women's shelters or counsellors** – for example, to show that a woman tried to get help because of family violence
- **therapists or counsellors** – to show that a woman has concerns about how she will deal with hardship or difficulties she would face if returned to her country of origin
- **religious leaders or community members** – for example, showing that the applicant is involved in a faith community or community activities of any kind as a volunteer or participant
- **friends and neighbours** – for example, showing that the applicant is a valued member of a community

Letters from people who know the applicant should include:

- the date
- the name of the writer
- how they know the applicant and when they met
- their contact information, including phone number and address
- a photocopy of a document that proves the writer's status as a permanent resident or citizen of Canada, unless the letter is from

a service provider or professional and is on letterhead

Letters should be signed by the writer and are more helpful if they are detailed.

Reports and records

Here are some examples of the kinds of reports and records that might help support an H&C application:

- **medical reports** – for example, reports of any injuries or trauma relating to family violence, diagnosis and treatment plan for any medical condition for which adequate care would not be available in the country of origin
- **psychological assessments** – for example, assessments that show a child's special learning needs or the impact that being forced to leave Canada would have, such as the impact of returning to a country where they suffered trauma
- **hospital records** – for example, admissions records for treatment of injuries related to family violence or treatment for a medical condition
- **police incident reports** – for example, keeping track of when the police were involved in family violence situations
- **immigration records** – for example, documents that show if a woman made a previous application for permanent residence

- **court records** – for example, showing criminal proceedings against an abuser, or showing family court proceedings
- **bank records** and other evidence of financial assets

Other evidence

Here are some examples of other kinds of evidence about an applicant's situation that might help support an H&C application:

- **photographs** of the applicant spending time with family or at work or taking part in community activities
- evidence about a woman's **country of origin** – for example, reports or expert evidence to show the lack of protection for women who are abused, the potential effect of the culture or customs on a woman's safety or well-being, or the lack of adequate medical care for a condition that has been diagnosed in the applicant or her child
- **job offer** if an employer is waiting until the applicant can get a work permit
- **pay stubs** and other evidence of income – for example, copies of the T4 form or Notice of Assessment from Canada Revenue Agency

What happens after an application is made?

H&C applications can be decided within a few months. Or it can take longer. IRCC has said that they will process H&C applications more quickly in cases of family violence.

In the meantime, a woman's situation can change. It is important to report any changes to IRCC when they happen. This includes changes in marital status and number of children. It also includes:

- any change of address
- information showing that a woman is now more established in Canada
- new information about hardship she would face if she is forced to leave
- new information about other reasons supporting an H&C application

New or additional evidence should be sent to IRCC as soon as it is available. It is important not to delay because IRCC can decide the application at any time.

Making an H&C application does not give an applicant the right to remain in Canada until the application is decided. Before applying a woman should get legal advice to find out about the risk of being forced to leave the country.

Getting legal help

A woman should get legal advice before she makes a refugee claim or an H&C application. An experienced immigration lawyer will help her understand her options.

There may also be legal issues affecting her situation that she is not aware of. For example, she may be from a country that Canada is not sending people back to because of the human rights situation there.

She may need to speak to a family lawyer, especially if she has children. In some situations, if there is a court order under family law that deals with the children, her removal from Canada might go against the order.

A woman should also know that if she does not have immigration status in Canada and she contacts the police, they may decide to contact immigration authorities. The police database will show if there is an immigration warrant in her name.

For legal advice, a woman can contact a legal clinic or a lawyer. Community legal clinics give free legal advice to people with low incomes, but not all clinics deal with immigration issues. Student legal clinics in law schools in Toronto, Kingston, London, Ottawa, and Windsor also represent and assist people.

To find a legal clinic, visit the Legal Aid Ontario (LAO) website at www.legalaid.on.ca or call Legal Aid Ontario at:

Toll-free: **1-800-668-8258**

Toronto area: **416-979-1446**

Bell Relay Service: **1-800-855-0511**

Legal Aid Ontario also offers a searchable directory of lawyers. A woman can search for a lawyer by area of law, location, and language at: www.legalaid.on.ca/en/getting/findingalawyer.asp.

Legal aid certificates

A legal aid certificate can pay for a lawyer's services. LAO will decide if a woman qualifies based on her income and legal issue.

Victims of family violence may be able to get a legal aid certificate on an emergency basis. It may be possible to apply and get the certificate on the same day.

Victims of family violence can also ask a women's shelter or community legal clinic to make a referral under LAO's Family Violence Authorization Program. Under this Program, victims of family violence may qualify for a free 2 hour session with a lawyer. A woman who needs advice from a family lawyer **and** an immigration lawyer can ask for both. If she needs a lawyer to represent her in legal proceedings, she will need to apply for a legal aid certificate.

Barbra Schlifer Commemorative Clinic

This organization provides free legal representation in family and immigration law, as well as counselling and language interpreter services for women who experience physical, sexual, or psychological abuse. They may also give summary advice and advocate for women in criminal law cases. They accept collect calls.

Toronto area: **416-323-9149**

Toronto area TTY: **416-323-1361**

www.schliferclinic.com

Law Society Referral Service

The Law Society Referral Service is an online service that gives callers the name of a lawyer in their area who can give them a free consultation for up to 30 minutes. They can ask for a lawyer who speaks their language, or a lawyer who accepts Legal Aid certificates. A woman can also call the Referral Service on a crisis line if she is unable to use the online service – for example, if she is in custody, in a shelter, or in a remote community without access to the internet. This line is available from Monday to Friday, 9:00 a.m. to 5:00 p.m.

Crisis Line –

Toll-free: **1-855-947-5255**

Toronto area: **416-947-5255**

www.findlegalhelp.ca

Other community resources

Assaulted Women's Helpline

The Helpline provides crisis counselling and referrals to shelters, legal advice and other services 24 hours a day, 7 days a week, for women across Ontario. It is free and available in over 100 languages, including 17 Aboriginal languages.

There are 27 agencies across Ontario that provide transitional housing to abused women and their children funded by the Ministry of Community and Social Services. To access these services, contact the Assaulted Women's Helpline.

Toll-free: **1-866-863-0511**

Toronto area: **416-863-0511**

Toll-free TTY: **1-866-863-7868**

Toronto area TTY: **416-364-8762**

#SAFE (#7233) **Bell Mobility, Rogers, Fido, or Telus cellphone**

www.awhl.org

Fem'aide

This helpline is for Francophone women in Ontario seeking support, referrals, and information on woman abuse, including sexual assault, available 24 hours a day, 7 days a week.

Toll-free: **1-877-336-2433**

Toll-free TTY: **1-866-860-7082**

www.femaide.ca

211 Ontario

This website is an online resource to help people find community and social services available across Ontario.

www.211ontario.ca

The 211 resource includes a 24-hour telephone referral service for all types of social services. It is available 24 hours a day, every day of the year, and in more than 150 languages.

Telephone: **211**

Other titles in the series:

- Family violence when a woman is sponsored by a spouse or partner
- Humanitarian and compassionate (H&C) applications and refugee claims: how are they different?

Related CLEO resources:

- Do you know a woman who is being abused? A legal rights handbook
- stepstojustice.ca has step-by-step information about common legal problems, including family violence, immigration, and refugee law

This publication contains general information. It is not a substitute for getting legal advice for your particular situation.

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