

Examining Immigrants' Vulnerability and the Government's Responsibility to Protect Immigrants and their Access to Justice

Canada was founded upon the notion that regardless of race, power, wealth, and other hierarchies, the law applies fairly to all persons; this is known as the Rule of Law, a pillar of Canada's democracy. However, when people face obstacles in receiving justice and utilizing the legal system, the law will impact them unfairly. As such, access to justice is fundamental to Canada's democracy, making it the government's responsibility, across all levels, to ensure that everyone can address their legal needs. It is important to acknowledge how different peoples face distinct problems, and that improving access to justice for the Canadian population as a whole requires addressing the existing issues per each demographic, particularly newcomers. Therefore, it is the Canadian government's responsibility to ensure that immigrants can access justice and overcome economic, cultural, and gender barriers.

Immigrants constitute one of the most prominent groups in Canada and are essential to both its economic and social well-being. However, they are in a unique situation and experience the justice system differently. Barriers encountered by immigrants, and non-immigrants alike, are further amplified, increasing their vulnerability; this is evident when examining the financial burden of using the legal system.

The most evident challenge arises from the cost of using the legal system, whether it be hiring a lawyer, getting a consultation, or using other services. A common presumption is that most people will not encounter legal problems in their lifetime. This was proven false by a study, which found that over a three-year period, nearly half of Canadian adults will encounter a family or civil justice problem.¹ However, resolving these issues is rendered difficult because many cannot afford legal services, nor will legal aid cover their cases. This significantly affects immigrants, especially newcomers, because of their undeniable link with lower income levels, experiencing poverty and financial struggles.

Despite entering Canada as skilled workers, it is an all too common experience for their foreign credentials not to be recognized, resulting in difficulties in finding employment as well as the problem of financial instability. In fact, the poverty rate of immigrants aged 25–54 is seven percentage points higher than that of Canadian-born individuals (in the year 2000, in Canada)². Consequently, they will have no other option than to work at entry-level jobs, which typically pay minimum wage and have long shifts— often working multiple jobs. This presents two

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<https://www.cfcj-fcj.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>

² <https://read.dukeupress.edu/demography/article/52/2/485/169358/Ethnic-Variations-in-Immigrant-Poverty-Exit-and>

problems that further prevent immigrants from seeking justice. The first is the income problem, making it unlikely for them to afford legal counselling. Secondly, a lack of time is a significant barrier as they may not have enough time to seek legal counsel due to work and family responsibilities. Additionally, it reduces the capacity for immigrants to research their legal problems which will tie into a point further elaborated when examining cultural barriers.

In 2019, anyone in British Columbia making over \$19,560 did not qualify for legal aid, preventing a significant portion of the population from affording an attorney. Because their incomes are higher than the cutoff for legal aid and they have enough of a surplus, the lower middle class– and even the middle class in some cases– fall through the cracks of the system. Since then, no significant changes have been made to fully address this problem. Moreover, legal aid is selective and based on the specific issue– certain cases will be considered “high priority” and others “low priority.” Although some indeed hold more weight than others, its limitation will restrict a certain area of justice solely to those who can afford it. The aforementioned financial challenges block immigrants’ ability to seek legal counsel and by proxy, their access to justice.

An extremely vulnerable category of immigrants that face numerous legal problems yet have difficulty accessing the Canadian Justice System are Temporary Foreign Workers (TFW). Not only do they have low incomes and often cannot pay for a lawyer, but it is not atypical for their rights to be abused by their employers. This is a recurring problem that must be addressed by the Canadian government, especially as it can lead to the exploitation of foreign workers. One of the root causes of their difficulties is the lack of knowledge and understanding regarding their rights, their permanent resident status, and Canadian culture more broadly. These problems are aggravated by the language barrier, which isolates them. As a result, Temporary Foreign Workers become dependent on their employer and often can do little against abuse or exploitation. This is illustrated by Pawan’s case, an Indian woman who had to pay excessive fees to obtain a worker’s permit, which amounted to thousands of dollars. Even once she started working, she had not received her permit. The employers then took advantage of her situation and unawareness, forcing her to work in poor conditions with minimum wage, as opposed to the \$20 an hour stated in the job offer.³ Her experience is not uncommon: Employment and Social Development Canada (ESDC) had over 2,000 allegations over the course of April to August 2022.⁴ A central aspect of this story is the lack of knowledge of her rights and the potential solutions available to her, which exacerbated the problem. Preventing employers from taking advantage of their workers in the first place is another crucial part that does not directly involve access to justice; however, the government must ensure that all immigrants, especially Temporary Foreign Workers, are aware of their rights and of the ways to seek justice should they face exploitation.

