

# Immigration, Abuse and Capacity Issues Background Paper

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*British Columbia immigrants: a remarkably heterogeneous group of people.*

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*Former British Columbia Premier Ujjal Dosanjh emigrated from India to England in 1968 at age 17 and then immigrated to Canada four years later.*

*The Right Honourable Adrienne Clarkson the former Governor General of Canada, came as a "refugee" child during the Second World War, grew up in Canada and experienced Canadian society throughout her entire life.*

*Asha and Filomena are "grannies" who immigrated to Canada at the ages of 55 years and 82 years. They came under the family reunification program to reunite with their families.*

Each an immigrant, but very different lives.

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### Executive Summary

Immigrants comprise over one quarter of British Columbia's population, and have added greatly to social fabric of the province for well over a century.

The term "immigrant" refers to people born outside of Canada who have been permitted by Canadian immigration authorities to live in the country permanently. Immigrants are an extremely heterogeneous group. They vary not only in terms of their country of origin, but also in age, gender, education, income, and religion. They may or may not be a member of a visible minority, or an ethnic minority.

Immigrants can be broadly divided into two different classes -- immigrants (Sponsored Family, Economic, Other) and refugees (Assisted, Sponsored, and Asylum). In British Columbia, the largest proportions of sponsored immigrants currently come from Asia and South Asia. Immigration to Canada can be a valuable opportunity for families to reunify.

However, sponsored immigrants (including for example, spouses, parents, dependent children) and refugees face a number of social conditions that leave them vulnerable to abuse, neglect or exploitation.

The lives of sponsored immigrants and refugees are affected by a complex intersection of provincial and federal laws and policies related to immigration, health care, social assistance and housing. Existing settlement services are geared largely to economic immigrants (labour oriented) and refugees. Recent immigrants can experience significant challenges in trying to negotiate their way through complex and sometimes contradictory provincial and federal systems to meet their responsibilities or seek out needed services.

**Basics of sponsorship:** Sponsorship is a legal commitment by one or more Canadian citizens or permanent residents made to the federal government. The sponsor gives an undertaking to be completely financially responsible for the basic needs of the sponsored person for a specified period of time. This includes food, clothing, a place to live, fuel, utilities, household supplies, personal requirements and health care not provided by public health including dental and eye care. The sponsor does not have to provide these directly, only to assure that the need is met if necessary.

The length of sponsorship commitment for spouses and common law partners is three years (reduced from 10 years). It is 10 years where a person sponsors a parent or grandparent. Applicants must meet basic financial eligibility to be sponsors, and sponsored person must meet health and security requirements.

Sponsored immigrants are usually in 'good' or stable health when they arrive in Canada, compared to the general population. However, this status declines over time, reflecting in the social conditions which many immigrants face in Canada, including lack of affordable housing, low income and poverty. At present, the time from

application to entry to Canada may be as long as ten years for many sponsored immigrants. Federal and provincial policies in areas of immigration, social assistance, housing and health care have important implications for the wellbeing of immigrants.

**Sponsorship and abuse:** There is a growing body of research recognizing that the sponsorship model creates significant and long lasting dependency, as well as an environment of vulnerability that increases the risk of harm in the relationship. Sponsorship can lead to a fundamental role reversal within the family, in which older members are not accorded the status they would normally have, and creating a significant power imbalance, a well recognized risk indicator for abuse. The reliance on family for everything, including transportation and interpretation can cause difficulties and increase the social isolation of sponsored immigrant. Neglect can occur in some sponsored immigrant families as a result of lack of personal resources, cultural values and expectations, along with a lack of culturally appropriate long term care options in the community.

Sponsors are often immigrants themselves; and some may experience the financial and other stresses of “racialized poverty”, depending on factors such whether they are a visible minority, their length of time in Canada, age, and education. This can leave their own economic circumstances more precarious over the long run than the general population. Even after the ten year sponsorship has ended, many old sponsored immigrants may continue to be economically vulnerable because he or she will only receive partial old age security benefits.

**Abuse issues among immigrants:** Abuse and neglect is often defined in the context of mainstream ideas and values. Service providers often have stereotypes or misconceptions about family relationships within different cultures, including about abuse and neglect.

The subtleties of abuse or neglect and the types experienced by immigrants who come from many diverse ethnic and cultural backgrounds may not be adequately recognized in existing legal or community organization definitions. Harms may come from the sponsor, extended family, and others within the community, including employers. It may occur in community or long term care settings.

Some of the forms of abuse include verbal abuse, various forms of disrespect by the sponsors or their children, isolation, and social abuse. It also includes economic exploitation (in the family, or by employers) such as expecting sponsored parents to provide unpaid child care, domestic chores or being expected to do farm labour at an advanced age or when in poor health. It may involve conflict over or neglect of important religious and cultural values and beliefs; passive neglect (e.g. family unable to afford the needed care and assistance, or where there are strong social and cultural expectations of providing care at all costs. The sponsor may use the sponsorship status as a lever by threatening to have the sponsored person “sent back home”. Sponsored immigrants face many systemic barriers to accessing help if they are experiencing abuse, neglect or other problems.

It is important for service providers to gain a better understanding of immigrants' cultural values, and how these can be different or similar to their own values. This can be very important for developing useful interventions and assistance efforts in abuse and neglect, to avoid stereotypes or misconceptions, and to avoid re-victimizing the abused person.

For immigrants experiencing abuse or neglect, decision-making may less reflect meeting their personal needs than fulfilling family needs and cultural expectations, including ways of maintaining "face" in the community. Language, communication difficulties, reliance on family or others to interpret and lack of familiarity with Canadian systems will affect the person's decisions in ways that may not be obvious. The service provider's "competence" in understanding the person's culture and values and having effective ways of meeting these issues is crucial.

**Sponsorship breakdown:** Sponsorships may breakdown, for many reasons, including unwillingness to support, abandonment or abuse, It also occurs because of the sponsor's inability to support as a result of loss of employment, disability, or death.

If the sponsored person applies for social assistance following sponsorship breakdown, the sponsor is legally required to repay this amount plus interest to the provincial government. The policy has profound financial and social effects on the family relationships for immigrants. The process by which sponsored immigrants are expected to "prove" abuse before being eligible for social assistance can leave them at risk of further harm.

**Mental capacity issues for immigrants:** The mental capacity and decision-making issues for immigrants are similar to those for other persons in many respects, and reflect everyday but often complex decisions related to personal finances, housing, income/employment, and relationships among others. However decisionmaking may occur in the absence of reliable information and understanding of Canadian systems. This leaves the most naïve vulnerable to harm. Immigrants also often have to deal with alien and more complex systems than most people do.

An immigrant's mental capacity may be affected by injury, stroke, mental health problems or special environmental risks. Longer processing and wait times in recent years have meant that sponsored adults will tend to be much older when they arrive in British Columbia. As a result, the likelihood of developing a serious health disease or a cognitive impairment while still under the sponsorship is higher today than for example, a decade ago.

Depression and acculturation problems for immigrants may be sometimes confused with mental incapacity. Some refugees who are trauma survivors may face impairment or post traumatic stress following their arrival here. For older immigrants, concerns about mental capacity may also arise in the context of suspected abuse or neglect or perceived self neglect.

Various levels and departments of government are likely to have internal disputes about paying for care or services the mentally incapable sponsored adult may need, leading to significant delays in receiving appropriate care.

**Assessing mental capacity for immigrants:** The process of assessing mental capacity is not culturally neutral. A successful assessment of decisionmaking capacity for immigrants is contingent upon the assessor's fluency in the other person's language, and the other person's fluency in English. It depends heavily on the assessor's cultural competence, which includes understanding the other person's values, cultural and religious beliefs. A "good" assessment is often contingent on accuracy of any interpretation services being used, and having a gender appropriate assessor for that culture. It also requires valid and reliable screening tools for that culture and people of that age, social class, and educational attainment (e.g. reliance on the Mini Mental Status Exam may give inaccurate information on mental status).

Terms such as "abuse" often do not have a ready equivalent in other cultures. A valid and reliable assessment requires availability of appropriate vocabulary in the other person's language for concepts discussed during the assessment (e.g. specific physical or mental health conditions, abuse, neglect, and mistreatment). Religious or cultural values, language or communication problems should not be mistaken for mental incompetence.

**Law, policy and practice:** There are a number of key areas in law, policy and practice that profoundly affect the well being of immigrants in British Columbia. There is a need for more and improved legal and social advocacy for immigrants, particularly older sponsored immigrants to help increase awareness of their rights and help them negotiate complex systems. There is a need for better access to affordable and age appropriate English as a second language courses for older immigrants, as well as other resources that can reduce their social isolation. There is a need for appropriate community supports in health, home care and housing for example that can help immigrant families better "maintain family harmony".

There is also a pressing need to address some of the underlying systemic factors for abuse and neglect among immigrants, which may include for example, poverty because of low wages and benefits, lack of affordable housing, the processing time for applicants, the length of sponsorship, and federal and provincial policies that may reinforce poverty (such as the refugee transportation loan, the Old Age Security, and the sponsorship debt).

