Health and Refugee/Immigration Law

May 14, 2019
Dr. Vanessa Redditt and Jennifer Stone
Health Justice Tuesdays – Supported by:

Legal Aid Ontario (Program Funding)
St. Michael’s Family Health Team and Hospital
(In Kind Support)
AFHTO Bright Lights Award
Nasmith Award (DFCM)
Organized by Education Subcommittee:
Gary Bloch, Emily Hill, J. Stone, R. Shoucri
Presenters

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Family Physician,
Crossroads Refugee Clinic
Women’s College Hospital

Jennifer Stone
Onsite Lawyer,
Health Justice Program
Presenter Disclosure

Faculty: Vanessa Redditt

Relationships with commercial interests:
- Grants/Research Support: None
- Speakers Bureau/Honoraria: None
- Consulting Fees: None
- Other: Staff physician at Women’s College Hospital

Faculty: Jennie Stone

Relationships with commercial interests:
- Grants/Research Support: None
- Speakers Bureau/Honoraria: None
- Consulting Fees: None
- Other: Employee of Neighbourhood Legal Services
Disclosing Commercial Support

This program has not received financial support nor in-kind support from any commercial interests

Potential for conflict(s) of interest:
• None
Mitigating Potential Bias

• *Not applicable*
Agenda & Objectives

1. Share a broad understanding of common migratory trajectories;

2. Recognize how accessing justice in immigration matters can impact health across the migratory/post-migratory trajectory;

3. Acquire skills in enhancing clinical documentation to support patients with immigration-related issues, and understanding appropriate referrals.
Changing Legal Aid Landscape

30% cut to Legal Aid this year, further 10% next year. Includes April 15, 2019 announcement that Province will no longer fund immigration & refugee matters.

- Feds provide approx. $16 million
- Provincial legal aid for refugees approx. $34 million

= SIGNIFICANT SHORTFALL

Currently: Only 7-hour certificates for Basis of Claim forms currently funded. Medical reports no longer funded. Refugee Law Offices remain open but triaging for most vulnerable, and focusing on appeals.
Case Scenario

• Ms. T is 38yo woman who arrived as a refugee claimant from Ethiopia eight months ago.
• She had to leave behind her 3 children, who remain with her mother. She is awaiting her refugee hearing and has no date.
• She lives in a small basement apartment, which she shares with 4 other women. She works at a factory and goes to English classes in the evening.
• Her sleep is disrupted by nightmares, her mood is low, and she experiences frequent flashbacks related to past trauma.
1. Migration pathways 101
Migration pathways in Canada

1. Economic Class immigrant (Express Entry, Provincial Nominee)
   - 1. Refugee claim in Canada
   - 2. Refugee/Protected Person Grant
   - 3. Permanent residence
   - 4. Family Reunification
   - 5. Loss of Status
   - 6. Citizenship

1. Resettled Refugees Arrival in Canada
   - Government Assisted or Privately Sponsored

3. Permanent residence
   - 2. First Stage Approval for In-Canada spouse
   - 1. Caregiver Pathways

4. Family Reunification
   - 2. First Stage Approval on H&C Grounds
   - 1. Humanitarian & Compassionate

5. Loss of Status
   - Permanent Residence can be lost for:
     - Criminality,
     - Failure to Maintain Residence,
     - Misrepresentation,
     - Cessation,
     - Vacation

6. Citizenship
   - Language requirement (Level 4 speaking and listening)
   - Knowledge requirement (literacy, up to level 15)
   - Fee

- Family Class Sponsorship
- Refugee family reunification
- One-Year Window
## Canada Immigration Levels (2017-2021)

<table>
<thead>
<tr>
<th>Year</th>
<th>Economic Programs</th>
<th>Family Class Programs</th>
<th>Refugees and Protected Persons</th>
<th>Humanitarian and Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>172,500</td>
<td>84,000</td>
<td>3,500</td>
<td>40,000</td>
</tr>
<tr>
<td>2018</td>
<td>177,500</td>
<td>86,000</td>
<td>3,500</td>
<td>43,000</td>
</tr>
<tr>
<td>2019</td>
<td>191,600</td>
<td>88,500</td>
<td>4,250</td>
<td>46,450</td>
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<tr>
<td>2020</td>
<td>195,800</td>
<td>91,000</td>
<td>4,500</td>
<td>49,700</td>
</tr>
<tr>
<td>2021</td>
<td>202,300</td>
<td>91,000</td>
<td>5,000</td>
<td>51,700</td>
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</tbody>
</table>
Refugee Claim Process

Q. When to refer for legal help? A. ALWAYS

Claimants 275% more likely to be granted refugee protection when represented by a lawyer than unrepresented.


https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&amp;article=1073&amp;context=ohlj
The Refugee Claim Process for healthcare providers

Inland Claims
Retrieve Basis of Claim form online
Prepare form

Port of Entry Claims
Make a refugee claim to CBSA
Eligibility determined

Submit BOC form
Given date to return to ensure eligibility

Submit the BOC form

Weeks to months
1-2 weeks but can vary

Eligible to have claim heard at the Refugee Protection Division of the IRB

WAIT

Credit: Dr. Meb Rashid
Refugee Claim Process for healthcare providers

- **IRB Hearing**
  - At Refugee Protection Division
  - Accepted
  - Deemed unacceptable
  - 15 days to submit

