

IMM- 3700-13

FEDERAL COURT

BETWEEN:

Y.Z. AND
THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AFFIDAVIT OF AMANDA DALE

I, AMANDA DALE, of the City of Toronto, in the Province of Ontario, AFFIRM
THAT:

1. I am the Executive Director of the Barbra Schlifer Commemorative Clinic (the "Schlifer Clinic" or the "Clinic"). As such, I have personal knowledge of the matters to which I depose in this affidavit. To the extent that any information contained herein is based on information and belief, I have stated the source of that information and I believe such information to be true.
2. This is an updated version of my previous affidavit which was sworn on June 24, 2013.

Overview

3. In this affidavit, I will address:
 - a. my professional background and experience as a manager and program director of women's social service organizations;
 - b. the history and mandate of the Schlifer Clinic;
 - c. the Clinic's position on women's experiences with violence and access to justice; and
 - d. our concerns about the potential impact of "Designated Countries of Origin" on women survivors of violence.

4. The Schlifer Clinic is, first and foremost, a front-line service provider to women who have experienced violence. The Clinic has over 25 years of experience working against violence against women. We provide legal representation, professional counselling, and language interpretation services to women. Our objective is to support women who have experienced violence by, among other things, offering avenues for redressing the harms they have suffered. Legal representation is one such avenue. The Schlifer Clinic provides legal representation and advocacy services in the areas of refugee and immigration, family, criminal, and administrative law.

My Background

5. I have over 30 years' experience as a manager, program developer, communications expert, policy analyst and law reform advocate on behalf of women victims of violence. This experience has made me acutely familiar with the social service needs of abuse survivors and the importance of survivors having meaningful access to the justice system. I am also well acquainted with the criminal justice system's traditionally poor response to gender-based violence against women and the resulting impact on women seeking redress through the law.

6. I hold an Honours B.A. in Political Science and Women's Studies from the University of Toronto, a Master's Degree in Social and Political Thought from the

University of Sussex, and a Master's Degree in International Human Rights Law, with a specialization in Women's Human Rights, from the University of Oxford.

7. Starting in 1985 and prior to joining the Schlifer Clinic, I held a variety of positions in the area of violence against women (VAW):
 - a. in 1985 I was the Women's Projects Liaison for the international aid organization, "Band Aid UK", in Khartoum, Sudan, where I led their women's projects during the Ethiopian and Darfur famine;
 - b. between 1985 and 1997, I worked in management and project coordination roles for several local women's service organizations, including YWCA Toronto, Toronto's oldest and largest women's organization;
 - c. in January, 1999, I became the Manager of St. Joseph's Women's Health Centre. In that capacity, I managed a multi-stakeholder community health centre specializing in VAW service response to multicultural and poor women;
 - d. From September 2001 to September 2009, I was the Director of Advocacy and Communications for YWCA Toronto.; and
 - e. During my tenure with the YWCA in Toronto, I was seconded to YWCA Canada to lead a number of initiatives including, in 2008/2009 providing pan-territorial training to shelter staff, and extended support to the development of a YWCA-sponsored women's shelter in Nunavut.
8. Some of my other notable activities include playing a leadership role in the City of Toronto audit following the "Jane Doe" sexual assault case. I have also worked as a consultant on projects related to violence against women with the Office of the Chief Coroner for Ontario and the RCMP. I currently sit at the consultation table regarding violence against women victim services with the Ministry of the Attorney General. I am also on the Board of the Woman Abuse Council (WomanACT), the coordinating body for victim services in Toronto. In May 2011, I led a provincial forum on the legal intersections of violence service responses to victims. I am also on the board of directors of Inter Pares, an international agency that works in the areas of food security, human rights and violence against women

in the countries Canada supports through international development funding around the world.

9. In May 2010, I assumed my current position as Executive Director of the Barbra Schlifer Commemorative Clinic. My primary role is to be part of the leadership on the issue of domestic violence for the benefit of policy makers, service providers and women. In light of my role, I am required to remain abreast of current violence against women research and policy.

10. The balance of this work has informed my knowledge and expertise on the 'lived' experience of women victims of domestic violence while also providing knowledge about high-level research, policy and other initiatives related to the eradication of violence against women, which is primarily domestic violence.