The lives of immigrants can be significantly improved by providing training at all levels of service delivery to build and strengthen service providers and government staff's cultural competence (e.g. through cross cultural training). Similarly there is a need for federal and provincial court systems that deal with immigrants to develop better awareness and understanding of cultural norms and values when designing legal "remedies". Efforts to help abused or neglected immigrants can benefit from culturally appropriate capacity and other assessments, and the use of protocols that reflect the cultural diversity of the province.

### PART I INTRODUCTION

*This paper is prepared for the Vanguard Collaborative as part of a broader project looking at mental capacity issues affecting vulnerable adults in British Columbia. The paper provides a snapshot of personal, social, cultural and systemic factors that may leave some groups of immigrants vulnerable to abuse or neglect and describes some of the ways in which capacity issues arise.*

#### 1. Starting points

Any attempt at describing the experience and circumstances of immigrants in British Columbia, especially in the context of abuse and capability will be challenging to say the least. This reality reflects many different factors: the wide diversity of immigrants, their families and the often overwhelming complexity of various systems involved in their lives.

*Many people, many lives:* People often combine refugees and immigrants together and ignore the different classes of immigrants.<sup>1</sup> However, each group of immigrants has its own characteristics including vulnerabilities, and its own special circumstances in how and why they come to Canada, and their life experiences here. Discussions about “immigrants” are often actually discussions about people from specific ethnocultural groups, ethnic minorities, and visible minorities.

This paper focuses largely on two groups of immigrants – refugees and older persons who are sponsored under family reunification [Family class]. Two decades ago, family class represented about half of all the immigrants coming to British Columbia, today it represents less than one third.

The paper introduces a few basic concepts in immigration and sponsorship. It identifies some of the circumstances and factors that may leave some immigrants, especially older members in British Columbia vulnerable to abuse or neglect, and identifies some of the circumstances in which mental capacity issues may arise. However, it is not intended to a comprehensive statement on any of these complex issues.

The paper stresses the importance of developing cultural competence among service providers. It also stresses understanding abuse and neglect not only as harms occurring between persons, but also in the context of families, communities and broader social policies that have the potential to reduce or increase harms for immigrants.

Immigration is a joint federal / provincial jurisdiction with its own special system, complete with its own language, structure, nuances, rules and exceptions to the rules.<sup>2</sup> The rules for immigrants in British Columbia (in terms of entitlement or eligibility to a wide range of public services) depend on their status.



### A. Terminology

The term “immigrant” refers to people born outside of Canada who have been permitted by Canadian immigration authorities to live in the country permanently.<sup>3</sup> Immigration policy in Canada and British Columbia is a joint federal provincial responsibility.

Immigrants represent a very heterogeneous group; they vary not only in terms of their country of origin, but also in age, gender, education, income, religion, home country status and whether they are used to an urban/rural life in their country of origin. They may or may not be a member of a visible minority, or an ethnic minority. They may or may not be joining a long established community of fellow countrymen when they come to British Columbia.

The general term “immigrant” can be broadly divided into two different classes -- immigrants (Family, Economic, Other) and refugees (Assisted, Sponsored, Asylum).<sup>4</sup> Economic immigrants fall into six categories: skilled workers, live in caregivers, entrepreneurs, investors, provincial nominees and self employed. They include those who are accepted based on bringing specific skills and/or capital to invest.<sup>5</sup> People under economic classes typically immigrated when they were young adults. They raised their families and aged in Canada. Their situations can be very different than older persons who recently arrived in Canada. Live in caregivers and seasonal agricultural workers are recognized as vulnerable groups in that they have far fewer rights than other economic immigrants.<sup>6</sup>

Under the Family Class, immediate families can sponsor their parents and/or grandparents. Many may come from regions such as Asia and may not speak English or French. The groups of sponsored immigrants are often socially and economically dependent upon their sponsors (many of whom are their children). They may be very isolated. These individuals will be older and have different social and health needs than business immigrants in the economic class.

Below Table 1 shows the changes in numbers and categories of immigrants coming to British Columbia from 1985 to 2006.

Table 1

| Year | Economic Classes |           |                |                |                    |              |          |             | Other Classes | Total  |
|------|------------------|-----------|----------------|----------------|--------------------|--------------|----------|-------------|---------------|--------|
|      | Family *         | Refug' ee | Skilled Worker | Prov'l Nominee | Live in Care-giver | Entre pren'r | Investor | Self Employ |               |        |
| 1985 | 6,443            | 1,872     | 2,031          | --             | --                 | 987          | --       | 251         | 676           | 12,260 |
| 1990 | 10,583           | 2,616     | 8,447          | --             | --                 | 3559         | 2013     | 430         | 1,454         | 29,104 |
| 1995 | 15,308           | 1,875     | 18,437         | --             | 1,176              | 3508         | 3036     | 956         | 278           | 44,574 |
| 2000 | 10,977           | 2,574     | 18,936         | 13             | 1,070              | 1775         | 1387     | 632         | 68            | 37,432 |
| 2005 | 11,723           | 2,156     | 2,1182         | 789            | 1080               | 871          | 5360     | 289         | 689           | 44,772 |
| 2006 | 13,460           | 1,981     | 16,729         | 1,942          | 1528               | 870          | 4,378    | 322         | 996           | 42,208 |

Note: Family includes any sponsored family members, including spouse, partner, children, parents, grandchildren.

Source: BC Stats June 2007, Table 2: Immigrant Landings by Class. <sup>7</sup>

## **B. Immigrants in British Columbia**

Like much of Canada, British Columbia has always had a large population born outside of the country. In 1921, about half the residents in our province emigrated from another country. Since 1961, immigrants have comprised one fifth to one quarter of the province's population. In 2006, the 1,119,215 immigrants represented 27.5% of the overall population of our province.

Over time, people's countries of origin have varied. Over 81% of European immigrants living in British Columbia came to Canada before or in 1991. So there are many European immigrants who have lived in British Columbia for a long time and aged here. By way of comparison, 63.4 per cent of all Asian born immigrants in British Columbia arrived in the country after 1991.<sup>8</sup> In 2006, seventy five percent of new immigrants came to British Columbia from Asia (China, India, Hong Kong and Taiwan).<sup>9</sup>

Looking at the whole immigrant profile, recent immigrants to British Columbia are significantly younger on average than the population of the province.<sup>10</sup> During the last decade, over 50% of female immigrants were aged between 20 and 49 years old at the time of their landing in British Columbia. About 5.2% was aged 55 to 64, and only 1.6 per cent was aged 65 years or older. <sup>11</sup> This reflects the policy shift to accepting more economic immigrants and sponsored spouses, with a decreased emphasis on accepting parents and grandparents under sponsorship.

### C. Two Special Classes of immigrants

- **Refugees**

*Immigrants move to Canada because they want to and refugees move because they have to.*

Each year about 2000 refugees arrive in British Columbia. Refugees are individuals who are accepted because they are considered to require protection under international law.<sup>12</sup> There is more than one type of refugee in Canada. Some obtain refugee status while in another country and others seek it after arriving in Canada.

Convention refugees are people who left their country because of a well-founded fear that they would be persecuted due to their religious beliefs, race, nationality, political opinion or they are members of a persecuted group. Canada also admits asylum seekers and people from designated refugee-producing countries. Asylum seekers are defined as those persons “seriously and personally affected by: civil war, armed conflict, or massive violations of human rights.”<sup>13</sup>

#### **Who are refugees?**

Refugees are not a homogeneous group. The largest group of refugees to Canada was “the Boat People” in 1982 who came from Vietnam. In the 1990s refugees to Canada were often political refugees; many were formally educated, integrated and obtained good jobs within a few years.<sup>14</sup>

In 2002, the Government of Canada implemented a new *Immigration and Refugee Protection Act*,<sup>15</sup> and introduced several changes. Immigration policy shifted to place greater emphasis on refugees’ need for protection and less on their ease in ability to resettle.<sup>16</sup> Canada began accepting more refugees who had lived a long time in refugee camps. They may have more complicated mental and physical health issues, they may have little or no formal education and some may have larger families.

Today, refugees are more likely than other immigrants to face literacy difficulties, trauma from civil war or armed conflict, language challenges, and more face significant and enduring poverty. The refugees are able to contribute to Canadian society, but often struggle with culture shock, a lack of information and support networks, shortage of affordable housing and low incomes, and long Canada Immigration and Citizenship (“CIC”) processing times for work permits and family sponsorship.

- **Sponsored Immigrants: Family Class**

Sponsorship is part of a broader government policy that Canada has had for well over the last half century to re-unify families (parents with their children, spouses together, adult children with their parents). It is considered an important part of family stability, community security and helps to meet Canada's international obligations.

Any Canadian citizen or a permanent resident of Canada who meets the eligibility criteria can sponsor their spouse, common-law partner, conjugal partner, dependent child (including adopted child) or other eligible relative (such as a parent or grandparent) to become a permanent resident.<sup>17</sup> Sponsored persons are not subject to many of the criteria or qualifications that economic immigrants must meet.

