

Women, family violence, and immigration

Humanitarian and compassionate (H&C) applications and refugee claims: how are they different?



This information is for front-line workers and advocates working with women who:

- have experienced family violence, and
- have questions about their immigration status and the right to remain 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.

In general, people must apply for permanent residence from outside Canada. In some cases, it is possible to ask Immigration, Refugees and Citizenship Canada (IRCC) to make an exception to this rule for humanitarian and compassionate reasons. An application for permanent residence on humanitarian and compassionate grounds is often called an “H&C application”.

This fact sheet explains some of the differences between an H&C application and a refugee claim. This information may be important for women who want to stay permanently in Canada and may need to choose between making an H&C application or a refugee claim.

How can a front-line worker help?

As a front-line worker, you may be able to help a woman who does not have permanent status in Canada by:

- letting her know when and where to get legal advice
- explaining some of the differences between an H&C application and a refugee claim
- helping her gather the evidence she needs to show that she should be allowed to stay in Canada

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 and Citizenship Canada, she has the right to apply in French. If she is making a refugee claim, she has the right to make her claim in French. This includes the right to have her hearing at the Immigration and Refugee Board 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. 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**.

How does IRCC decide H&C applications?

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

For more information about how H&C applications are decided and what kind of evidence can help, see [Making a humanitarian and compassionate \(H&C\) application](#) in this series.

What is a refugee claim?

The Immigration and Refugee Board (IRB) decides refugee claims made in Canada. A claimant must prove to the IRB that they are either a Convention refugee or a person in need of protection. If a claim is successful, the claimant is found to be a protected person and can apply for permanent residence.

Convention refugee

A Convention refugee must show a well-founded fear of being persecuted based on at least one of these things:

- race
- religion
- nationality
- political opinion
- membership in a particular social group – for example, someone might belong to a social group based on their gender, sexual orientation, or relationship to a family member who is politically active

A Convention refugee may be afraid of being persecuted either by government authorities or others. A claimant who fears persecution by others must show that their government cannot or will not protect them.

Person in need of protection

A person in need of protection is someone who would likely face at least one of these things if they are forced to return to their home country:

- torture
- a risk to their life
- a risk of cruel and unusual treatment
- a risk of cruel and unusual punishment

If the claim is based on one of the last 3 situations of risk, they must show **all** of the following:

- Their own government will not adequately protect them.
- The risk affects them personally. It is not a general risk faced by others in the country. For example, the risk is not the result of a famine or civil war.
- The risk is not the result of laws, such as being punished for committing a crime, unless these laws do not meet international standards.

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- The risk is not caused by their country being unable to give them the medical care they need, unless this is because of persecution or discrimination.

To prove that they are a Convention refugee or a person in need of protection, a claimant must also show that there is no place in their country that they could get to safely, where they would be free from the risk that they face, and where it would be reasonable to expect them to live. This is called the “internal flight alternative”.

What are some other differences between an H&C application and a refugee claim?

H&C Applications	Refugee Claims
H&C applicants do not usually get an interview. IRCC usually decides based on the written application.	A refugee claimant has the right to a hearing at the IRB unless their claim is not eligible.
Being well-established in Canada, with a work history and strong family relationships, increases an applicant’s chances of success.	Being established in Canada is not relevant to a refugee claim.
IRCC must consider any H&C reasons an applicant should be allowed to stay. They cannot look at risks in the same way the IRB does when it decides a refugee claim. But a situation that puts someone at risk may also cause hardship and support an H&C application.	The IRB only considers risks that fit into the “Convention refugee” and “person in need of protection” definitions.
For example, a woman who is at risk because of an abusive spouse in her home country may be able to show H&C reasons she should not be forced to return.	

H&C Applications

IRCC must consider the best interests of any child under the age of 18 who could be directly affected by their decision.

Making an H&C application does not give an applicant the right to stay in Canada until IRCC decides.

An H&C applicant can get permission to work or study after their application is approved at the first stage.

An H&C applicant must meet all the requirements for permanent residence. Or they must ask for exceptions to any requirements they do not meet. These requirements include health standards and the ability to support themselves financially. If they do not meet all the requirements, or if they have a family member who does not meet the requirements, they may not be able to get permanent resident status.

An H&C applicant who is successful at both stages becomes a permanent resident. A permanent resident can lose that status for reasons given in the law. For example, if they commit a crime that is considered serious under immigration law, they could lose their permanent resident status and be forced to leave Canada.

Refugee Claims

The IRB decides a claim based only on whether a claimant fits the definition of a Convention refugee or person in need of protection.

A refugee claimant can stay in Canada until the IRB decides their claim.

