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Submission on the Amendment to the Immigration and Refugee Protection Regulations

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Introduction

The Ontario Association of Interval and Transition Houses (OAITH) is a province-wide network of women's emergency shelters, second stage housing programs and related agencies for women and children escaping violence. Our 35-years of experience working with frontline services provide a strong foundation for commenting on the impacts of the proposed regulation on conditional residence for certain permanent residents under the *Immigration and Refugee Protection Regulations*.

OAITH originally wrote briefly to Justine Akman, Director of Social Policy and Programs, in April of 2011 to express concerns with regard to the dangers to women in the proposed regulation, in particular women who experience abuse in their relationships.

In the revised text of the regulation as published in the *Canada Gazette*, Part 1, Vol. 146, No. 10 on March 10, 2012, we were pleased to see that an attempt has been made to provide for an exemption for 'domestic violence' within the regulation wherein women might be able to separate from an abusive partner before the end of the conditional residence period.

Nevertheless, we must restate our opposition to this proposed regulation.

We continue to believe that the regulation will endanger women in abusive relationships, that the exemption will not provide protection to women and that it will threaten women's right to safety and security of the person as well as their equality rights under the *Canadian Charter of Rights and Freedoms* Sections 7 and 15. We also have concerns with regard to the purpose and development of the proposed regulation.

We hope that a more detailed explanation of our concerns might lead to the reconsideration of this regulation and a more effective immigration program for newcomers.

Purpose of the proposed regulation

This regulation is not necessary; therefore, its introduction is questionable.

The proposed regulation is characterized as a measure to stem the purported problem of "marriage fraud" in Canadian immigration, to restore the "integrity of the immigration program" undermined by such fraud and to prevent the pain experienced by new immigrants who might unknowingly enter into 'marriages of convenience'.

There is, however, no evidence base for the regulation. The analysis provided in the *Gazette*, to the contrary, acknowledges that "firm figures on the extent of relationships of convenience are not available." Figures are then estimated based on spousal and partner applications processed in 2010 which show that of the

46,300 applications processed, 7,408 were denied. Again with no data provided—and reasons for refusal must be available—the analysis estimates that “most of these were refused on the basis of a fraudulent relationship.”

The analysis points out that the vast majority of cases deemed to be fraudulent are screened out in the application process prior to newcomers entering Canada. Presumably, the government is confident that its interviewers are skilled and able to determine whether or not a relationship is genuine, otherwise they should be better trained. Moreover, a large percentage of cases that are originally determined to be fraudulent are found legitimate on Appeal. Perhaps the problem is that too many relationships are falsely found to be fraudulent, creating a resource issue within the appeal system that could otherwise be avoided if interviewers were less eager to exclude genuine couples.

We do not believe that the integrity of Canada’s immigration program is threatened in any way by the small number of spousal and partner applications that may ultimately be found to be fraudulent. These cases do not warrant the implementation of a regulation that will cost millions of dollars to enforce and put all spousal and partner relationships within the criteria for conditional permanent residency under potential suspicion and scrutiny, even beyond the period during which the condition exists. Clearly, there is little evidence that marriage fraud within the permanent resident population is a significant problem. If the government is convinced that it is, the number of such cases should be reported and analyzed before any targeted enforcement action is taken.

The proposed regulation purportedly also seeks to help newcomers avoid the pain of discovering that their spouse or partner was using them to obtain permanent residency and that their relationship was false. The number of partners that would be in this category would be even smaller than the overall number of fraudulent relationships. While we appreciate that government wants to empathize with those who are misled, it must weigh that pain against the potential danger to women who may suffer much greater impact as a result of this regulation.

There are already remedies within the current legislation to react to situations where newcomers provide false information to immigration authorities in order to enter the country. In response to the pain incurred by spouses misled by partners, perhaps the educational campaign on marriage fraud alluded to in the regulation could be better framed to encourage newcomers who may be duped to report those cases, as well as to provide supports to address the emotional consequences of their situation.

