

Family Law Issues for Immigrant, Refugee and Non-Status Women

ENG 008

FAMILY LAW FOR WOMEN IN ONTARIO



All Women. One Family Law.
Know your Rights.

flew Family Law
Education for Women
Women's Right to Know

fodf Femmes ontariennes et
droit de la famille
Le droit de savoir

Family Law Issues for Immigrant, Refugee and Non-Status Women

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, get legal advice as soon as possible to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem" on our website at www.onefamilylaw.ca.

Women who are newcomers to Canada face many challenges when their relationship ends. You may:

- worry about whether you can stay in Canada;
- worry how to support yourself if you leave him and he sponsored you;
- be afraid that your partner will try to take the children back to your home country without your permission;
- have trouble collecting child support from your partner if he leaves the country.

Your immigration status is not legally relevant in family law. You can apply for custody or support no matter what your immigration status is.

Although you have the same family law rights as any other woman, if you do not have status and you come to the attention of immigration officials, you could get deported. Your right to stay in Canada depends on your immigration status. To protect yourself and your children, you need to know your rights.

1. Immigration Concerns

When your relationship ends, your right to stay in Canada depends on your immigration status.

Permanent Residents

If you are a **permanent resident** or **landed immigrant** when your relationship ends, you cannot lose this status or be removed from Canada because your relationship has ended, even if your partner sponsored you to come to Canada. A sponsor is financially responsible for you for 3 years, whether or not you stay together. If your partner cannot or will not continue to support you, you can apply for social assistance to support yourself.

If your partner sponsored you to become a permanent resident from inside Canada and your relationship ends *before* your application has been accepted, you can apply to stay in Canada by making a **Humanitarian and Compassionate (H & C) grounds application**. If there was abuse in your relationship, you should tell Immigration about this in your application. To be successful on an H & C application, you must show that you have a strong connection to Canada and are able to support yourself. It can be hard for women who are receiving social assistance to succeed. You should get legal advice to make an H & C application.

Making an H & C application does not protect you from being deported. Immigration can still detain and deport you while you are waiting for a decision on your H & C application.

Refugees and Persons Needing Protection

You may be in Canada as a refugee or a person needing protection. If you have been found to be a Convention refugee or a person in need of protection, you cannot be removed from Canada because your relationship has ended.

If your claim is based on your partner's situation and your relationship ends before your refugee hearing, you may be able to separate your claim from his. If you were abused by your partner, you can add information about the abuse to your claim and ask for protection on that basis. To be successful, you must show that you are at risk in your own country and that the government cannot or will not protect you from the abuse.

If your refugee claim fails, you can make an H & C application (see above). You can also apply for a **pre-removal risk assessment (PRRA)**. This process requires Immigration to consider the risk you would face if you were sent back to your country.

No Legal Status

You may be here without legal status. This could be because your status as a visitor or student has expired or because you entered the country illegally. You should get legal advice as soon as possible about making an H & C application. There may be other immigration claims available to you as well, depending on your circumstances. Although you have the same family law rights as any other woman, you could get deported if you come to the attention of immigration officials.

2. Woman Abuse

If you have experienced abuse, immigration officials must consider this when they process your immigration application.

Woman abuse is against the law in Canada. If the police believe that your partner has assaulted you, they will lay a criminal charge against him. They will lay the charge even if you do not want them to. If the police believe that you assaulted your partner, you may also be charged.

A criminal conviction could affect your partner's status and could lead to deportation. Even if you are not charged, the police, the Crown or another court official could find out that you do not have status and tell Immigration. If this happens, you could be detained and deported. If you are involved with a criminal charge, get legal advice from an immigration lawyer right away.

3. Family Law Concerns

Immigrant, refugee and non-status women have the same rights and responsibilities as Canadian-born women under family law. You can bring a claim for custody, access, child and spousal support. You can ask the court to award you a share in your family's property on separation.

If you and your partner came to Canada from another country, family law issues can be more complicated, especially if either you or your partner decide to move home. Here are some common issues that arise:

a) Moving with the children

One difficult issue that often arises when parents don't live together is whether the parent the children live with can move the children out of the city, or in some cases, even out of the province or the country. You may want to move to be closer to other family members for support or for a job opportunity. Depending on your status, you may be forced to leave Canada. Such a move may make it difficult for your children's other parent to see the children on a regular basis. Depending on the distance of the move, cost may also become an issue.