- **Refugee Appeal Division**
  - Accepted
  - Deemed unacceptable
  - 15 days to submit

- **Federal Court Judicial Review**
  - Deemed unacceptable
  - Pre-Removal Risk Assessment
  - Removal Order

Credit: Dr. Meb Rashid
To learn more about strategies in the face of legal aid cuts:

- Recent changes to federal legislation and legal aid access: a 101 for health care providers
  
  **May 30, 12 – 1:30 pm**  
  **Li Ka Shing, Room 240, 209 Victoria**  
  Please RSVP to centrelist@smh.ca  
  Immigration/Refugee lawyer Maureen Silcoff

- Refugee/Immigration Report Writing & Addictions
  
  **June 4th, 2019, 5:30-8pm**  
  **33 Russell Street, Room 2029,**  
  Please RSVP by registering: https://forms.gle/EgVNLosAdPcdGhFm7  
  **COST:** $5 to cover snacks  
  Alex Caudarella, MD, Addictions Specialist and Family Physician; Shane Martinez, Criminal Defence Lawyer; Tony Navaneelan, Refugee Lawyer
2. A2J in immigration matters impacting health across the migratory trajectory
MIGRATION AND THE SOCIAL DETERMINANTS OF HEALTH

Conditions surrounding migration often fuel health inequities and may expose migrants to increased health risks and negative health outcomes.

INDIVIDUAL FACTORS
- age, sex & hereditary factors

LIFESTYLE FACTORS
- economic class, cultural or linguistic barriers, substance abuse

LIVING CONDITIONS
- access to clean water and sanitation, safe housing

WORKING CONDITIONS
- access to/ existence of jobs providing living wage

SOCIAL & COMMUNITY FACTORS
- existence of discrimination, stigma, social inclusion

GOVERNANCE & SOCIOECONOMIC CONDITIONS
- existence of legislation and policies affecting migrants’ health

Source: Adaptation of an infographic found in a World Health Organization (WHO)’s Commission on Social Determinants of Health (CDSH) report (2008:43).
Immigration status as foundational, a right to have rights

Access to Services

- Social assistance
- Legal representation/aid
- Access to ESL classes
- Schooling up to high school
- Applying for social insurance number
- Applying for a work permit
Immigration status as foundational, a right to have rights

- Language barriers
- Lack of familiarity
- Fear & discrimination

- Social assistance
- Legal representation/aid
- Access to ESL classes
- Schooling up to high school
- Applying for social insurance number
- Applying for a work permit
Case scenario

What would Ms. T be entitled to:
  • While waiting to hear if she’s eligible to make a refugee claim?
  • Once eligible to claim?
  • Once claim is granted?
  • As permanent resident?
  • As citizen?

Alternatively:
  • If claim is refused?

SEE HANDOUT ON ENTITLEMENTS PER STATUS
Interim Federal Health Program (IFHP)

- Temporary health care coverage for refugees
- Basic coverage: MDs&NPs/Diagnostics/Laboratory tests (similar to OHIP coverage)
- Supplemental services
  - Medications: similar to ODB formulary
  - Emergency dental
  - Vision
  - Physical therapy, allied health, medical devices, etc
- Coverage for one year for PSRs/GARs (some exceptions) and until passed refugee hearing for claimants

https://www.medaviebc.ca/en/health-professionals/resources
Accessing Services through IFHP

• Show Interim Federal Health Program Certificate

• Health professionals must be registered with IFHP Medavie Blue Cross
Migration dynamics in Canada

Source: Canadian International Development Platform, 2018. [https://cidpnsi.ca/migration-flows/]
Undocumented Migrants

- **Estimated 500,000 in Canada**
- Clinics serving uninsured migrants:
  - FCJ Refugee Centre
  - Community Health Centres
    - E.g. Access Alliance: no catchment area
  - Canadian Centre for Immigrant and Refugee Health
  - Muslim Welfare Centre of Toronto
  - Toronto Public Health: sexual health, vaccines, TB
  - Planned Parenthood
  - Midwifery care

3. Appropriate referrals and documentation for patients with immigration issues
“Get a report from a doctor or psychologist in Canada which documents your health problems”

“A letter from your doctor in Canada confirming scars or injuries”

Legal relevance of medical documentation for refugee claims and appeals

- To support a vulnerable person application at the Refugee Protection Division re need for special accommodations
- To assist decision maker in understanding barriers to giving testimony
- Viability of Internal Flight Alternative
- To identify mental health impacts of past trauma
- To document scars/injuries
General Documentation Tips

- **Introduction**
  - Writer’s background/credentials
  - Duration of clinician-patient relationship, frequency of visits
- **Description of symptoms at multiple visits**
- **Description of exam findings, including mental status exam**
- **Summary of diagnosis/findings and treatment plan**
- *If applicable, request for accommodations*
General Documentation Tips, Cont’d

