

Practical information for service providers working with women who have no legal status



MOTHERS WITHOUT STATUS

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This booklet offers general information on mothers without status and involves federal and BC law. Information in this guide is accurate as of December 2009.

This information is NOT about those who already have permanent resident status (Permanent Resident Card or a Record of Landing Document). If your client does not know whether she has permanent resident status, you should advise her to seek legal advice about her status in Canada. If your client is a permanent resident, and her sponsorship relationship has broken down, or her sponsor is abusive and failing to support her, you may wish to consult a guide on sponsorship breakdown, available at http://www.lss.bc.ca/publications/pub.aspx?p_id=113.

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Introduction

This booklet has been written for service providers who wish to assist "mothers without status" – those women who are neither Canadian citizens nor permanent residents and who need help navigating their way through both the Canadian immigration system and the family law system. It provides an overview of the issues mothers without status face, what they need to do to resolve their status and what support is available to help them. *This book does not provide legal advice.*

This is not a reference book for those who have been sponsored but are a part of sponsorship breakdown; which means that the sponsor will no longer provide for the woman or the woman cannot safely seek support from her partner who sponsored her.

As a service provider, you may feel overwhelmed in your efforts to assist and support mothers without status, given the complexity of their situation. This booklet is here to help. It breaks down the topic into manageable pieces and tackles each issue individually. It focuses on what you can do, step by step, to help guide a woman without status through the maze of Canadian immigration law and family law, and it provides useful contact information that will make the process easier for both you and the woman you are supporting.

SECTION I: UNDERSTANDING THE ISSUES

Who Are Mothers Without Status?

For the purposes of this booklet "mothers without status"¹ is a term used to describe single women with children who are living in Canada, but who are neither Canadian citizens nor permanent residents. They have found themselves in this position because they were previously in an intimate relationship with a man who is a Canadian citizen or permanent resident and who was either in the process of sponsoring or who promised to sponsor them. Once the relationship ended, these women were left with no permanent legal status.

Before compiling this booklet, the YWCA interviewed 23 mothers without status to gather information about how these women arrived in Canada and what has happened to them since. The information collected provides a picture of a diverse group of women. They arrived in Canada in various ways including, but not limited to, the following:

- With a temporary visitor's visa
- With a student visa
- With a work visa
- · With a working holiday visa
- As a traveller with a valid passport
- As a traveller who did not require a visa, permit or came to Canada prior to border regulations and rules and required no paperwork at all.

All of them were in intimate relationships with men that subsequently ended for one or more of these reasons:

- They were experiencing abuse from their intimate partners.
- Their intimate partners were abusing their children.
- They were told to leave the relationship by the Ministry of Children and Family Development because their children were witnessing and/or experiencing abuse.
- Their partners ended the relationships.

At the end of the relationships, some mothers without status found themselves with no sponsorship at all, but most were in the middle of the process of being sponsored by their intimate partners, who then cancelled the sponsorship and ended any financial obligation as sponsors.

Generally, women without status must stay in Canada if they want to remain with their children; they cannot legally take the children out of the country. But staying means applying for permanent resident status, which can take up to two years. During this time these women have limited opportunities to earn money and they may have very real fear of living close to their ex-partners if they have been abused. Consequently, mothers without status and their children live under extreme duress and hardship while they wait for immigration and family law issues to be resolved.

¹ Although individual situations differ for these women, for the sake of brevity, this booklet refers to them in all cases as "mothers without status."

First Steps: Understanding the System and Getting Immediate Help

Mothers without status must understand the legal choices and limitations they face and the practical steps they need to take to get the result they want. As a service provider, you may be a woman's main support as she faces her options.

Some mothers in this situation will want to stay in Canada where they have established ties. Others will tell you that they want to return to their country of origin with their children. Their reasons for wanting to return may include, but not be limited to, the following:

- They have no sources of income and no legal right to work in Canada.
- They want to keep safe from abusive ex-partners.
- They want to protect the children from abusive fathers.
- They have family and support systems in their country of origin.
- They want to leave behind the challenges presented by the immigration and family law systems in Canada.

As a service provider, it is important to get the woman to meet with a lawyer – either a pro bono program or other summary advice program to have her options assessed. Additionally, you will need to be cautious about the woman's options while discussing the next steps. In most cases, a woman without status will not be able to take her children out of Canada because of unresolved custody and access issues; she may not be able to take the children to her home country at all. This will seem very unfair; however, assisting her to piece her story together will give her the best chance to be able to do what she wants to do.

Take the time to review your client's situation and be prepared to explain why she cannot take the children out of Canada with her. If possible, review with her any relevant documentation to help her understand the situation (e.g., court orders that prevent the children from leaving the jurisdiction, emails that show her asking her ex-partner for permission to take the children that he has refused). Each situation will be different, but her options may include:

- Starting an immigration process (apply for Permanent Resident Status on Humanitarian & Compassionate grounds, refugee status or work permits), which is what this book is here to help with
- Applying to the courts for permission to leave the country with the child
- Returning to her country of origin without the child

Some women in this situation may decide to return to their abusive partners. If this is their choice, you may want to offer to help them create safety plans and let them know that you are there if they need you again.

A woman without status will usually be involved with both the Canadian immigration system and the family law system. These two systems operate completely independently of one another and navigating both can be overwhelming for a woman without status. You, as a service provider, can help a woman steer her way through whatever is required, getting appropriate professional help along the way.

1. Charting the way

The first step is to determine where a mother without status sits within the legal systems – both the immigration system and the family law system. That is, you need to find out whether her sponsorship was cancelled at the beginning, middle, or end of the process after her relationship ended, and whether she has started the process of applying for a custody order. Figures 1 and 2 (on pages 11 and 13) will help you determine a woman's current situation. These two flow charts show the various stages of the immigration and family law system for mothers without status. (Note: These figures are intended as planning tools only; they are not a substitute for legal advice.)

Regardless of where in the process a mother without status is, it is imperative that she get immediate advice from both an immigration lawyer and a family law lawyer.

Remember, while front-line workers in the immigration and family law systems are often very knowledgeable and will be able to answer some questions about process and paperwork, they are not legal experts. At the very least, a mother without status should obtain summary advice from a lawyer on the options available to her. The next step may be to apply for Legal Aid, if appropriate, in order to obtain funding for legal representation.

For immigration cases it is normally best to speak to a lawyer prior to applying for Legal Aid; they will be able to explain the best course of action to take and will be able to ensure that all relevant facts are presented to Legal Aid to prevent unnecessary appeals at Legal Aid.

2. Applying for Legal Aid

Legal Aid provides provincially funded access to legal counsel for those who cannot afford to pay for lawyers on their own. In British Columbia, Legal Aid is provided through the Legal Services Society through offices across the province.

