

## **Stricter Rules for Spousal Sponsorships**

When people find out that I am an immigration lawyer in Canada, one of the most frequently asked questions is this: “what is the easiest and fastest way to immigrate to Canada?”

The proper response to this type of question is that there is no short and simple answer as it would greatly depend on the specific qualifications and circumstances of the prospective immigrant. However, a number of prospective immigrants (or their families) have told me that they were advised that the fastest and easiest way to immigrate to Canada is to be sponsored by a Canadian citizen or permanent resident spouse. They were told that they can try to look for (or even pay) a Canadian citizen or permanent resident to marry them, submit an application for spousal sponsorship and voila, one can obtain permanent resident status in a few or several months. Some are also told that they can obtain a quick divorce from the Canadian citizen or permanent resident spouse shortly afterwards then move on with their lives.

If this scheme worked for some in the past without getting caught, it will be much more difficult, if not impossible, to get away with such fraudulent exercise under the present stricter spousal sponsorship regulations.

The scheme that these clients are describing is what Citizenship and Immigration Canada (CIC) refers to as “marriages or relationships of convenience.” Since cases of marriage fraud have proliferated for many years, CIC has decided to impose stricter regulations for this class of immigration applications, i.e. family class applications for spouses, common-law partners and conjugal partners.

### *Conjunctive to Disjunctive Test for Bad Faith Marriage*

In September 2010, CIC amended section 4 of the *Immigration and Refugee Protection Regulations (IRPR)* as a way of further discouraging so-called marriages of convenience. Prior to September 2010, the test was whether or not the relationship is “genuine” **and** was “entered into primarily” for the purpose of acquiring an immigration benefit (conjunctive test). Under the new regulation 4 of the IRPR, the test has become whether the relationship is “genuine” **or** was “entered into primarily” to gain an immigration benefit (disjunctive test).

What a huge difference a single word change could make. That is, by changing the word “and” to “or”, spousal sponsorship applications have undergone much stricter scrutiny not only at the visa offices but also at the Immigration Appeal Division (IAD). In the past, it is often enough that the visa officer or IAD board member finds that the relationship is genuine to be convinced that it was also not entered into primarily for immigration purposes.

With the wording change, even a genuine relationship may now result in a refused sponsorship application if there is a finding that the parties entered into such relationship primarily to gain an immigration benefit. As a result, many sponsorship applications based on genuine relationships may end up being refused if the person being sponsored has a problematic immigration history and

the sponsorship application happens to be the only option available for the sponsored spouse to become a permanent resident and avoid separation from the sponsoring spouse.

For more reasonable and sympathetic visa officers and IAD board members however, there is still room to argue that in the case of genuine relationships, gaining an immigration benefit is never the primary purpose for submitting a sponsorship application. It is hoped therefore, that reasonable decision-makers will prevail so that this regulatory change will not lead to more unjust refusals of the spousal sponsorship applications of genuine spouses and partners.

### *Five-Year Bar*

In March 2012, the proposed amendment to regulation 130(2) of the IRPR entered into force. This change prevents anyone “who became a permanent resident as a spouse, common-law or conjugal partner from sponsoring a subsequent spouse, common-law or conjugal partner for a period of five years following the date they became a permanent resident.”

Like the previous change, the purpose behind this regulatory amendment is to discourage sponsored spouses and partners from entering into a relationship of convenience to circumvent Canada’s immigration laws, separating from their sponsor then applying to sponsor a new spouse or partner shortly afterwards.

### *Conditional Permanent Residence for Sponsored Spouses*

Most recently, or in late October 2012, the CIC Minister announced yet another major change to Canada’s immigration regulations meant to discourage marriage fraud.

The new regulations provide that the permanent resident status of those who obtained such status after being sponsored by their spouses, common-law or conjugal partners, will be conditional on their having lived in a legitimate relationship with their sponsoring spouses, common-law or conjugal partners for a period of at least **two years** after becoming a landed immigrant. This will apply to spouses or partners in a relationship of two years or less and who have no children in common with their sponsor at the time they submit their sponsorship application.

Thankfully, there are exceptions to this conditional permanent resident status requirement. The exceptions include sponsored spouses or partners who are able to provide evidence of abuse or neglect. “Abuse” could be either of the following: “(i) physical abuse, including assault and forcible confinement; (ii) sexual abuse, including sexual contact without consent; (iii) psychological abuse, including threats and intimidation, and (iv) financial abuse, including fraud and extortion.” “Neglect” on the other hand, consists of “the failure to provide the necessities of life, such as food, clothing, medical care or shelter, and any other omission that results in a risk of serious harm.”

*(Please note that the above are meant for legal information purposes only and not intended to provide specific legal advice. It is strongly advised that you consult with a legal professional to discuss your particular circumstances.)*

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