If the government of Canada is concerned about stemming marriage fraud, it must find ways to address those cases without using the proverbial sledgehammer to crack a nut.

Women's equality rights

Women's and equity-seeking groups have long argued for measures to both recognize and address the specific issues within immigration policy in Canada that disproportionately affect women. One of these issues remains the spousal sponsorship program, which although revised to reduce the sponsorship period, still requires sponsored spouses (mostly women) to be dependent on their sponsor (mostly men) for a period of three years. For women who are in an abusive relationship and are sponsored, spousal sponsorship reinforces the subordinate position of women in these relationships and confers on the abuser yet another means of control within the relationship. For other women, it creates a relationship of subordination where none may have existed before. In our opinion, these dynamics and the legislation that reinforce them, violate women's right to safety and personal security and their right to equality.

Since most sponsored spouses are women and most sponsors are men, the creation of legislated dependency within the spousal sponsorship program amounts to legislated inequality for women entering Canada through the program.

The conditional residency regulation places a new condition on all women in spousal sponsorship relationships and strengthens the dependence created by the spousal sponsorship relationship. In addition, it intensifies the subordinate status of women with the threat of deportation for themselves and any sponsored relations, should they leave their relationship. As such, the conditional residency regulation becomes a state-sponsored coercive measure to ensure women's subordination and inequality.

The regulation creates a *de facto* "forced marriage" on women (and men) beginning at the point when sponsorship is granted and for a period of at least two years until a newcomer is granted permanent residence. Given that the relationship could well be just short of two years old before sponsorship is granted and continue beyond two years after that date, women may effectively be forced to remain in untenable or abusive relationships for many years.

Statistics Canada reports that the largest number of divorces in Canada take place in the marriages of less than four years. *The Daily*, May 4 2004, reports that less than 1 in 1000 marriages ends in the first year, rising to 25 out of 1000 after year three and then declining *after* four years. It is entirely reasonable to expect that similar numbers of marriage breakdowns within genuine relationships may well occur within couples in the spousal sponsorship program. Forcing couples unsuited to each other to remain married for over four years while Canadian citizens may separate and divorce puts an unreasonable expectation on these couples. Some spousal sponsorship relationship marriages will breakdown without any vestige of fraudulent intention.

As stated on the website of Citizenship and Immigration Canada (CIC): “Under the *Immigration and Refugee Protection Act*, CIC is accountable to Parliament for conducting gender-based analysis on the impact of the *Act* and its regulations.” It further states that: “Gender-based analysis will also be conducted to ensure that gender considerations are taken into account in the development of new policy, program and legislative frameworks and tools.”

Was a gender-based and equity analysis carried out with regard to this regulation?

We note that in the consultations outlined in the analysis section, there were no women’s anti-violence groups identified. In responses to the April 2011 notice in the *Canada Gazette*, however, there were women’s groups mentioned. The *Gazette*, although publicly available, is unlikely to reach a substantial number of agencies or organizations who work with women whom this regulation will affect. Our organization found out inadvertently about the regulation virtually at the end of the time period for responding to the *Gazette* notice. Given that the regulation disproportionately affects women, especially women in abusive relationships, the consultation methods and period of time have been inadequate.

The abuse exemption

Men who abuse women in their relationships have a compendium of tactics that they use to get their way. As indicated in the revised regulation exemption for abuse, these tactics include physical, sexual, emotional and financial tactics that maintain control at all times during the relationship. Some of these tactics are criminal; others are not. Men use all of the tactics because they work. They work because often there remains personal, institutional and cultural reinforcement of male superiority in Canada and violence against women remains pervasive throughout the country.

Women who escape abusive relationships must often take great risks in order to protect themselves and their children. In many communities the supports they need to safely escape do not exist or are inaccessible to them, especially if they are members of those communities of women that remain disenfranchised in Canada: Aboriginal women, women of colour, immigrant and refugee women, women with disabilities and Deaf women and low-income women. The Government of Canada is, or should be, aware of these realities; they have been repeatedly documented within Statistics Canada and for this, firm figures *are* available.

