

UN COMMISSION ON THE STATUS OF WOMEN

The Barbra Schlifer Commemorative Clinic (“the Clinic”) performs a substantive amount of legal work in the area of immigration and refugee law. The Clinic works with women who are victims of intimate partner violence and gender-based violence. The Clinic asserts that Section 108 of the *Immigration and Refugee Protection Act*, which lays out the provision for the cessation of refugee protection in Canada, disproportionately impacts women who are survivors of gender-based violence in its application. In doing so, the provision is discriminatory and places women at risk of deportation back to their home countries and abusers.

BACKGROUND ON THE BARBRA SCHLIFER COMMEMORATIVE CLINIC

The Clinic provides legal representation and advocacy services in the areas of immigration, family, and criminal law. The legal service is designed to pursue various legal remedies on behalf of the Clinic’s clients, and to ensure their protection from violence and to advance their legal rights in the practiced areas of law. The Clinic is a center by, for and about women. The Clinic amplifies women’s voices and cultivates their skills and resilience. In conjunction with the assistance from donors and volunteers, the Clinic is active in changing the conditions that threaten women’s safety, dignity, and equality.

The Clinic has extensive experience, and expertise serving and representing women who have experienced domestic violence, and has a robust history of advocacy on domestic violence and other VAW issues. The Clinic has delivered hundreds of public legal education and professional development programs on legal issues related to domestic violence, and other forms of violence experienced by women. The Clinic has consulted broadly with the government on criminal and family law proposed legislation and policies. The Clinic has also participated in numerous, multi-sector committees, coalitions and consultation groups consisting of government representatives, professionals from the legal profession, social service providers and academics. Our advocacy work has focused on enhancing service-provision



efficiencies and systemic responses to victims of violence and advocacy initiatives relating to the functioning of the various justice systems our clients utilize and the promotion of women's legal rights therein.

CESSATION UNDER THE LAW

Under Section 108(1) (a) of the *Immigration and Refugee Protection Act* a "claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection," if, "the person has voluntarily reavailed themselves of the protection of their country of nationality."¹ The courts have found on numerous occasions that a refugee who applied for a passport in their home country and returned home to visit, relinquished their status.

Concerning the cessation clauses, the UNHCR Handbook states that there are three requirements included in the cessation clause. The refugee must act voluntarily, the refugee must intend by his actions to re-avail himself to the protection of the home country, and the refugee must actually obtain such protection.² The handbook also states that obtaining a passport to one's home country, without proof of the contrary, will lead to an automatic assumption of intention to reavail.³

REFUGEE PROTECTION AND GENDER-BASED VIOLENCE

The provisions under Section 108 (1) (a) allow the Minister to strip valid government protection from legitimate refugees. A decision made by the Immigration and Refugee Board to waive refugee status results in the individual losing permanent residence status automatically, and the individual immediately becomes inadmissible for status in Canada. There is no opportunity to apply for consideration based on humanitarian factors or for the contemplation of the best interests of affected children. This is notably harsher treatment in comparison to other grounds of loss of permanent residence status.

The contemporary legislation and application of the cessation standards fail to take into account the lived experience of women who are victims of gender-based violence. Many return home to care for ill family members, or to seek out children they may have had to leave behind. To assume that in obtaining a passport, and travelling home, they are seeking protection from a state which has failed to protect them in the past, is to fail to consider the lived experience of many of these women fully. Women who are victims of gender-based violence are not fearful of the state

¹ Immigration and Refugee Protection Act, SC 2001, C 27 at s 108 (1)(a).

² United Nations Refugee Agency, "Handbook on procedures and criteria for determining refugee status and guidelines on international protection" online: <https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html> at p 30.

³ Ibid.

itself and should not be treated as a status quo refugee when applying the cessation standards. They fear their abuser, a third party. By failing to consider this in regards to the application of cessation provisions, the law disproportionately impacts women who are victims of domestic violence.

As currently implemented, it directly contravenes the UN policy general principle for proportionality and does not reflect a gender-sensitive approach as required by article 2(c) of the 1951 Refugee Convention. It creates further barriers for survivors of Gender-Based Violence to access justice from the Immigration and Refugee Board.

CONCLUSION

Section 108 (1) of the *Immigration and Refugee Protection Act* discriminates against women who are victims of domestic violence in failing to consider the lived realities of these individuals and by not reflecting a gender-sensitive based approach. It places women who are victims of domestic violence at risk of facing deportation back to their abuser and risks subjecting them to further abuse. The government should implement a new policy or legislation to ensure that cessation is not used to strip refugees of their status if they return home for brief visits. As the individual is not in fear of the particular state but of an individual within, unique insight and standard are required to ensure the adequate protection of women who are victims of gender-based violence.

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