There are two different processes for sponsoring family. One is used for sponsoring a spouse, conjugal or common-law partner and/or dependent children. Another process is used to sponsor other eligible relatives. Each has different eligibility criteria.

## **2. The basics of sponsorship**

### **A. What is sponsorship?**

Sponsorship is an unconditional legal commitment by one or more Canadian citizens or permanent residents made to the federal government. It involves two legal documents, (i) a sponsorship undertaking and (ii) a sponsorship agreement. The sponsor pays an application fee, a fee for the person being sponsored plus a fee for any dependant accompanying him or her.

The sponsorship agreement is signed by the sponsor, a cosigner if any, and the person being sponsored.<sup>18</sup> The sponsor commits to provide the basic requirements for daily living the sponsored family member(s) included in the undertaking so that they will not need to apply for 'social assistance'.

The eligible relative who is being sponsored must promise to make every effort to become self-supporting.<sup>19</sup> The sponsored family member(s) agrees to seek help from the sponsor if the sponsored person is unable to provide for his/her own basic requirements at some point.<sup>20</sup> Sponsorship often involves a significant commitment and self-sacrifice on behalf of the persons making this promise.

### **B. Who sponsors?**

Family Class immigrants are sponsored by family members already established in Canada.<sup>21</sup> Many sponsors are immigrants themselves. They may be well established in Canada, or may have lived here for a relatively short time (e.g. just over three years). Some are economic class immigrants; others were sponsored.

### **C. The sponsors' guarantee**

The sponsor gives an undertaking (unconditional guarantee) to be completely financially responsible for the basic needs of the sponsored person for a specified period of time. This responsibility includes food, clothing, a place to live, fuel, utilities, household supplies, personal requirements and any health care that is not provided by public health (including dental and eye care). The sponsor does not have to provide these directly, only to assure that the financial need is met if needed.

People or organizations that sponsor refugees also commit to providing emotional support in the settlement process.<sup>22</sup>

### **D. The length of the commitment**

The length of sponsorship commitment for refugees is usually one year, but can be up to three years. The length of sponsorship commitment for spouses and common law partners is three years.<sup>23</sup>

The length of commitment is 10 years for sponsored parents or grandchildren and certain other eligible relatives. It can be up to 10 years for parents who are sponsoring their dependant children, but can also be as short as three years.

It has been noted that being a sponsor involves an incredible feat of prognostication: very few Canadians would be able to predict and in effect guarantee their own financial status over a period of ten years.<sup>24</sup>

### **E. The financial threshold for sponsoring**

There is no financial threshold if one is sponsoring their spouse or a common law partner with no dependant children.<sup>25</sup>

People applying to be sponsors for parents, grandparents and other eligible adults however must meet basic financial eligibility. This is based on the Low Income Cut Off (LICO), a poverty measure in Canada.

The minimum amount the person must earn is based on the size of the family unit. It includes the sponsor, the spouse, any dependants, and number of persons sponsored. So in 2008, for example, a person with a spouse and one child sponsoring both his parents would need a minimum annual gross income of at least \$44,686.

There are a number of other financial criteria that will leave people ineligible to be sponsors: bankruptcy, being on social assistance (except disability benefits), non payment of alimony, defaulting on a previous sponsorship etc,

See **Table 2.**<sup>26</sup>

**Low Income Cut-off (LICO) Effective Until December 31, 2008**

| <b>Size of Family Unit</b>                            | <b>Minimum necessary income</b> |
|-------------------------------------------------------|---------------------------------|
| 1 person (the sponsor)                                | \$21,202                        |
| 2 persons                                             | \$26,396                        |
| 3 persons                                             | \$32,450                        |
| 4 persons                                             | \$39,399                        |
| 5 persons                                             | \$44,686                        |
| 6 persons                                             | \$50,397                        |
| 7 persons                                             | \$56,110                        |
| More than 7 persons, for each additional person, add: | \$5,713                         |

If sponsors do not have enough income to support the family member(s) they would like to sponsor into Canada, their eligible spouse or common-law partner can help by co-signing the Sponsorship Agreement and Undertaking.<sup>27</sup> The co-signer has the same responsibilities as the sponsor.<sup>28</sup>

Sponsorship is often a long, involved and costly process. At present, the time from application to entry to Canada may be as long as ten years for many sponsored immigrants. The average application time has significantly increased in the past five years for sponsored parents and grandparents.

**F. Who can come to Canada?**

Any sponsored person must meet certain health and security requirements.

*Health:* The person being sponsored must meet health and security requirements. Sponsored immigrants are usually in 'good' or stable health when they arrive in Canada, compared to the general population.<sup>29</sup> This is often called the "healthy immigrant effect". A prospective sponsored person will be denied if their health at the time of application might be considered as bringing "excessive demands" on Canada's health care system.<sup>30</sup>

However, this positive health status among immigrants declines over time. For example, among older persons this may partly reflect aging, but also many of the social

determinants of health (for example adequate housing, adequate income, work environment, social supports).

### **G. Special notes on sponsored refugees**

Refugees may be sponsored by the federal government, be privately sponsored or self sponsored.<sup>31</sup> Federal government pays the living costs of refugees that it sponsors *for one year*. If in need after that point, refugees may receive assistance from the provincial or municipal government.

Groups and individuals can sponsor refugees from abroad who qualify to come to Canada.<sup>32</sup> They are responsible for the financial and emotional support of the person in the resettlement process from one to three years.

Refugees who are sponsored by the government<sup>33</sup> or by private sponsors (e.g. church groups) are required to repay the costs of their travel to come Canada within 6 years, *with interest* (this is referred to as a "refugee transportation loan"). They also pay a fee of \$550 per person for processing their immigration.

The average transportation loan debt charged to refugees is between \$3,000 to \$5,000 per person. The Canadian Council on Refugees notes that maximum amount for a loan is \$10,000. However, a family may have to repay more than \$10,000 since a separate loan can be issued to any children over 18 years in a family.<sup>34</sup> The loans add significant burdens to refugees struggling with poverty.<sup>35</sup> If a payment is missed, it is deducted from child tax credit or tax refund.

## **3. Sponsorship breakdown**

### **A. What is sponsorship breakdown?**

This refers to the broad set of circumstances in which the relationship between the sponsor and the sponsored person becomes unraveled.

Sponsors remain obligated to provide basic requirements for sponsored person or persons for the period of the undertaking. The federal government notes that changes in circumstances (e.g., marital breakdown, separation, divorce, what the federal government refers to as "family rifts", unemployment, or change in financial circumstances) do not nullify this undertaking.<sup>36</sup> Nor does the death of the principal sponsored person (in cases in which that person has family members accompanying them).<sup>37</sup>

Sponsorship breakdown may occur when the sponsor cannot or will not provide for the person's needs.

### **B. Types of breakdown**

It may involve situations where the sponsor becomes unable to provide for some or all of the sponsored person(s)' basic needs, such as food, housing, clothing, or medical care, and the sponsored person is unable to support herself, himself and/or their dependants. It also involves situations where the sponsor is able, but refuses to carry out the responsibilities of sponsorship.

Sponsorship may breakdown because of economic reasons, health reasons, or where there is family conflict or violence. However there are also circumstances in which the sponsored person (spouse or dependant child) simply leaves.

Sponsorship is assumed to have broken down when the sponsored person applies for and receives social assistance benefits.

### **C. How common is it?**

There is a perception by the public that the social assistance system is misused by certain individuals or groups of immigrants. This is a mischaracterization of the situation. Research indicates that applications for social assistance do increase for immigrants during economic downturns.<sup>38</sup>

In 2001, 3% of family class immigrants (which includes sponsored grandparents, spouses, and children) in Canada received some social assistance at some point that year, as did 9% of skilled worker immigrants.<sup>39</sup> In Ontario in 2007, 1% of all social assistance recipients were sponsored immigrants. British Columbia government notes

“The majority of sponsors in B.C. fulfill their sponsorship responsibilities and obligations. It is estimated fewer than 12 per cent of immigrants who have come to British Columbia under family class sponsorships over the past five years have received income assistance while a sponsorship agreement was in effect.”<sup>40</sup>

That figure includes all family class sponsored immigrants (spouses, children). Poverty is more common among recent immigrants than other groups of immigrants. However, recent analysis shows that immigrants continue to face employment challenges. Even after 15 years in Canada, immigrants with a university degree are still more likely than the native-born to be in low-skilled jobs, even during economically buoyant periods.<sup>41</sup>



### **D. What are the consequences of sponsorship breakdown for the sponsored person?**

If the sponsorship breaks down, or the sponsor defaults, the sponsored person's legal status does not change. However, the person or the couple may need to seek financial help, including applying for social assistance.

*Working through systems:* There are a myriad of complex rules for social assistance or other services that the sponsored person must try to negotiate his or her way through when sponsorship breaks down. There are requirements for who they must inform, what is required as proof of breakdown, etc. The sponsored person is required to inform their Citizenship and Immigration Canada settlement worker that the sponsorship has broken down.