11. A copy of my curriculum vitae is attached as **Exhibit A**.

The Clinic's Experience and Knowledge of Domestic Violence

12. The Clinic has extensive experience and expertise serving and representing women who experience domestic violence. The Schlifer Clinic was established to commemorate the life and values of Barbra Schlifer, an Osgoode Hall law student who was sexually assaulted and murdered on the night of her call to the Bar in 1980.

13. Since opening its doors in 1985, the Clinic has provided services to over 50,000 women who have experienced violence. The Clinic's services include free legal representation, professional counselling and multilingual interpretation. We also engage in various public advocacy initiatives, including public legal education, professional development of legal, healthcare and social service professionals, and law reform. We also run a family court support program in the Toronto courts for victims of domestic assault. The Clinic also acts as a consultant for policy makers concerning domestic and sexual violence issues.

14. The Clinic's institutional objectives are best captured by its Mission Statement:

The Barbra Schlifer Clinic offers legal representation, professional counselling and multilingual interpretation to women who have experienced violence. Our diverse, skilled and compassionate staff accompany women through personal and practical transformation, helping them to build lives free from violence.

We are a centre by, for and about women. We amplify women's voices, and cultivate their skills and resilience. Together with our donors and volunteers, we are active in changing the conditions that threaten women's safety, dignity and equality.

The Clinic's Services and Activities

15. The Schlifer Clinic provides legal representation and advocacy services in the areas of refugee and immigration, family, criminal, and administrative law. These services are designed to assist women in seeking meaningful legal remedies and ensuring their access to justice in order to acquire legal protections and redress from violence.
16. In 2012, we provided services to 127 women survivors of domestic violence in the area of immigration and refugee law. In 2013, we provided services to 142 women survivors of domestic violence in the area of immigration and refugee law, 60 of whom had made refugee claims. Among the refugee claimants we provided services to, 18 identified as citizens of Designated Countries of Origin ("DCOs").
17. In addition to legal services, the Clinic provides a variety of group-based and individual counselling programs, employing diverse therapeutic and psycho-educational methodologies. The Clinic's counselling programs include short-term solution-focused counselling (3-6 weeks), long-term counselling (6 months), group programs, and our transitional and housing support program. The Clinic assisted 1178 women across all counselling programs in the fiscal year 2013-2014, but the demand for our services was far greater. The Clinic maintains a waiting list for long-term counselling. While the waiting time for varies, clients on the list may wait

anywhere from 3 to 6 months for services. There are usually about 30 women on our waiting list at any given time, and we close our waiting list periodically due to the high demand for services. In 2013, nearly 300 of the women who sought counselling services at the Clinic were referred elsewhere due to our resource limitations. However, free counselling services are under-resourced across the City of Toronto, and as a result, women may not attain access to services anywhere in the city for up to 6 months or more after seeking them out.

18. The Clinic also offers language interpretation service, which provides language interpreters to social service agencies and hospitals that deliver services to women survivors of violence, as well as the four Domestic Violence Courts serving Toronto.

The Clinic's Advocacy Experience

19. The Clinic has been involved in a number of cases that focused on the promotion of women's legal rights. In 1985 and 1991 the Clinic participated in two landmark constitutional cases concerning the Charter rights and interests of women victims of violence. The Clinic was a member of a coalition of interested organizations that intervened at the Supreme Court in *Canadian Newspapers Co. v. Canada (Attorney General)* and *R. v. Seaboyer; R. v. Gayme*.

20. We continue to be involved in appellate level advocacy which affects our constituents. In 2011, we appeared as an intervener at the Supreme Court of Canada in *R v. N.S.* This case arose in the context of a sexual assault proceeding and our submissions addressed the equality and privacy interests of complainants, as well as their access to justice.

21. At present, the Clinic is involved in a *Charter* challenge to recent amendments to *Criminal Code* and *Firearms Act*, in which the Clinic argues that women's rights to security and gender equality under the *Charter* would be violated by destroying the

registry and that changes to gun-control law would increase the risk to women in situations of domestic violence.

22. Additionally, the Clinic is an intervener in *R. v. Quesnelle*, which was heard by the Supreme Court of Canada on March 20, 2014. This case arose in the context of a sexual assault proceeding, and our submissions addressed the privacy interests of complainants, as well as their access to justice.