Like all decisions dealing with children, the test the court will use to decide whether or not to allow the move is the **best interests of the children**. If you are allowed to move with your children, the court may change the access arrangements to allow for longer visits with the access parent, or it may reduce the amount of money you receive in child support because the other parent has expensive travel costs associated with access.

b) Travelling with the children

In most cases, one parent cannot take the child outside Canada without the other parent's permission. If you travel with your children, you should have the custody order and a letter from the other parent that gives permission for the children to leave Canada. The letter should be notarized by a lawyer. When you cross the border, you should expect the border guards to ask you to prove that the children's other parent knows about the trip and has agreed to let them leave the country.

c) Child Abduction

Sometimes, one parent takes the children outside Canada without the other parent's permission. This is very serious, because it can be difficult to get the children back once they leave Canada. This is called **child abduction**. Child abduction is a serious crime in Canada.

There is no way to make absolutely sure your children never leave Canada illegally, but there are some things you can do to help protect your children. Make sure that the custody order or agreement:

- Is as clear and detailed as possible.
- Specifically says that the child cannot travel outside of Canada.

The order can also say that you or the court must keep the children's passports or the access parent's passport.

The main law that may be able to help you get your children back is the *Hague Convention on the Civil Aspects of International Child Abduction*. It is an international treaty signed by 75 countries. The countries who signed the treaty agree that they will work together with one another to find and return children who have been illegally moved from one country to another.

If your child is taken to a country that did not sign the Convention, it will be much harder to get your child back to Canada. If this happens, you can fight for custody using the laws of the country where your child was taken. You can also try to negotiate with the abductor and his family.

d) Collecting support from someone living outside Ontario

Orders for child and spousal support within Ontario are enforced by a provincial government agency called the **Family Responsibility Office (FRO)**. The FRO will collect support if the payor (the person who pays child support) lives anywhere in Canada or the United States and in some other countries. This is because all of the provinces in Canada, the U.S. and some other countries have signed agreements that allow the FRO to collect support orders across borders.

If the payor lives in a country that has not signed such an agreement, the FRO cannot help you enforce the support order. The only way you can collect support is to use the laws of the country where the payor lives.

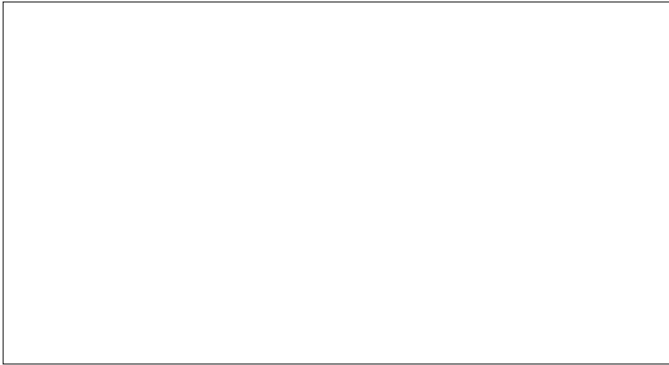
If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at www.onefamilylaw.ca or www.undroitdefamille.ca.

Family Law topics available in English*

1. Alternative Dispute Resolution and Family Law (ENG 001)
2. Child Protection and Family Law (ENG 002)
3. Child Support (ENG 003)
4. Criminal and Family Law (ENG 004)
5. Child Custody and Access (ENG 005)
6. Domestic Contracts (ENG 006)
7. Family Law Arbitration (ENG 007)
- 8. Family Law Issues for Immigrant, Refugee and Non-status Women (ENG 008)**
9. Finding Help with your Family Law Problem (ENG 009)
10. How Property is Divided in Family Law (ENG 010)
11. Marriage and Divorce (ENG 011)
12. Spousal Support (ENG 012)

** This booklet is available in multiple formats and languages. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.*



flew Family Law
Education for Women
Women's Right to Know

fodf Femmes ontariennes et
droit de la famille
Le droit de savoir

Funded by: / financé par :
 Ontario

The views expressed in these materials are the views of FLEW
and do not necessarily reflect those of the Province.