Sponsored immigrants are often unaware of their rights in Canada. In addition, some may have a strong distrust of authorities, based on experiences with authorities in their country of origin.

*Access to information:* Immigrants' access to information is also affected by the fact that information on key matters such as sponsorship breakdown or abuse information resources is typically available only in written form. This disadvantages people who have little or no literacy skills, and it ignores other culturally appropriate public education mechanisms such as community leaders, advocates and social theatre.

### **E. What are the consequences of sponsorship breakdown for the sponsor?**

The sponsor (and co-signers) is considered in default of the sponsorship. If social assistance is provided to a sponsored immigrant, the sponsor is required to repay the "debt" to the federal government.

A federal-provincial agreement allows the B.C. government to recover income assistance payments from sponsors who have defaulted on sponsorship agreements they signed in support of their immigrant family members.<sup>42</sup> This debt plus interest is assigned to the provincial government. As part of enforcing the debt repayment, the provincial government can seize the sponsor's or co-signer's tax returns, garnishee wages and put a lien on the sponsor or cosigner's home. This can cause significant strain on the sponsoring family, and can reinforce victimization of the sponsored person. In Ontario, the debt has been treated as having parity with child support obligations.<sup>43</sup>

The debt also survives the death of the sponsor in British Columbia, so it will come out of the sponsor's estate. In some instances, the sponsor may be required to pay for social assistance plus interest that was given over a decade ago. Until that debt is repaid, the person cannot sponsor any other person, including others who might have a more supportive relationship with the original sponsored relative.

The sponsor cannot sponsor anyone else until the debt is repaid.

### PART II IMMIGRATION AND ABUSE

#### 4. The basics

##### A. Defining abuse and neglect

It is important to avoid making broad sweeping generalizations about abuse and neglect in the context of immigrant and refugee groups. The ways that abuse and neglect can be manifested varies considerably from culture to culture, and within ethnic groups. There is growing evidence from research on various ethnic groups, that abuse and neglect will be defined somewhat differently compared to mainstream ideas and values.

To date, most of the ways that family violence and other harms are identified and classified have been based solely on the views of professionals and academics.<sup>44</sup> They generally “reflect a white middle-class professional perspective” rather than being based on the experiences of a wide range of people, including members of marginalized groups.<sup>45</sup> In some instances, practitioners may have an over idealized view of ethnic sub-cultures places too much emphasis on the ethnic family and informal supports (“of course, the Chinese respect their elders”), the style of family decision making and care-giving.<sup>46</sup>

Often older and younger immigrants will characterize mistreatment *more expansively*, and in a way that situates it within the systemic nature of the abuse. The subtleties of abuse or neglect and the types experienced by immigrants or within ethno-cultural groups may not be adequately recognized in existing legal or community organization definitions or protocols.<sup>47</sup>

In other instances, older and younger immigrants may characterize mistreatment more narrowly than others in Canada might. They may feel unhappiness and distress over the way they are treated, but they not call it abuse. They may not even have a word in their culture for mistreatment. Still others may view the situation as normal, justifiable family tensions, or in the context of traditional values and social roles. It is recognized that mistreatment in various cultural groups (irrespective of whether they are “immigrants”) may be undetected and underreported due to subtleties and cultural norms.<sup>48</sup>

##### B. Types of abuse and neglect

Immigrants and refugees can be affected by many of the types of abuse or neglect that practitioners may be familiar with, or easily come to mind in the context of family violence. However, some forms of harm may be manifested in different ways among immigrants and refugees. These include:

- emotional abuse – such as various forms of disrespect by the sponsors or their children, as well as isolation, and social abuse
- financial/ economic exploitation (within the family, or by employers<sup>49</sup>)

- surrogate abuse- destruction of personal religious shrines in the home, abuse of pets
- silence and avoidance, behaviours which in some cultures are seen as an extreme form of punishment<sup>50</sup>
- expecting sponsored parents to provide unpaid child care, domestic chores or paid labour (farm labour) at an advanced age or when in poor health (physical abuse)
- applying for and keeping the older person's old age benefits, without their knowledge (financial abuse)
- conflict over or neglect of important religious and cultural values and beliefs
- passive neglect (e.g. family unable to afford the needed care and assistance, or where there are strong social and cultural expectations of providing care at all costs);
- isolating the older person
- taking care of the person's physical needs, but ignoring them otherwise, emotionally distant (emotional or psychological neglect) (sometimes referred to as a "Golden Palace syndrome").

Although in research with immigrants and ethnic groups, people consistently identified psychological abuse and psychological neglect as the worst kind of mistreatment in their culture. However harms such as being isolated, unloved, and emotionally neglected, are not currently being identified by many maltreatment protocols.<sup>51</sup>

Research in other Canadian jurisdictions suggest that immigrants may experience exploitation or gouging from housing providers, particularly if there is a lack of affordable housing available.<sup>52</sup> The general lack of affordable housing leaves many immigrants feeling very insecure about their housing.<sup>53</sup>

### **C. Neglect: the community and institutional connection**

Some older immigrants may experience passive neglect at home because of cultural norms or mainstream expectations that "of course" family will give care, even if the older person's needs far exceed the family's capabilities. There may be cultural gender taboos concerning body touching/viewing by family.

Family may also be reluctant to have an older person move into a long term care facility, because of cost, cultural expectations, and suitability of the existing resources.<sup>54</sup> The potential for family neglect often comes up in the context of dementia and caregiving.<sup>55</sup> There may be cultural "normalizing" of dementia behaviors. There is a need for culturally sensitive cognitive testing.

Older immigrants may be at risk of experiencing neglect in care settings because there are few culturally appropriate long term care facilities. Staff members are likely to be culturally different from the resident. The existing long term care resources may lack culturally appropriate foods and activities, religious rites, and building style (architecture). Minority population residents are very likely to be isolated unless the staff

in the facility can communicate with the residents in their own language; provide culturally appropriate foods and activities, celebrations, and holidays. There may be culturally determined behaviors of bathing, eating, and toileting. Cultural (gender) taboos also need to be respected in providing care.<sup>56</sup>

### **D. Persons who cause the abuse**

Harms may come from the immigrant or refugee's sponsor, their spouse or members of the immediate or extended family, including grandchildren. In some cases, a sponsor is being abused by their spouse, which has a domino effect on the lives of the persons they have sponsored who may be living in the same household. Community service providers note that where there is an extended family, there can be multiple persons causing or involved in the abuse or neglect.

Some immigrants have experienced spousal violence in their country of origin which then continues when they come to Canada, or spousal violence that begins here.

Harms may also come from others within the community, including employers and housing providers.

### **E. Extent of the problem**

There is small but growing body of research available on abuse and neglect of older immigrants or within cultural groups. Some suggest that multiple risk factors work together in ethnic groups; they will experience multiple jeopardy for abuse and neglect within the family or in other relationships. As a result, abuse or neglect may be more common within certain cultural groups. In "elder abuse" reports to adult protective services in the United States, two thirds of the reports involved white seniors, and the remainder was black, Hispanic or other seniors.<sup>57</sup>

### **F. Risk factors**

There are a number of overlapping and interacting factors that appear to be associated with abuse and neglect among immigrants, in general, and among sponsored older members in particular. Intergenerational relationships are key to the success of the sponsorship. However factors such as pre-existing relationships between the sponsors and sponsored seniors, family structure, the seniors' resources (economic, language, etc.), the gender of the senior, motivations for sponsorship, the immigration experience (degrees of voluntariness and familiarity, etc.) and sponsorship regulations all contribute to familial harmony or discord.<sup>58</sup>

- **Dependency and power imbalance**

Sponsored immigrants have often given up all or most of their resources to come to Canada. There is a growing body of research recognizing that the sponsorship creates dependency and an environment of vulnerability that increases the risk of harm in the relationship.<sup>59</sup> Specifically, it has been found that sponsorship exacerbates inequalities

within the family, diminishes the sponsored person's dignity and their degree of independence, aggravates existing socio-economic disadvantages and therefore violates their fundamental rights.

In 2002, length sponsorship for spouses was reduced from 10 years to three years in response to the recognized imposed dependency and resulting heightened vulnerability.<sup>60</sup> Today, people sponsoring parents/grandparents are financially responsible to support them for 10 years. This length of time is much longer than for other sponsored persons.

The sponsor may use the sponsorship status as a lever by threatening to have the sponsored person "sent back home". In reality, there are very limited circumstances in which a sponsored person can be forced to leave the country. However, the sponsored persons are often unaware of their rights and the threat remains.

During the sponsorship period, seniors may not be eligible for public pensions (such as the Allowance, Old Age Security or the Guaranteed Income Supplement), social services, subsidized housing or housing subsidies or other local benefits, including language courses that might facilitate integration and reduce their isolation. In addition many older immigrants remain economically disadvantaged even after sponsorship ends, as they will only be eligible for partial benefits (usually one quarter of the regular amount) under Old Age Security, no matter how long they live in the country, whether they remain permanent residents or become Canadian citizens.