23. In 2011, the Clinic submitted a Brief to Parliament regarding the impact of recent changes to the immigration law on women who have experienced violence. The Submission of the Barbra Schlifer Commemorative Clinic, the Metropolitan Action Committee on Violence Against Women and Children (METRAC), and the Women's Legal Education and Action Fund (LEAF) to the Parliamentary Standing Committee on Immigration regarding the Committee's review of Bill C-31 (April 24, 2012) is attached to this Affidavit as **Exhibit B**.

24. In 2013, the Clinic received funding from the Law Foundation of Ontario for the Immigration/Refugee Law Project. During the 18-month project, we collaborated with community partners to respond to the increased risk of detention and deportation under Canada's new immigration policies to women who are victims of domestic violence. During the project, we consulted widely across the VAW sector, where we found that front line workers were confused about the changes to the law and about the implications for their clients.

25. Between October-November, 2013, consultations were completed with eight Toronto shelters for women. Front line staff at VAW agencies also reported that the women they served, and particularly women from DCOs, were experiencing heightened levels of fear and demoralization due to the recent changes in immigration law. In the course of our consultations, some shelter workers described women being deported to DCOs, regardless of their histories of violence. While some shelter workers have seen women being picked up and detained for the first

time, others report a decrease overall in the numbers of women seeking legal assistance regarding their immigration matters. This observation is in keeping with the increasing concern that a "culture of silence" is developing in the new climate.

26. The Clinic also sits on the Integrated Domestic Violence Court Advisory Committee. In addition, the Clinic took part in a project on the topic of judicial domestic violence education, which aimed to integrate the courts' understanding and consideration of evidence of domestic violence in family law proceedings so as to ensure the protection of women.

27. In addition to legal and political advocacy, the Schlifer Clinic has a long record of grassroots advocacy on VAW issues. We have delivered hundreds of public legal education and professional development programs on legal issues related to violence experienced by women. We have also participated in numerous multi-sector committees, coalitions and consultation groups consisting of government representatives, members of the legal profession, social service providers and academics. The Schlifer Clinic also engages in various service-delivery and advocacy partnerships and consultations with a wide range of service-providers that represent ethno-racially diverse communities in Toronto. In this respect the Schlifer Clinic has gained knowledge and expertise on the systemic barriers faced by members of the represented communities.

The Vulnerability of Women Survivors of Domestic Violence

28. The clinic's regular and direct contact with women survivors of violence has given us significant knowledge about how women survivors of violence perceive and interact with legal systems.

29. Women who are experiencing violence face multiple barriers to escaping that violence. Issues such as social isolation, financial dependence, unemployment, childcare responsibilities, desire to maintain the family structure for the children, mental health issues, disability, the hope that the abuser will change, inability to

access family law services, fear of court systems, the belief that it is her fault, and a myriad of other factors, may constrain a woman from leaving an abusive relationship, or cause her to return after leaving.

30. Even disclosing the abuse can be a significant challenge for women. Women may fear that they will not be believed, that they will lose their children, that the abuse will get worse if the abuser is reported to authorities, that they will be rejected by their family or stigmatized in their community. It is often particularly difficult for women to disclose experiences of abuse to service providers and authority figures, including lawyers and adjudicators.
31. Women survivors of violence who are also refugee claimants face multiple intersecting and interlocking barriers to accessing legal systems, including language barriers, trauma-related mental health issues, social isolation, childcare responsibilities, racism, shame and fear, financial insecurity, lack of knowledge about their legal rights, and lack of access to education and employment. These barriers significantly impede women from having meaningful access to legal systems, including the refugee determination system. As a result, there are often very steep barriers to asserting their legal rights and dealing with their lack of immigration status.
32. Many policies impact women's ability to create safety, and in many instances policies intersect to create additional barriers. Women, in seeking to end violence and establish health and wellbeing in their lives, are often penalized by policies. These policies impact women and intersect to create barriers to the determinants of safety for women.
33. Through our work we have encountered several common scenarios involving women refugees including:

- a. Women fleeing abuse at the hands of an intimate partner. Often women arrive in Canada not knowing about or understanding the refugee determination system;
- b. Women arriving in Canada with an abusive partner, whose claims for refugee protection are joined. Typically women in this situation have very little or no direct involvement in making their claim for refugee status; and
- c. Women leaving an abusive partner in Canada while an inland spousal sponsorship application is in process, resulting in a 'sponsorship breakdown' situation. Some such women have a well-founded fear of gender-based violence in their country of origin which they have yet not disclosed for a variety of reasons. These women, despite exhibiting remarkable resilience, are often scared, confused and extremely vulnerable.