Despite their lack of permanent status in Canada, mothers without status are entitled to apply for Legal Aid for help with both their family law situations and their immigration situations. To be eligible for Legal Aid, a woman must meet certain financial eligibility criteria, which are outlined on the Legal Services Society website: www.lss.bc.ca.

If you wish to talk to someone at Legal Aid in person, you can call the following numbers:

In Victoria: 250 387 6121

In Vancouver: 604 660 2421

Outside Victoria and Vancouver (toll-free): 1 800 663 7867

One of the most important supports that you can provide to a mother without status is help with her Legal Aid application. You can fill out the form for her, help her prepare for and accompany her to any meetings with Legal Services staff, and be her advocate throughout the process.

Limitations of Legal Aid

Keep in mind that Legal Aid is limited in the services it provides coverage for and services covered change. For family law issues, Legal Aid will help a woman without status obtain a restraining order to stay safe and/or to address custody and access issues to keep the children safe. They typically will not pay for a woman to get a divorce or request income support. Women with Ministry of Children and Family Development (MCFD) involvement will have access to legal representation through Legal Aid if they financially qualify and if there is a possibility that their child may be removed from the home or their child has already been removed from their home.

Generally, Legal Aid provides a limited amount of time for a lawyer to prepare an application. Therefore, it is important to help keep a woman focused on safety concerns and be sure to tell the Legal Aid worker about any abuse that she or her children have experienced at the hands of her ex-partner.

For immigration issues, Legal Aid may fund legal representation for applications for permanent resident status on humanitarian and compassionate grounds or for refugee claims. (These hours are separate from the hours spent on family law issues.)

If a woman has had a negative decision on an immigration/refugee application, Legal Aid may fund legal representation for a judicial review of the decision. Legal Aid also provides funding in some cases for Pre-Removal Risk Assessments (PRRAs).

If Legal Aid is denied

If your client is denied Legal Aid, encourage her to ask the Legal Services worker to put the reasons for the denial in writing. This information may be helpful if she needs to appeal the decision, or if you need to advocate on her behalf.

Once you have the denial in writing, review it to make sure that your client provided the intake worker with all the information needed. If you discover that the woman did not have the opportunity or failed to provide specific information on a safety or immigration concern, you can contact the Legal Services Society intake worker who issued the denial and provide the "new" information. You will need to get your client's written permission to do this and fax it to the intake worker before you speak with Legal Services Society about the case.

If the woman is denied Legal Aid for financial reasons, take the time to assess why she was denied. If she cannot access the money or assets that have made her financially ineligible, contact the Legal Services Society and explain the situation. Often a mother without status may have income on paper, but in reality cannot access the money because her expartner controls all the finances.

If all of the information was provided at the intake

interview, or if despite new information the woman is still denied Legal Aid, she can appeal the decision. If you believe that Legal Aid was denied unfairly, you can assist your client by writing out the appeal. Be sure to include any history of abuse and the reasons why she cannot take the children out of the country with her if she has to leave herself.

Even if a woman was fairly turned down for Legal Aid, she can reapply if her situation changes. A change in situation can include another threat, another assault, or a change in her financial situation.

In the interim or before applying to Legal Aid she may seek summary advice through a lawyer; some lawyers offer free summary advice through Access Justice and Salvation Army Pro Bono.

3. Working with lawyers

One of the most important things a support person can do is explain that a woman has complete confidentiality with her lawyer. For clients who come from places with corruption or whose ex-partners have caused them to fear the Canadian system, this is extremely important.

While it would be ideal to find a lawyer who could represent a mother without status for both immigration and family law issues, this is generally not possible because lawyers specialize in different areas of the law. Consequently, a mother without status may be working with two different lawyers. You, as the mother's advocate, can help the woman liaise between the two lawyers.

Transition houses, women's centres, advocates and other organizations that serve women sometimes provide lists of lawyers who accept Legal Aid clients and who understand the issues that pertain to mothers without status. They may also have lists of lawyers who can provide services in languages other than English. (Alternatively, a woman on Legal Aid can ask the lawyer for an interpreter if she has English as a second language as Legal Aid will fund the costs of interpretation and translation.) Once professional legal representation has been found, you can help a mother without status with strategies to make the best use of the lawyer. Helpful steps you can take include the following:

- Remind her to remain calm and to stay focused on the legal issues when talking with her lawyer. Remind her that her lawyer is not her support worker or counsellor and that she can discuss emotional issues with you.
- Help her to write down the story of her relationship and have it ready for her first meeting with her lawyer. Include any abuse she or her children may have experienced, evidence of the abuse (such as witnesses or medical reports) and financial information.
- Suggest that she limit telephone calls to her lawyer and remind her that every call costs money. (If she is on Legal Aid, these calls will be calculated as part of her allowable Legal Aid hours.)
- Suggest that as she thinks of questions that she needs answers to, she write them down to take to the lawyer at the next scheduled visit. This will help the time spent with the lawyer be as efficient as possible.
- Ask her if she would like you to keep copies of all relevant documents on file in your office. This includes correspondence from the woman's lawyer, from her ex-partner and his lawyer, and from immigration and family law services, as well as copies of all court orders. Some women without status move frequently and important documents can get lost during the moves. If you do keep copies, be sure to take them with you when you accompany the woman to any appointments with lawyers. If the woman is attending appointments without you, make a second copy of the relevant documents for her to take with her (leaving you with the first copy).
- Remind her to be aware of all upcoming court dates and immigration interviews, and let her know that it is important that she arrive on time. Some mothers without status may not even have bus fare to get to their legal appointments. You can help by taking her to the appointments or by providing her with bus tickets if your organization offers these services.

Navigating the Family Law System

When her intimate relationship ends, a mother without status needs to make decisions about her children, and that means understanding how the family law system works. Even though a woman may not have legal status herself in Canada, she can apply for guardianship, custody and access of her children, but she must do so within the framework of the legal system. Again, it is important that a woman without status understand that she may not be able to leave the country with her children if she does not have an order allowing her to do so.

The first step is to get legal advice so she understands her current situation and her options. She will also need to understand what the words mean (see box below).

WHAT THE WORDS MEAN

Custody generally means having daily care and control of the children. Parents are often given joint custody, which means that they share responsibility, but usually the children still live most of the time with one parent, who has primary residence and spend some time with the other parent.

Access refers to the time children spend with the non-custodial parent or the parent who does not have primary residence of the children. Sometimes access can refer to telephone calls, email communication and/or web camera contact.

If a woman believes the children may be in danger from the other parent or father, she may be able to ask the courts for *supervised access* to the children. This means that someone else is present during the visits to ensure the safety or security of the children. That person may be the woman, a friend, a relative, or a representative from a professional agency that charges money to supervise the access visits.