Sponsorship and economic dependency can lead to a fundamental role reversal within the family, in which older members are not accorded the status they would normally have in country of origin. This creates a significant power imbalance. Internalized and externalized racism and ageism can lead to older immigrants being treated as burdens within families. Some older immigrants have noted that society ignores or downplays their contributions to Canadian society, first the fact they raised and educated the children who are now contributing to Canada, and second their ongoing formal and informal contributions to families and community wellbeing in Canada.

- **Sponsor's dependency, financial and housing vulnerability**

As previously noted people sponsoring parents/grandparents are financially responsible to support them for 10 years. This length of time is much longer than for other sponsored persons. In this regard, the federal immigration policy requires a significant feat of prognostication for sponsors: they must consider their position at the time of application plus project their financial ability for ten years from the point the sponsored immigrant lands in Canada. The job security and financial stability of many Canadians is often unpredictable for any period, let alone a decade, due to numerous factors beyond their control.

While some sponsors are well established and economically stable, the situations for others may be more precarious. Some may experience the financial and other stresses

of “racialized poverty”, depending on factors such whether they are a visible minority, their length of time in Canada, age, and education.

An immigrant family may need to hold three or four jobs in order to survive. Staff working with new immigrants in British Columbia note that the pressure on others in the family is pressure that the sponsored person internalizes and feels on herself or himself.

- **Core values**

Culturally specific factors (such as core values) may contribute to abuse. These can also impede the victim's ability or desire to report or to seek help. They also help to maintain the invisibility of mistreatment within minority populations.

For example "La Familia" and "Verguenza" are two of many cultural core values within the Latino traditions. "La Familia" underscores the importance of protecting the family and family name. This may limit the older person in admitting to being victimized, and in accepting help, and may contribute to the tolerance of financial exploitation.<sup>61</sup> "Verguenza," (the concept of shame), is also a powerful concept within the traditional Latino culture, and affects how the person internally attributes the abuse, "I caused it ... I brought on his violence".<sup>62</sup>

- **Cultural change**

One of the well recognized factors for abuse in immigrant families is that the disintegration of the traditional family structures, in which older members are more likely to have a dominant position. Weakening of that status can leave older immigrants vulnerable to abuse or neglect.<sup>63</sup>

- **Gender**

Gender often influences the roles that the older immigrant has within the family. For example, women are often expected to be care providers for children, and older women are often given that responsibility so that immigrant daughters and daughters in law may work. It has been suggested that sponsored fathers or grandfathers may be less vulnerable to isolation than sponsored older women because of social norms. For example, the men are able get out of the house and use bicycle transportation.

- **Isolation**

Many recent immigrants are isolated by language, low income, culture and lack of transportation. Often sponsored immigrants cannot meet people, in part because they do not speak the local language, or they may be afraid to go into community. There is often a significant lack of community resources for ethno- cultural groups, further reinforcing, isolating and undermining opportunities to become part of the community. The sponsored older person's ongoing reliance on family for transportation and for

interpretation for almost every aspect of life in particular can leave them very isolated and can cause difficulties.

This isolation can be further perpetuated by the lack of access to language classes. While language courses such as English Language Services for Adults (ELSA) may be offered by settlement agencies, the courses are geared to economic immigrants and towards employment.<sup>64</sup> There are other economic and practical barriers. For example, not all courses are free; the sponsor must register the sponsored person and pay for them. In addition ELSA classes are not set up for older adults' different learning styles and could be set up to better accommodate needs of seniors.

- **Living arrangements**

Living arrangements are well recognized as one of the dominant risk factors for physical and psychological abuse at all ages, including seniors.<sup>65</sup> These forms are much more common among people who share the same household. Because many immigrant families live together in extended family arrangements, it is often believed that they necessarily want to live together. The reality is more complex. Living together can bring comfort and familiarity or it can heighten tension. The preference may be living close but not necessarily "with" one's adult children. The lack of affordable housing and housing discrimination especially for newer and "racialized" immigrants often means living wherever they can and having no choice but to live together as a large group.

- **Alcohol and substance use**

The role of alcohol and substance use is well recognized in family violence. It may also apply to some abuse situations among immigrants. The risk of substance use problems among immigrants is highly influenced by use of alcohol or drugs in the country of origin, gender (more common among men), length of residency in Canada, level of acculturation and degree of acculturative stress.<sup>66</sup> Adult children or the grandchildren's substance use are important considerations in abuse and neglect in immigrant families.

### **G. Barriers and responses**

A sponsored person experiencing abuse or neglect is faced with three scenarios. The person may be resigned, accepting abuse or neglect as simply "the ways things are" or all the person can expect. The person may try to leave, or the person may hope for change and try to work on family relationships.

**Deciding to stay:** The remedies currently offered to vulnerable sponsored immigrant adults who are experiencing or at risk of abuse or neglect often fail to recognize important cultural norms which may sometimes result in the person "deciding to stay" in the abusive relationship.

**Trying to leave:** There are many barriers for immigrants trying to access services, in general and when it comes to abuse or neglect. In many cases even when there are suspicions that abuse or neglect is occurring and people may be offering help, the immigrant may not disclose the situation. There is a strong fear of the unknown for many immigrants. In some cases, there may be no service of this kind in the home country, so the abused or neglected immigrant has no reason to expect it here. There is also concern about bringing shame on the family. The social stigma is often very strong.

There are many other systemic issues that leave the immigrants at risk of abuse or reinforce abuse or other harms that are occurring, For example when a sponsored immigrant applies for social assistance following sponsorship breakdown certain types of third party proof are needed to “verify” abuse. The focus is largely on physical abuse, ignoring the common forms of harm that may be more common for abused or neglected immigrants.

Immigrant’s women experiencing abuse have pointed out that the consequences of dialing “911” and involving the police may actually leave them at greater harm, particularly given their socio-economic vulnerability.<sup>67</sup>

**Within the legal system:** Lawyers who have experience with battered immigrants have noted that working with an interpreter significantly and negatively affects the process. Lawyers note it is much harder to get a “feel “for the client, capturing emotions and hesitations. It also makes it harder to grasp the person's needs. The language obstacle is also accentuated by the interpreters' translation, which is often unable to convey all the connotations that the words would carry in the country of origin (for example, expressions that can be very serious to them and which, when translate, become banal). There is the risk of totally missing the seriousness of the case.<sup>68</sup>



### **Social assistance & “proving” abuse**

If sponsorship breaks down, a sponsored immigrant can only receive social assistance after the sponsor confirms whether he or she is unable or unwilling to provide for the essential needs (including food, lodging, and clothing). The sponsor is to be informed about the social assistance application.

An exception is made in cases where there is documented abuse between the parties involved. The sponsor will not be contacted if there is a *verified* health and/or safety threat.<sup>69</sup>

Applicants who fear for their safety are required to provide substantiating verifiable third-party evidence that there is a potential risk to their health and/or safety.<sup>70</sup> Examples of documentation include:

- Police incident report of event;
- Court orders (such as a current restraining order);
- Hospital records indicating physical injuries as result of assault;
- Verification in writing from a transition house and/or support worker from an agency; and/or
- A doctor's report describing the current and ongoing treatment of the physical/mental effect of assault/abuse.

Abused sponsored immigrants are left in a difficult position: they may not know the services and they may not trust the police. More importantly this policy focuses on physical harms. The types of abuse experienced by sponsored immigrants may or may not include physical abuse. Indeed research on abused immigrants identifies that psychological abuse and neglect are the most common forms.<sup>71</sup>

### PART III Cultural Competence

Cultural competence refers to an ability to interact effectively with people of different cultures. Cultural competence has four components: (a) awareness of one's own cultural worldview, (b) attitude towards cultural differences, (c) knowledge of different cultural practices and worldviews, and (d) cross-cultural skills. Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across cultures.<sup>72</sup>

Somewhat related to developing cultural competence is "diversity training". The Ontario Provincial Police for example describe this way: "to include the multitude of social, cultural, physical and environmental differences among people that impact the way they think and behave".

Example of cultural competence in the context of abuse among vulnerable immigrants and refugees may include for example,

- supporting the person while respecting the immigrant's cultural realities—maintaining the peace, or in concepts of family shame;
- recognizing the need for family based solutions;
- prevention strategies that focus on culturally appropriate approaches, for example promoting family harmony, in a way that keeps persons safe.

There is a need for cross cultural training; training on the immigration system, policies, and laws; training on trauma that immigrants may have experienced in home country; and training on intersection of abuse and the immigrant experiencing, showing it from diverse countries and cultures.

Cultural competence may also be considered a legal responsibility in that provincial human rights law places a legal duty on public and private bodies to make efforts to reasonably accommodate persons from various races, countries of origin when providing services, facilities and accommodation customarily available to the public. Race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons are all protected categories under the law.

A culturally competent system is needed at all levels of abuse prevention and assistance. When developing resources such as transition homes, it is important to take into religious diversity. For example in a shelter or safe home, that might include creating a room in the shelter that is specifically for prayers, meditation, or spirituality.