A refugee claimant who is waiting for the IRB to decide their claim can get permission to study or to work, if they need money to support themselves.

A successful refugee claimant can apply for permanent residence and will not have to meet all of the usual requirements. For example, they do not have to show the ability to support themselves financially and they do not have to meet all the usual health standards. And it does not matter if they have a family member who does not meet all the requirements.

A successful refugee claimant gets the status of a protected person and will, in most cases, also become a permanent resident. But if they lose their status as a permanent resident, they might not be forced to leave Canada. This is because they still have the status of a protected person. In most cases the law does not allow a protected person to be sent back to a country where they would be at risk.

A successful H&C applicant becomes a permanent resident. Unlike a protected person, they do not risk losing their permanent resident status only because they travel to or get a passport from their country of nationality.

A protected person who becomes a permanent resident could lose their status as a protected person **and** permanent resident if they voluntarily go back under the protection of their country of nationality. This could happen if they travel to or get a passport from that country. They could then be forced to leave Canada.

An H&C applicant must pay a processing fee to apply. The current fees are:

- \$550 for each adult
- \$150 for each child under the age of 22 included in the application

An H&C applicant who is successful at the first stage will have to pay an additional Right of Permanent Residence Fee. The current fee is \$490 for each adult.

There is no fee to make a refugee claim.

A protected person will have to pay a processing fee to apply for permanent residence but does not have to pay a Right of Permanent Residence Fee.

Do IRCC and the IRB have special rules for women in situations of violence?

Yes. But these are just guidelines and each case is decided on its own.

IRCC guidelines say that immigration officers must be sensitive to situations of family violence when they decide H&C applications.

IRB guidelines say that board members must consider the following when deciding refugee claims by women who fear gender-related persecution:

- the risk of domestic abuse in a country where a woman will not be able to get the protection that she needs
- the risk of harm if a woman does not follow religious laws or cultural customs in her country

The IRB also has guidelines that are meant to help vulnerable people present their cases and to reduce the risk that they will be traumatized by the process.

Women who have suffered gender-related persecution may be vulnerable persons. A vulnerable person can ask the IRB for “procedural accommodations”. This means doing things differently because it might help a vulnerable person. For example, a woman might ask that a support person be allowed to attend a hearing with her.

Can a woman make an H&C application and a refugee claim at the same time?

No. She will have to choose between the two. **It is important a woman get legal advice about her options.**

What if an H&C applicant wants to make a refugee claim?

An H&C applicant can make a refugee claim. When the refugee claim is made, IRCC will stop processing the H&C application and will return it to the applicant.

What if a refugee claimant wants to make an H&C application?

This is possible only if they withdraw their refugee claim **before** evidence is presented at their refugee protection hearing. A claimant can withdraw their claim:

- by writing to the Refugee Protection Division of the IRB, or
- by saying they withdraw their claim at the beginning of their hearing.

What are the dangers of withdrawing a refugee claim?

If a refugee claim is withdrawn, a claimant with a conditional removal order can be forced to leave Canada. This is because the order that is made when the claim is referred to the IRB takes effect when the claim is withdrawn.

Filing an H&C application does not give an applicant the right to remain in Canada until the application is decided. And, there are several reasons why a person might not have the right to make an H&C application so it is important to get legal advice before withdrawing a claim.

A refugee claimant who withdraws their claim loses the right to make a refugee claim. There is no right to make another claim and it is very difficult to reinstate a claim that has been withdrawn.

Also, the claimant will not be able to get health benefits from the Interim Federal Health Program.

Can a refugee claimant who is not accepted make an H&C application?

An unsuccessful refugee claimant cannot make an H&C application until at least one year from the date their claim is finally:

- refused, or
- abandoned, or
- withdrawn **after** evidence was presented at the hearing.

This is often called the “one-year bar”. Many claimants will be forced to leave Canada within that one-year period.

If the claimant is a “designated foreign national”, the waiting period is at least 5 years from the date of the designation. A designated foreign national is someone who came to Canada in a

group designated as an “irregular arrival”. A group can be designated on or **after** arrival in Canada. A group may be designated because of suspected human smuggling or trafficking involving a criminal organization or terrorist group.

Are there any situations when the one-year bar does not apply?

Yes. The one-year bar will not apply if removing the claimant from Canada:

1. would not be in the best interests of a child directly affected, **or**
2. would put the life of the claimant or one of their dependants at risk because they would not be able to get the health or medical care that they need in their 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.

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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 200 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 to other French language services, and information on woman abuse, including sexual assault. It is 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**

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Notes:

Other titles in the series

- Family violence when a woman is sponsored by a spouse or partner
- Making a humanitarian and compassionate (H&C) application

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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