Guardianship means the right to make the major decisions that affect the children such as what schools they will attend, what religion they will be raised in, any medical treatment they may require and apply for a passport for the child. Often parents are granted joint guardianship of the children.

Women will not automatically get custody of the children when they leave a relationship, even if the father or other partner has been abusive. Who gets custody, access and guardianship of the children is determined by what the judge decides is in the children's best interests. It is common for courts to award joint custody and guardianship. A family law lawyer is most likely to be able to explain the meaning of a child's "best interests" in your case.

1. Staying or leaving: The options

Figure 1 illustrates the various routes a woman without status may take in the family law system, depending on whether she wants to remain in Canada or not. The following discussion provides more information about the basic paths illustrated in Figure 1 (page 11).

Pre-existing court order from another country, but no court order in Canada

If a woman without status wants to return to her country of origin, and she has an existing court order granting custody of the children from the country of origin, generally she can safely leave Canada with her children. However, she should consult with a lawyer before leaving to ensure all documentation is in place.

Note that this situation is very rare for women without status.

Court order from Canada stating the children are not to leave this jurisdiction and/or giving custody or access visits to the father

If a woman without status attempts to leave Canada with the children when there is a court order in place that states they must remain in the country, she could be charged with abduction and/or lose custody of the children.

Even if a woman successfully removes the children to her country of origin, she likely faces serious legal repercussions. More than 80 countries have signed the Hague Convention on the Civil Aspects of International Child Abduction, which ensures the quick return of children who have been wrongfully removed from Canada or from another country that is a signatory. This means that a custody order made in Canada stating the children cannot be removed will be valid in a country that is a signatory to the Hague Convention.

Even if a woman flees to a country that has not signed the Hague Convention, such as Japan, her ex-partner may still take the case to court in that country to try to get custody of the children.

No court order at all

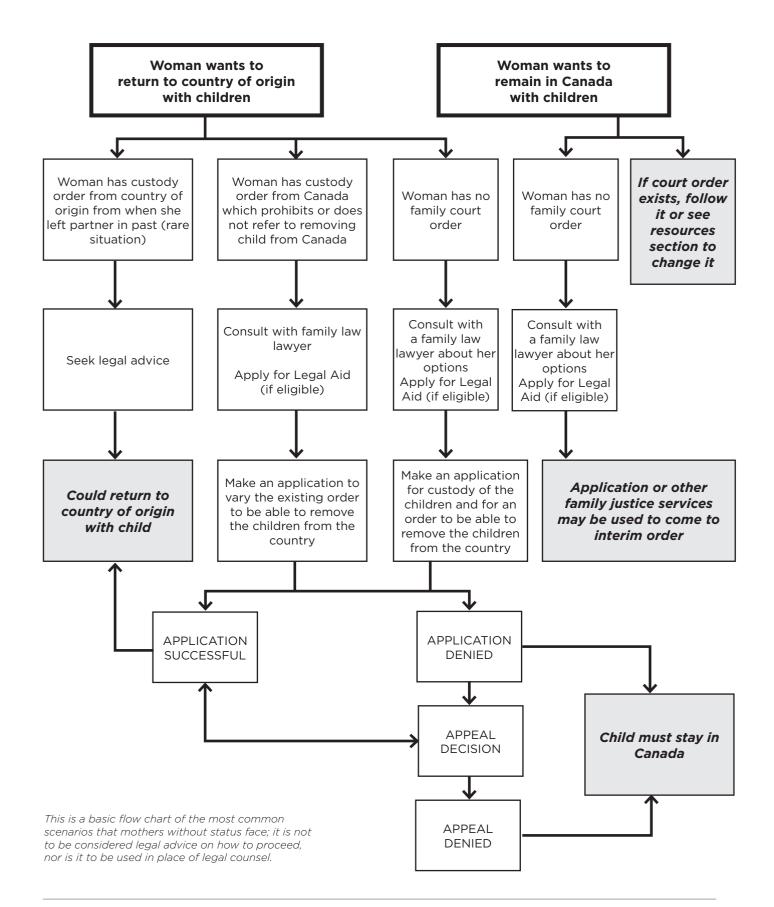
If a woman without status attempts to return to her country of origin with the children, and there is no court order regarding custody at all, she still risks serious legal consequences.

If there is no court order and the woman has not obtained the father's notarized permission and/ or the court's permission to leave the country, the father could go to court without notice (ex parte) to apply for custody. In that case, if the woman and children are in a country that has signed the Hague Convention, they can be forced to return to Canada, and the mother could lose custody and/or be charged with abducting the children.

In the situation where there is no court order, a mother without status can go to court to apply for an order specifically allowing her to remove her children from Canada. The courts will weigh her request against the children's rights to have access to their father. In order to successfully argue that she should be allowed to leave the jurisdiction with the child, she will need to gather evidence to prove that the move is in the best interests of the children. Evidence might include any police or medical reports showing that the children were abused by their father, evidence that the country she intends to move to has a quality of life equivalent to Canada's (including education and health services), and plans for maintaining the children's access to their father from the other country (where appropriate). However, she should know that her chances of success are poor without such evidence.

Whether the woman wishes to remain in Canada with the child or return to her country of origin with the child, it is very important that she recognizes that without a court order she creates an opportunity for the other parent to go to a court (without notice to her) and tell a story that may be inaccurate, and cause the court to create an order that is clearly not in the child's best interests.

Figure 1: Navigating the family law system



Staying in Canada with the children

If a woman without status wishes to remain in Canada, and there is no existing order, she should go to court as soon as possible to determine custody and access. If she delays she may find that the children's father has gone to court without informing her (ex parte) to obtain his own order.

The process for applying for custody is the same for a woman without status as it is for any woman fleeing abuse by her intimate partner. However, there have been cases where judges have denied mothers custody of the children because their lack of status created a situation where they were unable to provide consistency and stability for the children, and/or because it made them appear to be at risk of fleeing the country with the children. Therefore, it is helpful for the woman to include information in her affidavit saying how she will provide a stable environment for her children despite her lack of legal status. If the woman plans to remain in Canada, she should also state that on her affidavit and describe what legal steps she is taking to make that happen. Any statement that emphasizes her ties to Canada may help.

For detailed information on custody and access issues, please see the YWCA Vancouver website at ywcavan.org and refer to the brochure Leaving An Abusive Relationship: Information on Custody and Access for Women With Children.

2. Ministry of Children and Family Development Involvement

The Ministry of Children and Family Development, MCFD, Child Welfare or Child Protection are all names for the child protection system which has a government mandate to ensure that all children in BC are safe and healthy.