The hallmark of a culturally competent system is one that:

- demonstrates the services are accessible to victims of family violence
- recognizes the diversity of people and cultures and their experience of violence
- shows knowledge and understanding of their whole person frameworks of health
- know what makes a responsive service for them and develops these services
- has accountability

- has partnerships with immigrant and non immigrant groups
- demonstrates and incorporates the family and the community context in the delivery of services.

Research shows that when services are less culturally appropriate they are also likely to be less effective in addressing needs. Specifically, this is because

- the service provider fails to elicit needed information;
- communication between the service provider/ practitioner and client about issues, causes and solutions for problems is incomplete;
- the service provider/ practitioner makes fewer recommendations for potential solutions or preventive measures;
- clients are less motivated to follow recommendations or to seek follow-up services;
- clients are less willing to return to the same service provider/ practitioner or program <sup>73</sup>

It is important to build the cultural competence of lawyers, advocates and others towards immigrants and older clients in particular. Practitioners may need to adapt interventions to suit various cultural contexts. Needed modifications may include:

- using culturally sensitive word choices, themes and behaviors to elicit discussion about suspected abuse;
- employing a neutral demeanor and assisting the victim in safety planning; and
- employing third party support from non-abusive family, friends and the community to expand the victim's support base beyond that of the perpetrator.<sup>74</sup>

### PART IV MENTAL CAPACITY

The mental capacity and decision-making issues for immigrants are similar to those for other adults in many respects, and reflect everyday but often complex decisions related to personal finances, housing, health, income/employment, and relationships among others. Decisionmaking by immigrants may sometimes occur in the presence of language barriers and the absence of reliable information. Recent immigrants in particular often have to negotiate through very complex systems often without much aid.

Some mental capacity questions may arise in the context of injury, stroke or mental health problems. Longer wait times for processing applications in recent years means that sponsored adults will be much older when they arrive in Canada. As a result, the likelihood of developing a serious health disease or a cognitive impairment while still under the sponsorship restrictions may be higher.

Depression and acculturation problems for immigrants may be sometimes confused with mental incapacity. Some refugees who are trauma survivors may face impairment or post traumatic syndrome subsequent to their arrival here.

Mental capacity issues for immigrants and refugees come up in most of the same ways it arises for non immigrants. It may come up in the context of

- safety and abuse,
- health,
- treatment
- what may be perceived by others as "self neglect"
- mental health issues, and
- end of life decisions.

An immigrant's mental capacity may be impaired by disease, (motor vehicle) injury or trauma. Some Canadian research suggests that environment hazards such as pesticides can significantly affect the decisionmaking capability of some people who work in agriculture.<sup>75</sup>

- **Mental capacity and dementia**

Many of the social determinants of health (including income, education, work, social exclusion, social support) can have important effects on the people's physical health, as well as their mental health and cognition.<sup>76</sup> The prevalence of dementia among ethnic minority seniors and immigrants is probably similar to those who are not members of ethnic minorities.<sup>77</sup> At the same time, there are an increasing number of immigrants who are growing older.

- **Mental capacity and abuse**

For those immigrants experiencing abuse or neglect, decision-making may less reflect meeting personal needs than family needs and cultural expectations, including ways of maintaining “face” in the community. Language, communication difficulties, reliance on family or others to interpret and lack of familiarity with Canadian systems will affect the person's decisions in ways that may not be obvious. The service provider's “competence” in understanding and having effective ways of meeting these issues is crucial.

- **System issues and mental incapacity**

When mental capacity questions arise for sponsored immigrants, various levels and departments of government are likely to have internal disputes about who will pay for care or services the mentally incapable adult may need. This may lead to significant delays in the person receiving need care and treatment.

- **Assessing mental capability : ethno cultural issues**

It has been pointed that a successful assessment of the decisionmaking capacity is contingent on many things:

- the assessor's fluency in the person's language,
- that person in question's fluency in English,
- the accuracy of interpretation services and
- availability of appropriate vocabulary in the person's language for concepts that being discussed during the assessment.

Even the phrase “decision-making capacity” lacks an equivalent in some languages spoken by ethnic minority elders (e.g. Gujarati).<sup>78</sup>

It has also been pointed out that issues that may be discussed during the assessment of capacity including symptoms, diagnosis and treatments, may also lack matching vocabulary. This has been observed for mental illness in some ethnic minority groups.<sup>79</sup>

While ideally, the assessor should conduct the assessment in the subject's language, bilingual health and social care workers are scarce. Relatives, non-clinical and clinical staff and professional interpreters have been used for interpretation in clinical practice. It has been suggested that lay interpreters may be biased because they are emotionally involved; they may inaccurately or inappropriately translate the questions and answers and translate their opinions rather than facts. Conversely professional interpreters may not be able to build rapport or capture key ideas in sensitive areas such as abuse and neglect.

Dialect, gender and ethnicity are also important in the choice of interpreters. For example, if a male interpreter is used to interpret on behalf of an elderly woman from India, there may be difficulty establishing rapport and getting accurate information

from her. There can be similar difficulties if the ethnicity of the person and the interpreter is not matched accurately.

- **Mental capacity and post traumatic stress disorder (PTSD)**

Immigrant and refugee women may come from war-torn countries and from countries where they may have been exposed to disaster, incidents of extreme trauma and continued gender oppression. Immigrant and refugee men are also at risk from many of these same stressors. There is a lack of awareness in the mental health community about PTSD among immigrants and refugees, in part because they seldom attend clinics but also as a result of practitioners' beliefs that they "should have gotten about it over time."

Symptoms of complex Post Traumatic Stress Disorder may include persistent sadness, suicidal thoughts, explosive anger or inhibited anger. Conversely the person may also feel helplessness, shame, a sense of guilt and sense of being different from others. The person may become isolated, distrustful and hopeless. The victims may feel betrayed and fear the world is no longer a safe place for them. They may have difficulty trusting others, organizing their thoughts and making decisions. They may be vulnerable to exploitation.<sup>80</sup>

Violence in personal relationships also triggers the recurrence of PTSD. However, immigrant, refugee and racialized women find that the support systems for victims and survivors of violence against women are not culturally sensitive. Women survivors of violence can be taken away from their families to shelters. That leaves them physically safe, but their emotional needs and social support are often neglected. Language barriers lead to problems with communication.<sup>81</sup>

- **Mental capacity and legal representation**

Mental capacity issues may arise when legal practitioners are working with and representing immigrant clients, including refugees in the claimant and appeal process. It has been pointed out that here too, cultural beliefs, values, and differences play an important role in the context of determining client competency.<sup>82</sup> In particular, there is the significant potential for clash between the North American focus on individual autonomy or self interest and other cultural directions in which people may place considerably more value on may be desirable or in the best interest the family (family's good) over that of what may be desirable or in the best interest of the individual. Refugees' mental capacity also arises sometimes in the refugee claimant and appeal process, in general and in their ability to instruct lawyers.

- **Assessing mental capacity for immigrants**

A successful assessment of decisionmaking capacity for immigrants is contingent upon seven things

- the assessor's fluency in the other person's language, and the other person's fluency in English,
- the validity and reliability of the screening tools for that culture and people of that age, social class, and educational attainment (e.g. reliance on the MMSE may give inaccurate information on mental status)
- accuracy of any interpretation services being used
- a gender appropriate assessor for that culture
- availability of appropriate vocabulary in the other person's language for concepts discussed during the assessment (e.g. specific physical or mental health conditions, abuse, neglect, mistreatment)
- cultural competence, which includes understanding the other person's values, cultural and religious beliefs.

Language or communication problems should not be mistaken for mental incompetence.

### PART V Specific Options for Future Policy and Practice Direction

The risk of abuse and neglect among immigrants, particularly older sponsored immigrants reflects not only people's personal risk factors, their family situation but also many systemic matters. A number of options for future policy direction at the federal, provincial, individually and joint, as well as some practice options are described below.

#### Federal Options

**Issue #1: Length of sponsorship:** The legal obligation to financially support individuals for ten years creates and reinforces dependency, leaving many sponsoring families subject to significant responsibilities and leaving sponsored immigrants very vulnerable to victimization by family or others. It is suggested that the federal government reduce the length of sponsorship for sponsored parents and grandparents to three years. This would match other sponsored groups including sponsored spouses and sponsored refugees. The length of spouse sponsorship was reduced several years ago from ten years to three years following research underscoring its impact in family violence. Three years is the minimum length of time before a permanent resident can become a citizen.

**Issue #2: Poverty:** Refugees are an extremely vulnerable group of persons who have been forced to flee their country and seek safety in Canada. They typically have the fewest personal resources (money, language, employment skills) and the most difficult time settling in Canada.

**(a) The refugee transportation loan.** Refugees are required to pay back their transportation costs, within six years of arrival. It has been recommended in many quarters that the federal government eliminate the travel loan repayment, as it places undue economic stress on refugee families. This (in combination with the many other stressors) may leave refugee families vulnerable to many harms, including neglect of children and older family members.