34. Women from designated countries in each of these scenarios have fewer rights due to the Designated Country of Origin ("DCO") regime. As a result, for reasons I set out below, I believe that a significant number of women will never have their own risk of persecution or hardship assessed at all or properly assessed prior to being deported from Canada, and that a significant number of women who are able to make their own claim will be denied due to unfair procedures.

Concern Over Recent Changes to Immigration Law

35. I am gravely concerned about the impact on women of the recent changes to Canadian immigration law. The recent changes have substantially increased the barriers women already face.

36. The reduced timelines for women from DCOs mean that in 30-45 days or less, a woman will have to seek legal aid, find a lawyer, disclose the extent of the abuse she experienced, gather evidence, and prepare for a hearing. These deadlines will have a disproportionate impact on the claims of women who have experienced violence. Given the barriers that abused women face in accessing services and the difficulty in disclosing their experiences of violence, the effect will be that legitimate claims will not be properly presented and therefore denied.

37. Due in part to the extremely short timelines, a significant number of women from designated countries will be unable to disclose particularly sensitive information about the abuse they have experienced at their refugee hearings. Similarly, many women will be unable to gather necessary evidence in time for their hearings, due in part to their inability to retain a lawyer in time for the hearing, lack of support networks to assist with evidence gathering, social isolation leading to decreased availability of evidence, inability to pay for records or medical assessments, and a lack of knowledge of formal systems for requesting records, including medical and police records. Under the DCO system, such women will not have a further opportunity to disclose any information previously undisclosed or to present new evidence gathered after the refugee decision has been made, because they do not have access to an appeal, and because the government has the authority to deport them prior to the determination of an application for leave and judicial review.

38. In our experience, the majority of our clients do not disclose the full extent of the abuse they have experienced in their first meeting with their lawyer. Often, it is only until after a woman has developed a relationship of trust with her lawyer over time that she will feel comfortable enough to disclose more of her narrative. In many instances, important disclosures happen after several months or even years of representing a client. It is imperative to have the opportunity to present such disclosures in the refugee determination process.

39. Our immigration clients experience significant difficulties in gathering evidence in support of their claims or applications. One of the central difficulties in document domestic violence claims is that it is a crime that often takes place behind closed doors. Domestic violence is considered by many people in countries around the world to be a 'private' matter outside of the protections of the law. Indeed, such views are still to be found in Canada. Many of our clients make significant efforts to hide the abuse from friends and family, and many never report the abuse to police.

Many clients' families do not agree with their decision to leave their partner due to abuse or lack the means or ability to assist a client with evidence-gathering in the country of origin. As such, gathering supporting evidence can be a big challenge, requiring much time and effort on the part of the claimant and the lawyer.

40. The DCO regime also fails to recognize that women often experience systemic discrimination and violence in otherwise seemingly 'safe' countries. Many of the DCOs are significant source countries for gender-based violence claims. We have represented clients from Mexico, South Korea, and Hungary, all of which are presently on the DCO list. Often, even where legislation against gender-based violence may exist, women who experience gender-based violence do not receive an adequate level of protection in practice. In these cases, it is imperative for claimants to be given substantive rights in the refugee determination process, the failure of which can lead to deportation of clients at serious risk of persecution.

41. Many of the recent changes to the immigration system interact to decrease the rights of women in the refugee determination system. If a woman is prevented from getting a fair hearing because of a controlling, abusive partner, there has been a clear breach of natural justice at the RPD without a method of correcting it on appeal. She can apply to reopen the case in some circumstances, but could face deportation prior to a decision in this application. In my view, the combined effect of these and other changes to immigration law will mean that more women will be deported from Canada without ever having their own claim of abuse heard.

42. Women from designated countries will face additional barriers, as they will not have access to an appeal and may be subject to removal proceedings approximately 30 to 45 days after filing a refugee claim in Canada. Removal may proceed, regardless of whether their original refugee decision was unreasonable, and regardless of whether the refugee claim contained any information of their own risk of violence.