Some mothers without status may become involved with the BC Ministry of Children and Family Development (MCFD). This may happen if the children have witnessed their mother being abused. In this case, an MCFD child protection worker may ask the mother to leave her partner so that the children are not exposed to violence. The worker may also tell the woman that if she does not leave, the children may be apprehended by the ministry.

This scenario can add to the stress of a woman without status. When a mother without status leaves an abusive relationship at the insistence of a child protection worker, she often has nowhere to go, nor does she have the resources to support herself and her children. Consequently, some women in this situation, to survive, decide that they must stay in contact with their abusers so that they do not cancel their sponsorship applications and/or to get food, shelter, or financial support from them. You may want to caution the woman about her obligation to Citizenship and Immigration Canada (CIC) and the need to disclose a change in the relationship for sponsorship.

Child protection workers may not fully understand these challenges experienced by mothers without status or why a woman hesitates to leave an abusive relationship. You, as a service provider, can help your client by explaining the complexities of the situation to the child protection worker. To be an effective advocate, it is helpful to know MCFD policies. Child protection workers are required to follow the MCFD Guidelines for Best Practice Approaches – Child Protection and Violence Against Women, which is available on the MCFD website (www.gov.bc.ca/ mcfd).

If MCFD is already involved in your client's case, there may be some ways they can help financially, such as providing a monthly bus pass or gift certificates. Although it is not typical, there is a precedent for MCFD to cover the cost of the medical exam required for a permanent resident application of a mother without status and to contribute some money toward her right of permanent residence fee. (See the section below on the immigration system.)

If MCFD threatens to remove the children from the mother, contact the mother's family law lawyer and immigration lawyer immediately. This may allow her permanent residency application on humanitarian and compassionate grounds to be rushed. Don't try to create this situation if it doesn't already exist as the results cannot be predicted. The family law lawyer can also seek to make sure that the child stays with the mother. Figure 2 illustrates the scenarios of a mother without status navigating the Canadian immigration system. Regardless of when the sponsorship was cancelled in relation to her application for permanent residence, if indeed any sponsorship existed, a woman without status will need to seek legal assistance to proceed.

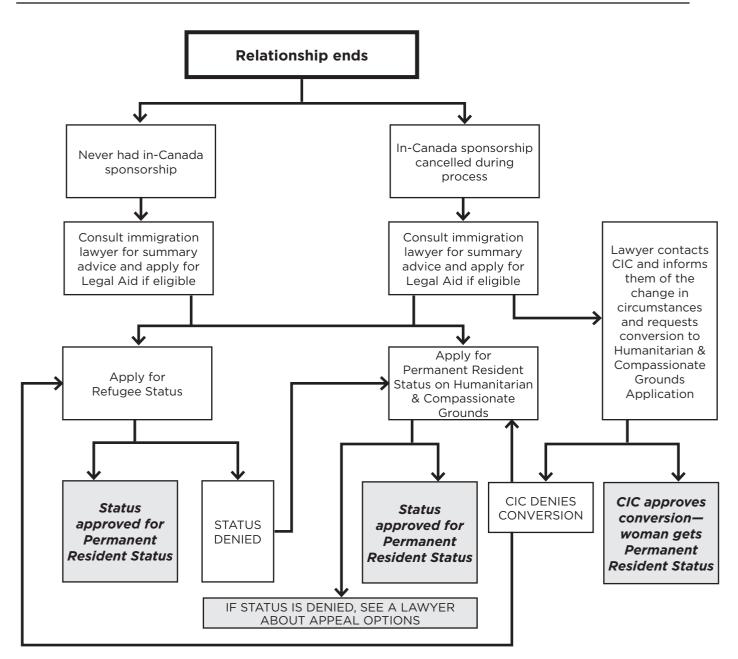


Figure 2: Navigating the immigration system

This is a basic flow chart of the most common scenarios that mothers without status face; it is not to be considered legal advice on how to proceed, nor is it to be used in place of legal counsel.

Navigating the Immigration System

The following discussion provides more information about the routes a woman without status may take as outlined in Figure 2 (page 13).

1. Sponsorship

Many mothers without status will be part of the In-Canada sponsorship, which is different from overseas sponsorship. "Sponsorship" refers to the process under Canadian immigration rules that allows one family member to sponsor another family member (e.g., spouse, common-law partner) to become a permanent resident. Some women without status will have come to Canada with the promise of sponsorship by their ex-partners. Others will be in the midst of the sponsorship process, only to find that their former partners cancelled the sponsorship before or once the relationships ended.

If a woman without status has no sponsorship or if the former intimate partner cancelled the sponsorship at the beginning or middle of the process, the woman should be referred to a lawyer who can help her determine the options available to her.

If a woman without status finds that the sponsorship was cancelled during the process, CIC may convert the application to an application for permanent residence based on humanitarian and compassionate grounds. If they do not allow the application to be converted, the woman then can make a new application either for permanent resident status on humanitarian and compassionate grounds or, in some cases, for refugee status.

When women are speaking with their immigration lawyers they will have confidentiality and be provided with their legal options.

2. Applying for permanent residence: Humanitarian and compassionate grounds

If a woman without status finds herself without sponsorship, or with her sponsorship cancelled, she may apply for permanent residence status on humanitarian and compassionate grounds. The application can be made based on the strong connections the woman has made in Canada, the impact that leaving Canada would have on her children and the hardship she would face if forced to live in her home country.

Applying for permanent residence based on humanitarian and compassionate grounds can be a long process. Filing the application costs \$550. There are currently no loans available to cover this application fee; an application filed without the fee will not be processed. Unless a woman already has a work permit, she will not be able to work legally in Canada during this process until she is "approved in principle". Once she is approved in principle, she can apply for a work permit to be able to work while waiting to officially be granted permanent resident status.

The basic steps for applying for permanent residence on humanitarian and compassionate grounds are as follows and are provided so that as a worker you can guide her through what to expect next; this is not a comprehensive guide:

- Fill out the Application for Permanent Residence from Within Canada - Humanitarian and Compassionate Considerations (IMM 5001) and the Supplementary Information - Humanitarian and Compassionate Considerations form (IMM 5283). This application will include evidence - see below.
- 2. Pay the processing fee: 550^2 for the woman and 150^2 for each child.
- 2 All fees are accurate as of December 15, 2009. Please check the CIC website to ensure amounts are still correct.

3. Wait for a decision, which can take up to a year. If there are any significant changes in an applicant's life, updates should be provided. If an approval in principle is granted, follow the instructions provided and pay the additional associated fees (see discussion below).