In addition, abuse of women in their relationships extends to their children. Abusers use and sometimes abuse their children as a method of control over the entire family. Women who come to Canada without children under this regulation may become mothers during the two-year period of the condition. They may also bring with them, or later sponsor, children from other relationships, who will also be subjected to control by the abuser.

As a result of many years of work by women’s advocates and various community partners, progress has been made to educate the public about woman abuse, and

attempts continue to eradicate violence against women. Exemptions such as the one included in the conditional residence regulation have been introduced in other policy initiatives as a way of acknowledging and addressing the specific barriers abused women face in accessing the services or complying with particular requirements within policies and programs.

Do these exemptions work? For some women they do. For others they may work some of the time. But whether or not they work depends on the number of barriers women face in accessing help or complying with expectations. Barriers increase and intersect for women who are marginalized in Canada. For women just arriving in the country, they are extensive; for many women they may be insurmountable.

We cannot envision many women in abusive relationships successfully using the exemption in this regulation for a number of reasons:

1. The regulation in and of itself is designed as an enforcement tool that threatens women with deportation. For immigrant women who are in abusive relationships, the threat of deportation by partners is often one way in which the abuser maintains control, whether or not the threat is real. Through this regulation, the Government of Canada will bolster the tactic with its own state-sponsored threat to remove women, their children and others relatives they may have sponsored. As the sponsor, a partner already controls the process for a woman's entry into Canada and any potential for her to lose her status. For an abuser this is a huge weapon in his arsenal of control tactics.
2. Abusers use disinformation as a way to isolate and control. For abused immigrant women who do not speak English or French, access to full and accurate information about the conditional residence regulation and the possibility of exemption will be hard to come by. They will likely rely on the abuser to understand the policy and its implications. For women who have not had access to school or literacy teaching, this barrier will be particularly challenging as they may have no alternative way to access information about their rights, including about the exemption from this regulation.
3. Women in abusive relationships often have little to no financial resources of their own—they are all controlled by their partner. For newcomers to Canada, especially for women whose first language is neither English nor French, amassing funds will be unlikely or impossible—funds which the regulation analysis information acknowledges will be needed to leave the abuser and then to prove abuse and continual co-habitation to Immigration authorities.
4. Even if services such as shelters and counselling agencies may be available in the community, many immigrant women—especially women new to the country—may not know about them or may not feel that they are accessible to them. In many services, language interpretation may not be available. In addition, immigrant women will be reluctant to call systems such as the police, by which they might verify the abuse, especially if police or other bureaucracies in their country of origin did not support women in abusive relationships or

colluded with abusers in oppressing women.

5. Depending on cultural and faith values within their community, many immigrant women sponsored by their spouses, especially if they have not been in their relationship for a long time, may feel a greater responsibility to remain with their partner despite the abuse, particularly if they risk breaking the condition they must adhere to in order to stay in Canada, or to protect the sponsorship of close relatives that they may have sponsored. In addition, they may feel responsible to their community as a whole, depend on their community for support and information and fear being isolated from their community if they use this exemption.
6. As we pointed out in our first submission on this regulation, 'domestic violence' is now reportable to child protection authorities in many jurisdictions in Canada. There are continuing questions about the effectiveness of such policies in reducing child exposure to violence. At the same time, women fear these policies and the possibility that their children may be taken from them if they seek help for abuse. The proposed regulation adds to the dilemma for women new to Canada who may be, or become, mothers. In effect, the regulation creates a 'Catch-22'. Women will be forced to remain in abusive relationships for at least two years or face deportation. At the same time, should local child protection authorities become aware of abuse, they may require that the woman leave the relationship or face child apprehension. Because women fear the child protection system, they will be reluctant to use such agencies to prove abuse.
7. With regard to obtaining proof of abuse, the regulation is not helpful. Women are often abused behind closed doors and threatened if they report it to anyone. In some cases, women may be unable to leave their home without their partner, making it more difficult for them to report to an agency that could provide verification.