³ <https://www.cbc.ca/news/canada/british-columbia/temporary-foreign-workers-charged-exorbitant-fees-1.6591936>

⁴ Ibid.

Equally important are the cultural and language barriers prevalent in the Canadian Justice System, impacting a number of immigrants, notably newcomers. These barriers show themselves in two critical parts: legal services and legal resources. In this case, legal resources consist of any information from the government or affiliated organizations which informs individuals of their legal rights and different channels to resolve legal issues. Although immigrants' English speaking and reading abilities vary widely, a significant portion has yet to reach fluency and struggle to understand a number of resources, including online or not (such as pamphlets or books). This places immigrants in a disadvantaged position, as they are unaware of their rights and various laws that impact them directly. For instance, an immigrant's landlord might refuse to repair the property, making it inhabitable (like blocked water pipes). However, because they do not know their rights as tenants— and understanding legal resources is incredibly difficult— they cannot take legal action.

Furthermore, this issue is exacerbated by the jargon typically present in law. Even immigrants with professional working proficiency may fail to comprehend the language used, and hence are placed in a vulnerable position. Moreover, one must consider how these resources are disseminated to the public. The most common form is through the internet— specifically websites— or through books. Because such books tend to be overly complicated and incomprehensible for lay people, they are rarely used and can be disregarded. This leaves the internet, which is not always effective because many communities may not have access to adequate wifi. The only remaining method is visiting a public library with computers, but nearby libraries do not exist in every community. Consequently, even if immigrants could understand and utilize legal resources, they may face additional barriers that prevent them from using those resources in the first place. Therefore, the government must prioritize finding methods to make this information reach all immigrant communities.

Additionally, consulting with attorneys may be challenging for many immigrants. Cultural insensitivity from lawyers will likely make immigrants feel misunderstood and unseen and may deter immigrants from pursuing their case. Oftentimes, this is not intentional and roots in cultural differences, showing the need for establishing a safe space for immigrants in the legal world through cultural sensitivity training.

Further, it is imperative to recognize that women are a marginalized group, even within their own communities, and that getting justice for domestic violence cases has multiple barriers. As victims of domestic violence, they face additional challenges to accessing justice, as well as an amplification of existing barriers for all immigrants. The first challenge that arises is the willingness of a victim to speak out against her abuser; across all demographics, it is difficult for victims to seek help, let alone denounce their partner. However, as immigrants, they lack a support system since they have left their families and loved ones (very few are “immigrants sponsored by family”). Cultural differences play into this, ultimately isolating women. Once

isolated, men can better control the victim and any resources that may provide legal or even monetary and emotional support. This is furthered by the fear of being ostracized by their communities, a common notion across all ethnicities and races. The feeling of isolation has many causes, one of which is the language barrier. The woman's dependency on her abuser is increased and gives him more control over any legal resources. Its second effect is that the victim may not be able to communicate her situation effectively, and it may appear to be less severe due to a simple vocabulary. This problem is particularly dangerous should the woman call police officers or seek any form of help. She might be ignored and dissuaded from taking action or in danger if her partner were to find out.

Likewise, law enforcement features certain flaws which prevent women from escaping their abusive situation, causing distrust in the system's ability to protect them. One study found that 40 percent of women do not expect a complete criminal justice system response to their call to the police.⁵ Moreover, dual charging is another dissuading factor, as the woman may be charged, even if she was acting in self-defence, and her partner may use this to manipulate her into staying silent. The aforementioned issues are directly linked to a lack of access to legal resources, indicating that they would be sought by the victims as a method to change their situation. Equally important is realistic information that clearly informs women of the possible aftermath of involving law enforcement, how it may affect their immigration status, and the dangers should their husband not be detained, among others. Acknowledging the limitations of the justice system and that the abuser is not always charged and incarcerated is vital since the woman's life may be in danger. In addition, including the impacts on the woman's immigration status and what steps to take is crucial, especially for sponsored immigrants. There are many aspects to consider, which the victim should clearly be informed of to facilitate her pursuit of justice.

Access to justice is fundamental to Canada's democracy, making it the government's duty to eliminate the economic, cultural, and gendered barriers, which are often intertwined, for immigrants and marginalized groups within this category. Because immigrants tend to be vulnerable due to their socioeconomic status, it is paramount that they be able to utilize the legal system to pursue justice. In order to move forward, the government must implement systematic changes to address each flaw of the system.