For more information on the Humanitarian & Compassionate Grounds application please see: http://multilingolegal.ca/documents/A_Guide_to_ Humanitarian_and_Compassionate_Applications.pdf

As a service provider, there are many things you can do to help a woman without status through this application process. First, you can help her prepare for her lawyer's appointment by filling out draft versions of the forms and gathering all the required information and evidence, which includes the following:

- A written explanation of why obtaining permanent resident status in Canada would be in the best interests of her children; details about family and other relationships in Canada that support her request for humanitarian and compassionate considerations; whether/how the woman has established herself in Canada; how she supports herself financially in Canada; and why it would be a hardship for her to return to her home country (e.g., racial discrimination for having bi-racial children).
- Two recent passport-size photos of herself and any children included in the application
- Documents proving her identity
- Documents proving her relationship to every person included in the application

Second, you can write a letter of support for her and/ or help her to make a list of other people who could write letters of support for her application, such as friends, co-workers, teachers and representatives from places where she has volunteered. Volunteer work and letters of support from volunteer supervisors can be useful in showing that she will contribute to Canadian society. (If the woman has not done any volunteer work but she is interested in doing so, you could help her find a placement within walking distance of her home. Some volunteer placements also give honorariums which will help her financially.)

Third, you can help the woman find ways to pay the processing fees, which may be a barrier to her. Help her make a list of religious and cultural organizations that may be willing to assist, or of other people she knows who may be willing to contribute. You may want to inform the woman of the fees early in the process so that she can try to save for them.

Fourth, you can support the woman emotionally as she waits to hear the results of her application. The long wait can be difficult for a woman who is struggling with little money and who is worried about the outcome. It is not useful for friends, family and service providers to barrage her immigration lawyer with calls asking for updates; this will not speed up the process. Instead, you can help her check her status and processing time online at the CIC website, as long as she knows her client ID number.

If the application is approved in principle, the woman will receive instructions on what to do next and what further fees she must pay. She cannot proceed on these items until after she has been told to do so by CIC; the results will not be considered:

- Medical examination: The woman must have a medical examination done by an approved medical examiner (a list will be supplied). The medical exam cannot be performed by anyone else, such as a doctor at a free clinic. The cost of this examination is \$280 or more³ and there are no programs to assist with this cost. Women who live in rural areas where the nearest approved medical examiner is outside of a 242-kilometre radius can call CIC to discuss other options.
- Police certificate: The woman will be asked to supply a police certificate from any country in which she has resided for a period of six months or longer to ensure she does not have a criminal record. The fee for this will vary from country to country.
- Work permit: A woman whose permanent resident application has been approved in principle is eligible to apply for a work permit. The application fee for the work permit costs \$150.³

If the woman is finally approved for permanent resident status, she must pay a right of permanent residence fee of \$490.³ There is a loan option to cover the cost of the right of permanent resident fee (but not for the processing fees). To qualify, she must show that the loan is necessary and that she has the ability to repay it. If she has been in Canada for three years or longer, she must also show that she was unable to get a loan from a bank or from another lending institution.

³ All fees are accurate as of December 15, 2009. Please check the CIC website to ensure amounts are still correct.

3. Applying for refugee status

Refugee status may be granted to persons in or outside of Canada who are seeking protection from harm in their own country. Usually they are seeking protection due to fear of persecution in their country of origin due to race, religion, nationality, membership in a particular group (which can include women), or because of their political beliefs. Sometimes their removal from Canada would mean risk of torture, risk to their life, or the possibility of cruel and unusual punishment.

If you believe a woman without status may be eligible for refugee status, you can help her to write a list of the reasons why she believes she is at risk in her home country. She can use this list when she talks with a lawyer.

More information on refugee applications and processes is available at: http://www.lss.bc.ca/ publications/pub.aspx?p_id=286 and http://www.lss. bc.ca/publications/pub.aspx?p_id=288

It is possible to apply for both refugee status and for permanent residence through a humanitarian and compassionate grounds application at the same time.

Dealing with Canada Border Services Agency

The Canada Border Services Agency (CBSA) is the federal agency that is responsible for all border enforcement and customs services. Women without status are at risk of being reported to Canada Border Services Agency (CBSA) if they are in the country illegally. This applies to women who don't have any sort of temporary visa or permit.

Some women are reported by their ex-partners, others have been reported by service agencies while trying to access services (e.g., hospitals) where official documents are required, and yet others have been reported when caught for minor infractions, such as failing to pay transit fees or not wearing seatbelts.

As a service provider, you can help a woman without any status by advising her to take these commonsense steps:

- Do not discuss her lack of status with anyone who does not need to know.
- Stay on the right side of all laws, even minor ones.
- If she has to go to the hospital, ask you, her advocate, to go with her and to explain her situation to hospital staff if they ask questions about her status. If she is already in the process of applying to stay in the country on humanitarian and compassionate grounds, emphasize this fact.

If your organization is providing housing to a woman without status, be sure you discuss the possibility of CBSA calling your organization to try to find her, or even showing up in person. Inform her of your organization's policies on disclosing her whereabouts to them.

If your client does get reported to CBSA, advise her to see a lawyer immediately so she can make an informed choice about responding. Failure to meet with the CBSA when asked can lead to a warrant being issued, arrest and possible detention. If a woman without status responds to a call from CBSA, she will be given an appointment which she must attend in person. She can bring someone to interpret for her or request that an interpreter be provided for the meeting.

A woman who is presented with a removal order may be offered a pre-removal risk assessment (PRRA), which is a written application intended to protect those who face the risk of torture, death, or other forms of persecution if they are removed from Canada. In most cases, prior to removal from Canada, a person must be offered a PRRA.

The woman should have the assistance of a lawyer to complete the PRRA form and to send it in. If she does not have a lawyer, Legal Aid may provide coverage for the PRRA application. If she is already in the process of applying for permanent resident status on humanitarian and compassionate grounds, both that and the PRRA may be considered at the same time.

If she has submitted the PRRA, she can apply for a work permit in Canada while the PRRA is being considered. CBSA will call the woman to set up a meeting when they have the results of the PRRA. She will need to attend in person, and she can take a lawyer and/or an advocate with her. Advise her of the importance of remaining calm and accepting of the results even if she is to be deported; failure to do so could result in her being taken into custody.

A woman may be able to review a negative PRRA decision at Federal Court. She should see a lawyer immediately after she has received the decision if she wants to pursue this option. Legal Aid may fund this type of application.

If a mother without status has been issued a removal order she may also request a deferral of removal by preparing reasons why she needs to defer the removal, such as current court proceedings, or needing to wait until the end of the school year to minimize the impact on the children.

SECTION II: HELPING WOMEN MEET THEIR BASIC NEEDS

This section applies specifically to women who are only applying for permanent resident status on humanitarian and compassionate grounds, as they currently have significantly fewer entitlements than refugee claimants. If you are working with a woman who is applying for refugee status, you may find it helpful to refer to the cleoNET website (www.cleonet.ca), which has information on various aspects of the process for advocates and support workers.