**(b) Old Age Security.** Old immigrants (e.g. those aged 65+) are only eligible for old age security benefits if they have lived in Canada 10 years and met other criteria. The amount they receive from OAS varies with their age when they came to Canada as a permanent resident. Those coming to Canada at age 65 or older when they become eligible will receive the least amount of OAS- often one quarter of the amount that other citizens receive. This percentage does not increase with their length of residency in Canada. While they may be eligible for the Guaranteed Income Supplement because they have low income, the continued reduced level leaves older immigrants financially dependant on family even after sponsorship ends, creating a long lasting economic burden on the families.

It is suggested that the federal government review this policy of reduced benefits, and reconsider it in the context of its practical effect on older immigrants and older immigrants' families, as well as in a human rights framework (international human rights and Charter rights).



### Provincial & Federal Options

**Issue #3: Sponsorship debt** - If a sponsor becomes unwilling or unable to support a sponsored immigrant, the sponsorship breaks down. The sponsored immigrant may need to seek social assistance benefits from the provincial government. This then becomes a debt that the sponsor is required to repay to the provincial government with interest, and can lead to garnishment, liens etc.

There is a fundamental difference between a sponsor being unwilling and being unable to continue to support an immigrant. Both levels of government need to recognize this in pursuing these debts. The debt can be an extreme financial burden and can create significant conflict and tension in the family, and may escalate the harm to the sponsored individual or couple.

It is suggested that provincial government make a policy distinction in debt collection between sponsors who are unwilling to support and ones who are unable to support the individual because of financial/ economic difficulties (such as loss of employment) or where it no longer becomes possible to carry out responsibilities, (e.g. disability, death). Pursuing the debt after death of the sponsor simply places the debt on the rest of the family.

It is also suggested that the provincial government not pursue debt collection from sponsors who are unable to support the individual due to changes in economic circumstances.

**(b) Evidence based decisionmaking:** There is a perception or unstated assumption that sponsors and immigrants in general are trying to “milk the system” by defaulting on sponsorship obligation/receiving social assistance. It is suggested that research be undertaken to examine the extent of the defaults in BC, along with the actual circumstances of the defaults, and the impacts on families to provide a better foundation for policy making.

### Provincial Options

#### **Issue #4: Proving abuse in sponsorship default.**

Sponsored immigrants leaving an abusive situation are eligible for social assistance in British Columbia. However, they must show third party verification for abuse. The current focus of acceptable evidence is largely on physical harms, not the types of harms that older immigrants, for example, may face --including psychological abuse or neglect. It is suggested that the issue of proof be relaxed or what is considered as proof be broadened.

### **Issue #5 Building skills, knowledge and awareness**

There is a need for government staff and community services providers to become more “culturally competent” about immigrant and ethnocultural families, with greater awareness and responsiveness to their strengths, the kinds of supports they need and the types of harm being experienced. In the context of abuse and neglect, there is a need for culturally sensitive guidelines and definitions that reflect the kinds of harms that sponsored immigrants’ experience.

It is suggested that cultural competence training be provided for any provincial government staff members who are in contact with immigrants, and that this is especially needed for those in contact with abused or neglected immigrants (e.g. those responsible for interpreting provisions for sponsorship default).

### **Issue #6 Reducing isolation**

**(a) Language:** English language (ESL) skills are fundamental to integration and inclusion, and reduction of immigrants’ isolation. The resources and program delivery for English as a second language are problematic for many refugees and immigrants. Refugees are only eligible for ESL if they are outside the Lower Mainland. Sponsors must pay for the courses for sponsored parents/ grandparents. Sponsored parents/ grandparents often provide child care, and the ESL classes seldom offer child care, so sponsored parents/ grandparents cannot attend. The ESL program and teaching method is geared more to employment language skills than living and social language skills.

It is suggested that ESL classes be expanded so that they are more available and relevant to older immigrants. That may include providing the classes free or at low cost and providing day care for grandparents who are caring for grandchildren.

**(b) BC Bus pass program:** Bus passes are an important means of reducing isolation for immigrants, as well as aiding social integration. There are a number of groups that are eligible for the bus passes, including low income sponsored immigrants over the age of 65 years (who otherwise would be eligible for OAS and GIS if they had lived here 10 years). This is an important benefit that significantly helps improve ability to get around and reduce isolations. However many immigrants are unaware of the program and of those under age 65 may not be covered if they are not receiving social assistance.

It is suggested that the bus pass program be made available to those below age 65 who have the financial need.

### **Issue #7: Negotiating extremely complex systems.**

One of the most consistent remarks among immigrant serving agencies is the general lack of awareness among government bodies and community agencies about immigrants from cultures other than the “white mainstream”, as well as the lack of awareness about the depth of the challenges and complexities of systems that many immigrants are trying to work within.

In particular, immigrants and immigrant supportive agencies point out that persons working within government as well as public and private organizations tend to be extremely unaware of the challenges that immigrants face in trying to figure out myriad of immigration, social assistance, employment, and housing systems. People are also generally unaware how complex and often contradictory these systems are.

It is suggested that a robust advocacy system be developed (or where the advocacy services exist, the number of advocates increased) who can help sponsored and other immigrants make their way through these systems including any review or appeal systems, e.g. social assistance.

It is equally important that immigrant serving agencies who are acting as information and referral services have current, reliable information on who to call for certain benefits.

It is suggested that the information and services that immigrants are likely to need be streamlined and simplified.

### **Issue #8 Rights Information**

Immigrants need good information before coming to Canada, and afterwards. Some, particularly older persons, may not be literate in own language let alone English, which increases their vulnerability. Translation of material to various languages is a useful step, but not the only needed one. Providing information on multicultural radio or television stations can be useful, as can alternate means, such as the use of social theatre to highlight abuse issues within that culture as well as to identify solutions and community resources.

It is suggested that rights information and other information commonly needed be made available in the manner most useful to the various groups.

It is also suggested that

- adequate funding be provided for interpreter services to facilitate immigrants' access to appropriate victim support services.
- funding be provided to increase the number of Multicultural Outreach workers for people who are victims of violence.

The People's Law School publication "Learning about the Law" helps ESL students learn about the law in British Columbia. It uses very simple English so that people who are new to Canada, and who are learning to read and write English for the first time, will find it easy to understand.<sup>83</sup> It is equally important that this information is made available in alternate manners for people who are not literate.

### **Issue #9 Courts**

Courts sometimes deal with family relations and other legal matters affecting immigrants. In an increasingly culturally diverse province, it will be important to have a judicial system that can understand and where appropriate reflect cultural perspectives and craft solutions to be culturally appropriate (for example in determining who will live with whom if a sponsorship has broken down). There are often important cultural norms in this area. It is suggested that cultural issues be included as part of the continuing education for judges on family violence.

### **Issue #10 Practice Issues – Building cultural competence**

It is extremely important that service providers gain a better understanding of immigrants' cultural values, and how these can be different or similar to their own values. This can be very important for developing useful interventions and assistance efforts in abuse and neglect, to avoid stereotypes or misconceptions, and to avoid re-victimizing the abused person. The notions of gender equality and power and control in families differ and "can play out" differently according to religious and cultural belief systems and traditions.

It is suggested that training be provided at all levels of service delivery to build and strengthen service providers and government staff's cultural competence, to reflect and respond better to the cultural diversity of the province.

### **Issue #11 Neglect**

It is important to understand how neglect can occur in some immigrant families. This may reflect cultural norms for caring for older members at home but also the lack of culturally appropriate long term care.

It is suggested that the provincial health authorities explore alternatives to reduce the risk of neglect among immigrants. This might include providing additional supports so that immigrants' families can contribute to provide that care at home; or assure that long term care facilities are developed to meet the social, cultural, religious needs of various older immigrants.

### **Issue #12 Mental Competency Assessment**

Mental capacity issues for immigrants can arise in the context of deteriorating physical or mental health, brain injury, or environmental risk factors. It is important to understand the role of trauma for immigrants and refugees, recognize that some will be experience post traumatic stress disorder, and recognize how that may affects reactions.

It is essential that the assessment process be much more culturally appropriate and culturally sensitive; that includes the assessment tools being used. Assessment tools are often not reliable for persons with little education, low literacy or poor English language skills.

It is suggested that all aspects of the assessment process be reviewed from a cultural perspective to assure that it is able to give an accurate assessment of the person's capacities.

### **Issue #13 Protocols**

It is suggested that any protocols that are developed use a cultural lens.

### GLOSSARY

**Accompanying dependent:** A spouse or dependent child of the principal applicant who intends to immigrate to Canada.

**Resettlement:** The term used by Citizenship and Immigration Canada (CIC) to describe the legal process of bringing a refugee to Canada to live as a permanent resident.

**Refugee or refugee claimant:** A refugee claimant is a person who requests refugee protection status.

**Immigrant:** People born outside of Canada who have been permitted by Canadian immigration authorities to live in the country permanently

**Canadian citizen:** A person who is Canadian by birth or who has applied for citizenship through Citizenship and Immigration Canada (CIC) and has received a Canadian citizenship certificate.

**Family class:** Permanent residents sponsored by a Canadian citizen or a permanent resident living in Canada who is 18 years of age or over.