What evidence would give an Immigration officer "reason to believe" that abuse or neglect had occurred? What would be considered "related evidence" with respect to abuse and/or neglect? How would Immigration determine proof of emotional abuse and intimidation, tactics which are often subtle and misunderstood? If Immigration officers are to depend on criminal charges, medical reports, psychiatric assessments or court applications to determine abuse or neglect, many women will fail in their efforts to leave and will be forced back into the abuse, with unknown consequences. Should this regulation be adopted, it must not be implemented without full disclosure and consultation on what Immigration authorities would accept as "proof" of abuse.

8. Immigration officials are not trained to identify or respond to violence against women, which is a complex and multilayered social problem misunderstood by many community professionals, even those who deal with it on a daily basis. It would be dangerous to assign decisions about whether or not abuse has occurred to immigration authorities and we have no confidence they can safely

make the decisions necessary to protect women who might apply for the exemption.

9. Abuse is common in the relationships of women who are forced to become 'mail order brides' as a result of poverty or social unrest in their home countries—men who look for 'mail order brides' often seek women who are dependent, obedient to orders and, they hope, more deferential to male authority than women born in Canada or other Western nations. Women in these marriages may be particularly affected by this regulation and unlikely to seek the exemption.
10. The analysis section of the regulation notes that Canada is following in the footsteps of other countries, such as England, Australia and the United States, in creating a conditional residency period for spousal sponsorship immigrants. The Canadian version appears to most reflect US law in which the period of conditional residency is two years for a relationship of less than two years prior to sponsorship. In the American law there was also an additional exemption created for physical abuse and "mental cruelty". The United States example, however, also shows that such an exemption is not useful for immigrant women, mail order brides or wives of the military who come under this law. One analysis of the US law from Yale Law Journal identifies many of the same concerns listed above as reasons why the law and the exemption have not protected abused immigrant women in that country. It doesn't make sense to recreate regulatory policy in Canada that has failed in other jurisdictions to result in benefits for women. (Source: "A licence to abuse: the impact of conditional status on female immigrants." *The Yale Law Journal*. April 1, 1993.)
11. The conditional residence regulation allows for enforcement both during and after the two-year conditional should officials suspect non-compliance. Women who endure the abuse for the conditional period and then leave the relationship will continue to experience harassment and potential violence as a result of escape. Separation does not necessarily equate with safety.

It is common, for example, for abusers to interfere with a woman's attempts to be independent, to engage in abusive family law tactics, to make false reports to social assistance and child protection agencies and to use any systemic process to disrupt her life. It will be no surprise, therefore, if abusers falsely report women to Immigration officials claiming that they violated the conditional residence. The regulation provides another handy weapon to abusers who seek to use the system to keep their partners close and to punish them when they leave. The regulation increases the abuser's power over the woman, both during and after the conditional residence period. The regulation is threatening to women who experience violence, therefore, not only during the conditional period but potentially for years to come and even after they become Canadian citizens.

Conclusion

Given that this regulation creates nothing more than an added enforcement tool within the immigration program, offers little of benefit to Canadians, creates *de facto* "forced marriage" and has the potential to endanger women's rights to security of the person and equality, the regulation must be removed from consideration.

In order to better support women entering Canada as sponsored spouses, government would be better advised to remove any period of sponsorship for spouses in addition to removing this regulation, and to provide a process by which spouses of permanent residents would automatically become permanent residents or could apply for permanent residency independent of their spouses.

In addition, we recommend that any funds allocated to the implementation of this regulation should, instead, be applied to services and programs that support women entering Canada to know and understand their human and legal rights. Specifically, it should be used to reverse the continuing reductions in support to services for immigrant and refugee women that have taken place in recent years and are continuing under the current government.

Respectfully submitted,



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