As a service provider, you will find the following information useful as you help your client meet her basic needs while she waits for a decision on her permanent resident status.

Access to Money

Although some mothers without status have no income at all, others may be accessing, or able to access, one or more of the following sources of income:

- Legal employment
- Child support
- Spousal support
- Family assets
- Income assistance
- Money from family or friends
- Canada Child Tax Benefit and Universal Child Care Benefit.
- Income from illegal employment and/or "survival sex"

Wherever income or other money comes from, women without status will also need help dealing with the banking system.

1. Legal employment

A woman who holds a temporary work permit or a working holiday permit can legally work in Canada. Otherwise, a mother without status will have to wait until she receives approval in principle for permanent resident status, at which time she can apply for a work permit. The exception to this is for women who have applied for PRRA (see the section on Canada Border Services above), who are also generally eligible to apply for work permits in Canada.

2. Child support

A mother without status has the same entitlement to child support as permanent residents and citizens of Canada. If the children reside mainly with the mother, she can apply for child support even if custody has not yet been determined. Once a custody order is in place, she can also register with the Family Maintenance Enforcement Program to ensure child support is paid.

As a service provider, it is important to respect a woman's choice about seeking child support. Women who have experienced abuse from their ex-partners may have safety concerns about seeking child support and choose not to do so. Some women may also choose not to ask for child support as their ex-partners will retaliate by seeking custody of the children.

3. Spousal support

A mother without status has the same entitlement to spousal support as permanent residents and citizens of Canada. Typically, an unmarried woman must file a motion in court asking for spousal support within one year of leaving her partner; spousal support determinations can be made anytime up until the divorce. In order to qualify for spousal support, she must have lived with her partner for two years if she was in a common-law relationship.

There are four factors a court will consider when deciding on spousal support:

- Length of marriage/cohabitation
- Difference in incomes
- Economic disadvantage created by the marriage or child care responsibilities
- Earning capacity based on family obligations

It is important to respect a woman's choice about seeking spousal support. Women who have experienced abuse from their ex-partners may have safety concerns about seeking spousal support and choose not to do so.

4. Family assets

A mother without status is entitled to the same division of family property as permanent residents and citizens of Canada. As a service provider, you can explain that it may take a long time for the assets to be divided in court, and it will be difficult to find a lawyer to assist in the process if she has no money to pay the legal costs.

Foreign assets may not be divided by BC courts as they fall outside of the jurisdiction; however, they may be factored in for settlement purposes.

5. Income assistance

Women who have applied to stay in Canada on humanitarian and compassionate grounds may also apply for income assistance benefits, but they are often denied.

Before applying for income assistance, a woman without status should consult with an immigration lawyer because her humanitarian and compassionate application can be denied if she is receiving any form of income assistance from Canada. A lawyer can help weigh the risks in a particular situation.

6. Money from family members or friends

Family members, friends, religious organizations and cultural groups may be willing and able to provide support and help to a woman without status. You can offer to help your client write a letter to her potential supporters, explaining why she needs assistance. Alternatively, you could ask the woman if she will give you permission to talk directly to potential supporters on her behalf.

7. Canada Child Tax Benefit and Universal Child Care Benefit

A woman who has some form of legal status in Canada, such as a work permit, is legally entitled to receive the Canada Child Tax Benefit and the Universal Child Care Benefit if she has resided in Canada continuously for 18 months. In this case the benefits will begin from the 19th month and continue from that time. However, her right to these benefits changes if she no longer has status.

A mother without any status at all, or who has not had status for 18 months continuously, might have been receiving the Canada Child Tax Benefit and the Universal Child Care Benefit while she was with her partner if he was a permanent resident or Canadian citizen and if he filed an income tax return for the previous year. In this case, even if the woman had no status in Canada, if she was listed on the tax return, the Canada Child Tax Benefit and the Universal Child Care Benefit would normally be issued in her name. When the relationship ended, the Canada Child Tax Benefit and the Universal Child Care Benefit would continue to be issued to the mother without status until parents contacted the Canada Revenue Agency (CRA) to inform them of the change in circumstances or until one or both of them files the next year's taxes and records the changes (in which case the last cheque will usually be received in September).

However, a mother who has absolutely no legal status in Canada or who has not had status for 18 months continuously ceases to be entitled to the Canada Child Tax Benefit and the Universal Child Care Benefit at the end of her relationship with the parent who has legal status in Canada, even if the children are Canadian citizens. If CRA becomes aware that a woman has received benefits after the end of the relationship, she will be asked to pay back the money. Even in cases where the mother without status subsequently gets legal status, and permanent legal entitlement to the Canada Child Tax Benefit and the Universal Child Care Benefit, she will still have to pay back any money that she received before becoming eligible.

8. Income from illegal employment and "survival sex"

In the struggle to meet basic needs, some mothers without status will work illegally and/or depend on "survival sex." Survival sex includes working in the sex trade or dating/living with a new partner who she would not otherwise choose to be with in order to meet her basic needs.

As a service provider, you must be very careful when dealing with this issue. Women need to be informed of the possible consequences of working illegally, including sex-trade work. A woman without status who is caught working illegally could be found to have violated the Immigration and Refugee Protection Act and be issued an exclusion order that requires her to seek the special permission of Canada to return once she has been removed from the country. A woman also needs to know the potential safety risks of survival sex. At the same time, it is important to respect the woman's choices, acknowledging that she is entitled to make her own decisions.

You may want to investigate the possibility of your own organization offering extra support to mothers without status to ease the pressure for them to rely on survival sex or illegal work to get by.

9. Banking

Banking may be challenging for a mother without status due to lack of documentation and potential language barriers. Most banks require two pieces of identification to open a bank account. Usually one of these must be a form of photo identification such as a passport. Women can also use birth certificates, temporary social insurance numbers, or work permits.

A bank is more likely to let a woman without status open an account if she is accompanied by someone that they know (such as a regular customer). You can help your client by encouraging her to find someone she knows who already has an account with a bank to accompany her. If she has no other resource, you could go with her and advocate on her behalf.

Food

If your client needs to go to a food bank or to an organization that serves free meals, she may need to provide proof of residence, income, or identity. You can help your client by writing a letter to the food bank or other agency confirming her lack of status and her income level.

You might also explore whether your own organization can adopt a policy for mothers without status that provides them with extra donations given their lack of access to many of the usual resources.

Housing

1. Shelters

Shelters offer temporary free shelter and food in a communal living setting. Many shelters receive no funding for clients who are not receiving income assistance and, therefore, they impose limits of staying a few days on people without status.