**Foreign national:** A person who is not a Canadian citizen or a permanent resident. This includes a stateless person.

**Permanent resident:** A person who is legally in Canada on a permanent basis as an immigrant or refugee, but not yet a Canadian citizen (formerly known as landed immigrant).

**Permanent resident visa:** Visa issued by the Citizenship and Immigration Canada (CIC) visa office overseas in order for a foreign national to enter Canada permanently.

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<sup>2</sup> For example, annotated publications for immigration lawyers on the IRPA run between 856 and 1020 pages. *Immigration and Refugee Protection Act and Regulations 2009* Carswell 2009; *Annotated Immigration and Refugee Protection Act of Canada 2008*, Goslett, H.M. Caruso, B.J. (Eds.) Thomson Carswell.

<sup>3</sup> BC Stats Immigrant Population of British Columbia 2006 Census Fast Facts. Online: <http://www.bcstats.gov.bc.ca/pubs/immig/imm073sf.pdf>

<sup>4</sup> Durst, supra, n. 1.

<sup>5</sup> MacKinnon, S., Stephens, S. & Salah, Z. (2006). *Inner-city refugee women: stories of hope and survival, lessons for public policy*. Canadian Centre for Policy Alternatives-Manitoba Canadian Centre for Policy Alternatives. Online: [http://www.policyalternatives.ca/documents/Manitoba\\_Pubs/2007/refugee\\_women.pdf](http://www.policyalternatives.ca/documents/Manitoba_Pubs/2007/refugee_women.pdf)

<sup>6</sup> See for example: Canadian Council for Refugees. (March 2006). Non-citizens in Canada: equally human, equally entitled to rights report to the UN Committee on Economic, Social and Cultural Rights on Canada's compliance with the International Covenant on Economic, Social and Cultural Rights March 2006. "Live in Caregivers" page 11. Online: <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/CCR-background.pdf>

<sup>7</sup> BC Stats (June 2007). Table 2: Immigrant Landings by Class. Online: <http://www.bcstats.gov.bc.ca/data/pop/mig/immLandC.pdf>

<sup>8</sup> BC Stats 2006 Census Fast Facts. Immigrant Population of British Columbia. Online <http://www.bcstats.gov.bc.ca/pubs/immig/imm073sf.pdf>

<sup>9</sup> BC Stats (June 2007). "B.C. Immigration by Area of Last Permanent Residence January to December, 2006, Total Landings: 42,208 Persons." Online: <http://www.bcstats.gov.bc.ca/data/pop/mig/imm06t1a.pdf>

- It notes that 31,482 out of 42,088 new immigrants came to British Columbia from Asia (China, India, Hong Kong and Taiwan).

<sup>10</sup> BC Stats. "Age, family and marital characteristics of B.C. immigrants" *Immigration Highlights*, Issue 06-2 <http://www.bcstats.gov.bc.ca/pubs/immig/imm062sf.pdf>

- The median age of immigrants arriving in British Columbia has gradually increased from 28.9 years in 1981 to 32.8 years in 2005. However, recent immigrants which had a median age of 39.5 years in year 2005.

<sup>11</sup> BC Stats (September 2008) Special feature. "Female immigrants landed in B.C." Online: <http://www.bcstats.gov.bc.ca/pubs/immig/imm082sf.pdf>

<sup>12</sup> MacKinnon et al, supra, n. 5

<sup>13</sup> Citizenship and Immigration Canada uses three legal processes, which are divided into refugee classes, for resettling refugees in Canada. The three refugee classes are:

1. Convention Refugees Abroad Class
2. Country of Asylum Class
3. Source Country Class

Online: <http://www.cic.gc.ca/ENGLISH/refugees/outside/index.asp>

<sup>14</sup> Ahearne, S. (Saturday, August 23, 2008), "Refugees carry burden of debt". *Star Phoenix* Canwest News Service. Online:

[http://www.canada.com/saskatoonstarphoenix/news/weekend\\_extra/story.html?id=b5827cdc-76d6-4f88-9342-0c840e68f110](http://www.canada.com/saskatoonstarphoenix/news/weekend_extra/story.html?id=b5827cdc-76d6-4f88-9342-0c840e68f110)

<sup>15</sup> Immigration and Refugee Protection Act (2001) c. 27.

<sup>16</sup> MacKinnon, et al. *supra*, n. 5.

<sup>17</sup> Citizenship and Immigration Canada. "Sponsoring your family". Online: <http://www.cic.gc.ca/english/immigrate/sponsor/index.asp>.

Also: Citizenship and Immigration Canada. **IP 2** Processing Applications to Sponsor Members of the Family Class. Online: <http://www.cic.gc.ca/ENGLISH/RESOURCES/manuals/ip/ip02e.pdf>

There are certain bars to being sponsors: prospective sponsors and co-signers generally cannot sponsor if: they are permanent residents subject to a removal order; they are detained in any penitentiary, jail, reformatory or prison; they are convicted of a sexual offence under the Criminal Code [against anyone]; or an offence [against the person] under the Criminal Code against a family member; they are in default of spousal or child support payments ordered by a court; they are in default of a debt owed under the Immigration and Refugee Protection Act (that includes social assistance debt); they are an undischarged bankrupt under the Bankruptcy and Insolvency Act.

<sup>18</sup> Citizenship and Immigration Canada. IMM 1344BE: Sponsorship Agreement. Online: <http://www.cic.gc.ca/english/pdf/kits/forms/IMM1344EB.pdf>

<sup>19</sup> Citizenship and Immigration Canada. Sponsoring your family: Eligible relatives—How to apply. Online: <http://www.cic.gc.ca/english/immigrate/sponsor/relatives-apply-how.asp#step1>

<sup>20</sup> Ontario Council of Agencies Serving Immigrants "Understanding a Family Class Sponsorship Breakdown Information for Sponsors. Online: [http://www.settlement.org/downloads/Sponsorship\\_Breakdown\\_Sponsor\\_EN.pdf](http://www.settlement.org/downloads/Sponsorship_Breakdown_Sponsor_EN.pdf)

<sup>21</sup> MacKinnon, et al. *supra*, n. 5.

<sup>22</sup> Citizenship and Immigration Canada. "Guide to the private sponsorship of refugees program." <http://www.cic.gc.ca/English/pdf/pub/ref-sponsor.pdf>

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<sup>24</sup> Koehn, S., Spencer, C., & Hwang, E. (in press). Promises, promises: cultural and legal dimensions of sponsorship for immigrant senior. Koehn S., Spencer, C., Hwang, E. (in press). Promises, promises: cultural and legal dimensions of sponsorship for immigrant seniors. In D. Durst & M. Maclean (eds.) *Identity and diversity of immigrant seniors* [working title]. McGill Queens Press.

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<sup>26</sup> *Ibid.*

<sup>27</sup> The spouse must be a permanent resident or Canadian citizen in order to be a co-signer.

<sup>28</sup> OCASI, *supra*, n. 20

<sup>29</sup> See for example, Vissandjee, B., Desmeules, M. Cao, Z. Abdool, S. & Kazanjian, A. (2004). Integrating ethnicity and migration as determinants of Canadian women's health. *BioMed Central Women's Health*. 4 (Suppl 1), S32. Online: <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=2096680>

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This issue has come to the Supreme Court of Canada. See *Hilewitz v. Canada* (Minister of Citizenship and Immigration); *De Jong v. Canada* (Minister of Citizenship and Immigration), [2005] 2 S.C.R. 706, 2005 SCC 57. People may have some success if they appeal under compassionate and humanitarian grounds. See *Chana, Balwinder Kaur v. M.C.I. (IAD VA6-01197)*. The sponsored application for permanent residence of the appellant's parents was refused on the basis that her father, who suffered from osteoarthritis of the knees and left hip, was medically inadmissible.

<sup>31</sup> In the case of government sponsored refugees, the funding goes to non-governmental organizations to support the persons.

<sup>32</sup> Citizenship and Immigration Canada. "Refugees". Online: <http://www.cic.gc.ca/ENGLISH/refugees/index.asp>

<sup>33</sup> Federal government, or in the case of Quebec, to the Quebec government.

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<sup>37</sup> Citizenship and Immigration Canada. Ibid.

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<sup>70</sup> Government policy notes that where there is a lack of substantiating evidence to support the allegation of abuse the cases are assessed on their own merit individually in unique circumstances by a panel. The worker is to discuss it with the supervisor and make notes on the file. Staff will contact the immigration liaison and request a panel review. The immigration liaison will arrange panel members with expertise to review the case. The applicant may be assessed for Hardship code L pending verification of health and safety threat if appropriate. Once, the health/safety is verified the file should be switched to regular assistance. See: Government of British Columbia. Ibid.

<sup>71</sup> Government of British Columbia. Ibid.

<sup>72</sup> Wikipedia. "Cultural competence." Online : [http://en.wikipedia.org/wiki/Cultural\\_competence](http://en.wikipedia.org/wiki/Cultural_competence)

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<sup>82</sup> Kim, H. (2007). Do I really understand? Cultural concerns in determining diminished competency. 15 *Elder Law Journal*, 265- 290.

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