- Focus on an objective account of reported symptoms, examination findings, and treatment plans/recommendations.
- Use neutral, professional language.
- Avoid commenting on the patient’s credibility.
- Avoid a lengthy summary of the patient’s history.
- Avoid statements that may be perceived as advocacy for the patient.
Role of primary care

• Facilitate referrals to psychiatry, relevant medical specialists

• Practical reality: mental health care often falls within scope of primary care

Other Resources

Refugee and other immigration claims:
https://refugeeclaims.wordpress.com/

Refugee Claim process:
https://refugee.cleo.on.ca/en/refugee-protection-hearing

For claimants: https://refugeehearing.cleo.on.ca/
Other Proceedings that can require supporting medical documentation

- Humanitarian & Compassionate (H&C) applications
- Pre-Removal Risk Assessments (PRRAs)
- Detention reviews
- Deportation appeals at the Immigration Appeal Division (IAD)
- Danger Opinions
- Requests to Canada Border Services Agency (CBSA) to defer removal
- Motions to Federal Court to stay removal
- Family reunification (ineligible family, expediting)
- Seeking waiver from some citizenship requirements
Legal relevance of medical documentation for other proceedings

- To identify potential mental health impact of deportation of vulnerable person
- To contextualize past criminal or dangerous behaviour
- To assist decision maker in understanding current or past barriers to giving testimony
- To identify mental health impacts of past trauma
- To prompt the positive exercise of humanitarian and compassionate discretion
Role of documentation for H&C Discretion

...“those facts, established by the evidence, which would excite in a reasonable man [sic] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes ‘warrant the granting of special relief’ from the effect of the provisions of the Immigration Act.”

Chirwa v. Canada (Minister of Citizenship and Immigration) (1970) 4 I.A.C. 338
Medical evidence for H&C Discretion

- Letter from doctor/hospital explaining diagnosis and medical care required
- Hospital records
- Prescriptions for medications
- Connection to psychiatrist, psychologist or therapist, would conduct assessment and provide diagnosis and care required
- Letter from medical professional in country of nationality or expert on unavailability of care

https://www.cleo.on.ca/en/publications/handc
Appropriate Legal Aid Referrals

- **Legal Aid Certificate Program** - for Basis of Claims only
- **Refugee Law Office** - some appeals
- **Community or Specialty Legal Aid clinics**

Search by postal code:

https://www.legalaid.on.ca/en/contact/contact.asp?type=cl
Case scenario: health care support

- Ms. T waited 4 years for her refugee hearing. During that time she had difficulty accessing health care although she was covered by IFH. **VULNERABLE PERSONS/EXPEDITED**
- After her claim was accepted, she waited another 3 years for her children to arrive. **IMPACT OF FAMILY SEPARATION**
- She had precarious work and was required to apply for a work permit every 6 months during those years until she became a PR, coupled with a temporary SIN. She was injured at her factory job and was let go. **SUPPORT THROUGH WSIB ETC CLAIM**
- She’s had limited time for ESL, as she’s been working multiple jobs and sending money back home. She’s unable to pass the citizenship due to her limited English. **WAIVER LETTER**
Summary of Best Practices

• Be alert & alive to migration history
• Ask if connected: to lawyer, shelter worker, social worker, settlement worker
• Communicate with advocate early if there is one
• Sign onto an open letter asking the Provincial government to reverse the legal aid cuts!

link: https://forms.gle/4kJSHsKmMZ1Vsmh8
OR email healthprovidersagainstLAOcuts@gmail.com
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<th>Topic</th>
<th>Speakers</th>
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<td>Dr. Andrew Bond and Benjamin Ries</td>
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<tr>
<td>March 19, 2019</td>
<td>Health and Family Law</td>
<td>Dr. Kathleen Doukas and Ishbel Ogilvie</td>
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<tr>
<td>April 9, 2019</td>
<td>Health and Income Security Law</td>
<td>Dr. Gary Bloch and Anu Bakshi</td>
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<tr>
<td>May 14, 2019</td>
<td>Health and Immigration Law</td>
<td>Dr. Vanessa Redditt and Jennifer Stone</td>
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<td>May 28, 2019</td>
<td>Legal Issues affecting people living w HIV/AIDS</td>
<td>Dr. Gordon Arbess and Ryan Peck</td>
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<tr>
<td>June 18, 2019</td>
<td>Health, Law and Indigenous Peoples</td>
<td>Melissa Stevenson, Dr. Fatima Uddin and Emily Hill</td>
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<td>Sept. 10, 2019*</td>
<td>Health and Capacity, Decision-Making, and Advanced Care planning</td>
<td>Dr. Bill Sullivan and Mercedes Perez</td>
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<td>Sept. 24, 2019</td>
<td>Health and Employment Law</td>
<td>Dr. Andrew Pinto and Nabila Qureshi</td>
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<td>Oct. 8, 2019</td>
<td>Health and Criminal Justice System</td>
<td>Flora Matheson and Promise Holmes Skinner</td>
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<td>Nov. 19, 2019</td>
<td>Health and Human Rights Law</td>
<td>Dr. Laurie Green and Kerri Joffe</td>
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Contact

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