2. First-stage transition houses

First-stage transition houses offer free shelter and food in a communal living setting for a period of up to 30 days. Occasionally, transition houses will give women without status extensions so that they can stay longer.

First-stage transition houses differ from shelters in that they are specifically intended for women fleeing abuse in their intimate relationships and women are not required to be on income assistance. The support workers are often knowledgeable about custody and access issues and can provide other supports to women.

3. Second-stage transition houses

Second-stage transition houses provide long-term housing and support to women who have experienced abuse from their intimate partners. While they typically have a housing charge, some offer partial or complete subsidy to women with low or no income. Typically families live in their own self-contained apartments that are furnished or partially furnished. As most second-stage programs do not provide food, it is useful to assist your client with a plan for securing food and attaching it to her application.

4. BC Housing

BC Housing is a provincial Crown agency that assists those in need with affordable housing options. However, BC Housing currently does not accept applications from mothers without status until their permanent resident status has been approved.

5. Housing co-operatives

Many housing co-operatives do not ask about status on their applications or in their interviews. However, housing co-operatives often have long waitlists, the mother without status will need to have some source of income, and some co-ops do not have subsidies available.

If a mother without status is accepted into a co-op, the BC Co-operative Housing Federation's Opening Doors program can provide an interest-free loan to pay for the required share purchase. (See Section V: Resources.)

Health Care

1. Medical care

A mother without status who has applied for permanent residence on humanitarian and compassionate grounds is not eligible for medical benefits unless she has received a temporary work permit or student visa. If she does not have one of these, she is eligible for basic coverage under the Medical Services Plan (MSP), but not for premium assistance. Premium assistance is not available until one year after she has received her permanent resident status

A child born in Canada or who has Canadian citizenship is eligible for medical benefits. The MSP will set up the account in the child's name, and the bills will come addressed to the child. A child cannot, however, get premium assistance, as this is always assessed on the basis of the income of the parent he or she lives with, and they will not accept applications until the mother has permanent resident status for one year.

A child with no status in Canada is not eligible for medical benefits.

Some medical clinics will provide free care even if the woman has no status or proper ID (e.g., Pine Free Clinic in Vancouver; see Section V: Resources).

2. Dental care

Unless a woman without status is receiving income assistance, no dental care coverage is available for her or her children.

The Healthy Kids Program, which helps middle- and low-income families with the costs of children's basic dental care and prescription eyewear, is available to families who have been approved for MSP premium assistance. However, since women without status become eligible for MSP coverage only after they have permanent resident status for one year, this program is not available to them, even if their children are Canadian citizens.

Some dental clinics in Vancouver offer low-cost options (e.g., Reach Dental Clinic; see Section V: Resources).

Education

1. Education for adults

A mother without legal status is not entitled to access free government-funded education programs in Canada. This includes English-as-a-second-language programs, such as the government-funded ELSA. Furthermore, some work permits specifically prohibit studying in Canada.

Some women may be eligible to apply for student permits from within Canada, but each case is different. It is best to encourage the woman you are helping to consult with her immigration lawyer.

An option for women without status who wish to take English classes are those courses offered for free by some churches. You can help your client by checking out the churches with programs in her neighbourhood.

2. Education for children

Children are eligible to attend school for free if the parent or guardian with whom they principally reside is a resident of British Columbia. Residency in BC is interpreted differently by the various school boards across the province. As a service provider, you can help by accompanying a mother without status to the school and advocate for her to be able to register the children.

Once children are registered in school, the mother can speak to the principal or administrative assistant about waiving costs for outings and to find out if the school offers a hot meal program.

Child Care

Your client may need time without her children to prepare documents, attend immigration or court hearings, meet with her lawyer, work, or just have a break. Encourage your client to connect with other single mothers who may be willing to help with child care. Also, women in Vancouver can contact YWCA Crabtree Corner Early Learning and Care Centre, a drop-in day care, which can provide free or low-cost childcare (see Section V: Resources).

The BC Ministry of Children and Family Development offers a child care subsidy to assist eligible British Columbia families with the cost of child care. However, mothers without status are not eligible for this subsidy.

SECTION III: COMMONLY ASKED QUESTIONS

How long does a woman without status have to wait to get status?

Normally within BC, an application for permanent residence based on humanitarian and compassionate grounds takes between one-and-a-half to two years to process.

If a woman without status has Canadian-born children, will it be easier for her to get status? Will she get approval for status more quickly?

While immigration officers consider the circumstances of each woman without status when determining whether or not to approve an application for permanent residency, including whether she has Canadian-born children, this does not normally influence how quickly a woman's application is accepted or denied.

If a woman is leaving an abusive partner, does she automatically get custody of the children?

No. While a judge must examine the "best interests of a child" in making a custody and access decision, he or she does not have to consider "past conduct" of a father or abusive partner unless that abuse has been perpetrated directly against the children.

Even when abuse has been perpetrated against the children, the woman must be able to provide proof of the abuse. It is not wise to make allegations of abuse that cannot be substantiated, as a mother can be accused of being an "unfriendly parent" or of trying to alienate her children from their father, and this could jeopardize her chances of success in getting custody or primary residence of the children.

If a woman's husband offers to do the sponsorship now - and she doesn't even have to go back to him is that okay?

No, sponsorship is for couples that are together - if she says she's with him and she isn't, she is misrepresenting to CIC. Even if she is successful, and the sponsorship application is approved based on the misrepresentation, she may be at risk later of having her permanent resident status taken away because it was obtained through misrepresenting facts.

If a woman loses custody of her children, how will this affect her immigration status?

It depends on an individual woman's circumstances. Generally, immigration officers must consider the best interests of the children when making decisions about a woman's immigration status.

If the mother has consistent and regular access to her children, then her removal from the country would significantly affect the children, even though they are not in her custody. This situation should be explained to the immigration officer, including a detailed list of access visits, so that he or she can make a decision based on all of the facts.

Can older children decide if they want to leave the country with their mother who does not have status? It depends on the specific circumstances including the ages of the children.

If the children's father is not contesting custody, the children may have the right to leave the country with their mother. As well, if there is absolute proof of abuse of the children by the other parent, a judge may consider the children's request to depart the country.

Judges are more likely to consider the wishes of older children (12 years and older).

Can a woman leave the country if she's pregnant? There is nothing to prevent a woman from leaving the country while she is pregnant.

Once the baby is born, the father of the child may still seek custody. This will have to take place in a court that has jurisdiction over the issue. The courts in British Columbia will not make an order for a child who has never even visited the province.

Can the woman without status move to another province?

Based on her lack of status alone, a woman can move to another province. If she does so, she must inform the CIC and, in some cases, CBSA right away with her new address and contact phone numbers.