43. We have represented clients from now-designated countries who came to Canada with their abusive partners and made refugee claims which were then denied. Several such clients have had their refugee claims reopened and subsequently granted on the basis of the abuse they experienced. These clients may not have had the opportunity to apply to reopen their claims if the DCO system had been in place at that time. As a result, they may have been deported from Canada without ever having their own risk of abuse assessed.
44. I have been advised about the following two cases by our staff immigration and refugee lawyer, Sayran Sulevani. I have also reviewed summaries of each case. I provided support in the former case by securing assessors to perform medical and psychological assessments of the client and her children.
45. In the first case, our client came from Mexico with her abusive husband and their four children in 2007. Their refugee claim, based primarily on her husband's experiences of gang-related violence, was denied in 2008. The abuse continued after the claim was denied, and the client made the difficult decision to call police and separate from her husband. The client was referred to the Clinic where we submitted a Pre-Removal Risk Assessment Application in 2009, during which the woman was statutorily permitted to stay in Canada. We simultaneously applied to reopen her refugee claim based on the fact that she had not had an opportunity at the initial hearing to present evidence about her fear of abuse. The reopening was granted and she received a *de novo* refugee hearing. Her claim was then denied in 2011, and we filed an application for judicial review, during which the woman was statutorily permitted to remain in Canada. The judicial review was granted on consent after five months, and a new hearing was scheduled. The client's second *de novo* refugee hearing took place in 2012 and she was accepted as a refugee in 2013. If this client's claim had been determined under the current system, without access to a statutory stay of removal after her first refugee claim refusal, or during the judicial review of her subsequent refusal, the client would have been vulnerable to being deported to persecution without her risk of abuse having been considered.

46. In another case, our client arrived in Canada from Mexico with her developmentally disabled son in 2007 and was later joined by her abusive husband. Their refugee claim, based primarily on her husband's experiences of gang-related violence, was denied in 2010. The client submitted a Pre-Removal Risk Assessment Application in 2010, while she was still with her partner, during which she was statutorily permitted to stay in Canada. After a serious attack, the client left her husband in 2011. The client was then referred to the Clinic, where we assisted her to submit a Humanitarian and Compassionate ("H&C") Application. We also referred her to a lawyer who assisted her to apply to reopen her refugee claim based on the fact that she had not had an opportunity to present evidence of her risk of abuse at the initial hearing. The reopening was granted and she received a *de novo* refugee hearing, which took place between 2011 and 2013. The claim was approved in 2013. If this client's claim had been determined under the current refugee determination system, without access to a statutory stay of removal after her first refugee hearing, the client would have been vulnerable to being deported to persecution without her risk of abuse having been considered.

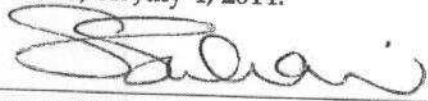
47. These changes, considered cumulatively, remove the ability of a significant number of women who come to Canada with their abusers and rely on the abuser's refugee claim while living under his power and control, to have their risk of persecution assessed *at all*. The lives of a significant number of women will be put at risk and Canada's reputation as a safe haven for gender equality, leading the standards of the international protective regimes will be severely undermined.

48. It is a common scenario that an abused woman never substantively participates in a refugee claim or judicial review, instead being subsumed in the claim of her abusive partner. Under the new immigration laws, a woman from a DCO who has received a decision from the Federal Court, may not reopen her refugee claim under any circumstances. She will not have access to a PRRA application for 36 months after a final determination, a period during which the

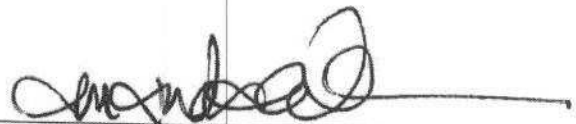
government will almost certainly attempt to deport her. In the meantime, she is not permitted to submit an H&C application during her refugee claim. If she falls under an exception that allows her to submit an H&C application after a refugee determination, the application will not prevent her removal from Canada, and the narrow discretion of immigration officers to defer removal has been further limited. As such, many women, including survivors of some of the most horrendous forms of violence, will never have their voices heard in the Canadian refugee and humanitarian system.

49. My analysis is informed by my long history of working in the Anti-Violence Against Women sector as well as my role as the Executive Director of the Barbra Schlifer Commemorative Clinic.

AFFIRMED BEFORE ME at the City
of Toronto, in the Province of
Ontario, on July 4, 2014.



Sayran Sulevani
Barrister and Solicitor
LSUC # 56955H



AMANDA DALE