⁵ https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03_la20-rr03_aj20/rr03_la20.pdf

Bibliography

- Ahmadzai, Masiya. "A Study on Visible Minority Immigrant Women's Experiences with Domestic Violence." *Scholars Commons @ Laurier*, 2015,
https://scholars.wlu.ca/cgi/viewcontent.cgi?article=1014&context=brantford_sjce.
Accessed 16 April 2023.
- Alberta Civil Liberties Research Centre. "Access to Justice - New Canadians — Alberta Civil Liberties Research Centre." *Alberta Civil Liberties Research Centre*,
<https://www.aclrc.com/access-to-justice-new-canadians>. Accessed 24 April 2023.
- Ballard, Joel, and Francis Plourde. "Recruiters and employers increasingly taking advantage of temporary foreign workers, advocate says." *CBC*, 23 September 2022,
<https://www.cbc.ca/news/canada/british-columbia/temporary-foreign-workers-charged-exorbitant-fees-1.6591936>. Accessed 13 April 2023.
- Department of Justice Canada. "State of the Criminal Justice System - 2019 Report."
Department of Justice, 2019,
<https://www.justice.gc.ca/eng/cj-jp/state-etat/2019rpt-rap2019/state-etat.pdf>. Accessed 18 April 2023.
- Derrick, Anne. "Six Degrees from Liberation: Legal Needs of Women in Legal and Other Matters." *Department of Justice*, 31 May 2001,
https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03_la20-rr03_aj20/rr03_la20.pdf.
Accessed 19 April 2023.
- Government of Canada. "Access to Justice." *Department of Justice*, 1 September 2021,
<https://www.justice.gc.ca/eng/csj-sjc/access-acces/index.html>. Accessed 16 April 2023.

Government of Canada. “State of the Criminal Justice System- Focus on Women.” *Department of Justice*, 2021,

https://www.justice.gc.ca/eng/cj-jp/state-etat/2021rpt-rap2021/pdf/SOCJS_2020_en.pdf.

Accessed 13 April 2023.

Graveland, Bill. “A 'broken' system: Canadians can't afford lawyers but don't qualify for legal aid | Globalnews.ca.” *Global News*, 6 December 2019,

<https://globalnews.ca/news/6263618/a-broken-system-canadians-cant-afford-lawyers-but-dont-qualify-for-legal-aid/>. Accessed 18 April 2023.

Kaida, Lisa. “Ethnic Variations in Immigrant Poverty Exit and Female Employment: The Missing Link.” *Duke University Press*, 29 July 2022,

<https://doi.org/10.1007/s13524-015-0371-8>. Accessed 18 April 2023.

MacFarlane, Julie. “Poverty and Access to Justice.” *International Centre for Criminal Law Reform & Criminal Justice Policy*, 3 February 2022,

https://icclr.org/wp-content/uploads/2022/02/Access-to-Justice-and-Poverty_ICCLR_RR-2022-2_Bellsmith-Goertzen-Neilsen-Stinson.pdf?x62554&x28096. Accessed 24 April 2023.

Menjívar, Cecilia, and Olivia Salcido. “IMMIGRANT WOMEN AND DOMESTIC VIOLENCE Common Experiences in Different Countries.” *Refugee Research Network*, 2002,

<https://refugeeresearch.net/wp-content/uploads/2016/05/Menjivar-and-Salcido-2002-Immigrant-women-and-domestic-violence.pdf>. Accessed 16 April 2023.

Miller, Nelson P. “Beyond Bias— Cultural Competence as a Lawyer Skill.” *Michigan Bar Journal*,

https://www.fordham.edu/download/downloads/id/3026/beyond_bias_cultural_competency.pdf%20Interpreters. Accessed 16 April 2023.

Stefanovich, Olivia. "We're in trouble': Advocates urge Ottawa to help close the access-to-justice gap." *CBC*, 18 April 2021, <https://www.cbc.ca/news/politics/access-to-justice-federal-budget-2021-requests-1.5989872>. Accessed 13 April 2023.

Thérien, Marc. "Expanding Horizons: Rethinking Access to Justice in Canada." *Department of Justice*, March 2000, https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00_2-po00_2/op00_2.pdf. Accessed 14 April 2023.

Voyvodic, Rose. "LAWYERS MEET THE SOCIAL CONTEXT: UNDERSTANDING CULTURAL COMPETENCE." *Canadian Bar Association*, https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/Canadian%20Bar%20Review/Vol84_025.pdf. Accessed 15 April 2023.