However, for mothers without status, the answer to this question also depends on the family law situation. If there is a current custody and access order in place and she violates it by removing the children (e.g., the father cannot have his court ordered weekly access visit), the father can go back to court and get an order for custody of the children. In this case, the mother could potentially be charged with kidnapping the children.

If there is no current custody and access order in place, the mother can move, but the father can later go to court and ask for an order for the children to be returned to BC. She may want to apply to the court to be allowed to move with the children. In this case, it can be useful to help her make a list of reasons why the move is beneficial to the children, such as proximity to support systems.

Can a woman without status return to her country of origin to visit her family and then return to Canada? It is best that a woman does not return to her country of origin when she does not have status, as she may not be able to get back into Canada.

If a woman has applied for permanent residence under humanitarian and compassionate grounds, a return to her country will undermine her application. Usually, a mother without status applying for status on humanitarian and compassionate grounds states that it would be a hardship for her and her children to return to her country of origin. Therefore, if she goes back to her country to visit, immigration officers may not believe it is a hardship for her and her children to live there. Women who have made a refugee claim cannot return to their home countries, without withdrawing their claim for protection. A person can only make one claim for refugee protection in a lifetime. In most cases, once the claim is withdrawn, she will not be able to reapply as a refugee.

If a woman without status commits a crime while in Canada, will she be deported?

CIC's response to a crime will differ depending on the type of crime, the kind of harm inflicted as a result of the crime, and the views of the immigration officer who is informed of the crime. She will need to see a lawyer to discuss the impact of her criminality on her immigration status.

Can a service provider get in trouble for helping someone who is in Canada illegally?

It is illegal to assist someone to illegally enter the country; however, it is not illegal to help a mother without status as long as the service provider follows the law and encourages the woman to do the same. Additionally, there is no duty to report that someone is living here illegally.

SECTION IV: TIPS FOR PROVIDING SERVICE TO MOTHERS WITHOUT STATUS

Mothers without status experience many challenges, which can provoke feelings of anxiety, loss, fear and frustration. The complexity and uncertainty of the family law and immigration issues, the impact of having experienced abuse from their intimate partners, the challenges of language barriers and the struggles to meet daily needs for themselves and for their children can be overwhelming.

As a service provider, you might be a woman's entire support system in Canada. This can present unique challenges and may require that you "go the extra distance" by providing more time and services than usual. You may find that you need to rethink the usual policies and processes of your organization, as they may not be helpful when working with mothers without status. Often, typical referrals are not applicable and there are no obvious solutions to the situation. Here are a few tips for working with mothers without status that will help you in your job:

- Don't guess when asked questions about immigration or family law. Too much damage can be done! Let your client know that you will find the answer and get back to her, or refer her to a lawyer.
- Draw in other front-line workers from the community who can help support your client so that everything doesn't fall on you. Meet together to divide up tasks and to avoid duplicating services.
- Remember the importance of self-care, including debriefing with colleagues when you are feeling overwhelmed.
- Remember that you **are** making a difference. During interviews for the YWCA project, mothers without status consistently identified the importance of the assistance they received from various individuals and agencies.

The YWCA is hopeful that the situation for mothers without status will change on many fronts. Any updates will be posted on the YWCA Vancouver website at ywcavan.org.

SECTION V: RESOURCES

FREE AND LOW-COST LEGAL INFORMATION

Citizenship and Immigration

Canada *www.cic.gc.ca* Provides information on applying for permanent resident status on humanitarian and compassionate grounds, and on refugee claims.

ClickLaw *www.clicklaw.bc.ca* Offers a wide range of information about legal resources and services, including pro bono services.

Foreign Affairs and International Trade Canada

www.voyage.gc.ca/publications/ child-abductions_enlevementsenfants-eng.asp

The online brochure on international child abductions offers information on the Hague Convention.

J.P. Boyd's BC Family Law Resource

www.bcfamilylawresource.com Provides general information on custody and access issues, including a calculator for spousal support and child support.

Legal Services Society (Legal Aid) www.lss.bc.ca

Provides information on Legal Aid, including requirements to qualify, information on duty counsel who can provide up to three hours of family law service, and Legal Aid tariffs, to provide a greater understanding of allotted times for lawyers being paid through Legal Aid.

Vancouver and Lower Mainland Multicultural Family Support Services Society www.vlmfss.ca

Free pro bono family law and immigration law clinics on a monthly basis for internal clients. Appointments needed. Many of the community support workers are very knowledgeable about the issues mothers without status face.

YWCA Vancouver ywcavan.org Has published a brochure Leaving an Abusive Relationship: Information on Custody and Access for Women With Children, which is available in several languages.

FREE AND LOW-COST RESOURCES TO MEET BASIC NEEDS Housing and Food Health Care

Carnegie Centre

www.carnegie.vcn.bc.ca Offers a list of free and low-cost housing, food, clothing, medical/ dental services, mainly in the Downtown Eastside of Vancouver.

Co-operative Housing Federation of BC *www.chf.bc.ca* Provides a list of co-ops in BC.

Greater Vancouver Food Bank Society www.foodbank.bc.ca Provides free food once a week, except on the week that the Ministry of Social Development and Housing issues income assistance cheques. Phone for locations: 604 876 3601.

Greater Vancouver Shelter Strategy www.gvss.ca

Provides a list of Metro Vancouver shelters.

Victoria Cool Aid Society www.coolaid.org

Provides a list of Victoria housing and shelters.

YWCA Vancouver *ywcavan.org* The Stopping the Violence Brochure provides a list of firststage transition houses and other resources for women who have experienced abuse by their intimate partners. Crabtree Corner at 533 East Hastings Street in Vancouver provides low-cost or free child care to mothers without status. Phone for information: 604 216 1650.

Food Banks Canada

http://foodbankscanada.ca This site has a list of food banks across British Columbia.

Pine Free Clinic

1985 W. 4th Ave., Vancouver For people without any medical coverage. Free service, including pre-natal and birthing care. Available to youth 24 years and under anytime during clinic hours. Anyone over the age of 24 may see a doctor for free from 9:00 a.m. to noon, Monday to Friday. 604 736 2391

Reach Dental Clinic

1145 Commercial Drive, Vancouver Provides low cost dental services to residents of Vancouver. 604 254 1331

Victoria Cool Aid Society

www.coolaid.org Provides a list of low-cost health and dental services in Victoria.

Other services

Eastside Family Place

1655 William St., Vancouver Provides low-cost child care in the mornings. 604 251 1018

Single Mothers Support Network

www.singlemothers.ca Offers opportunities for single mothers in Vancouver to attend potlucks with other single mothers and to barter for goods and services. Sometimes offers free tickets to events.

Single Parent Resource Centre of Victoria

www.singleparentvictoria.ca Has a clothing room, bread pantry, and a furniture and household goods exchange.



