

# **Spousal Sponsorship**

Prepared For: Legal Education Society of Alberta  
*Immigration Law*

Prepared By:

**Rekha McNutt**

**Caron & Partners LLP**

**Calgary, Alberta**

For Presentation In:

Edmonton – September 20, 2011

Calgary – September 21, 2011

## 1. INTRODUCTION

Canadian citizens and permanent residents of Canada have a right to sponsor their spouses, common-law partners, or conjugal partners for permanent residence to Canada.

Spouses are defined as legally married couples. Common-law partners are defined as couples who have cohabited in a conjugal relationship for a period of at least 1 year.<sup>1</sup> Individuals who have been in a conjugal relationship for at least 1 year, but who cannot cohabit due to persecution or risk of criminal prosecution, are also considered common-law partners for the purposes of the *Immigration and Refugee Protection Regulations* (“Regulations”).<sup>2</sup>

Conjugal relationships are unique to Canadian immigration law. In essence, a conjugal partner would fit the definition of common-law partner, but for the fact that the couple cannot live together because of immigration related issues (eg. The partner cannot get a visa to remain in Canada while the sponsorship is being processed). “Conjugal Partner” is defined as:

“conjugal partner” means, in relation to a sponsor, a foreign national residing outside Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year.<sup>3</sup>

There are two mechanisms to sponsor a spouse or common-law partner for permanent residence. A sponsorship application may be made under the “Family Class” or under the “Spouse or Common Law Partner in Canada Class”. For conjugal sponsors, the only option is to file an application under the Family Class.

Regardless of which Class the application is filed under, the reviewing immigration officer will undertake a review under section 4 of the Regulations:

4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership
  - (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; **or**
  - (b) is not genuine.

---

<sup>1</sup> *Immigration and Refugee Protection Regulations* (SOR/2002-227), (“Regulations”) section 1(1) “Common-law partner”

<sup>2</sup> Regulations section 1(2)

<sup>3</sup> Regulations section 2

Until recently, an application could be refused only in cases where both 4(1)(a) and (b) were found to exist. With recent changes to the Regulations, a refusal is possible if either is found to exist.

## 2. **SPONSOR'S ELIGIBILITY**

In order to sponsor a spouse, common-law partner or conjugal partner, the sponsor must be a Canadian citizen or permanent resident of Canada, and be at least 18 years of age. Sponsors who are permanent residents must also reside in Canada during the course of the sponsorship application. Canadian citizens need not reside in Canada when the sponsorship application is filed but must satisfy a visa officer that they intend to reside in Canada once the applicant is granted permanent residence.<sup>4</sup>

Sponsors must provide an undertaking to the Canadian government that they will provide the basic necessities for the applicant and any accompanying dependents. During the period of the undertaking, the sponsor is obligated to reimburse the Canadian government for any social assistance payments made to their spouse. The undertaking begins on the day that the spouse becomes a permanent resident of Canada and ends after a period of 3 years. The sponsor need not meet minimum income requirements to sponsor a spouse, but must satisfy an officer that they are able to meet the terms of their undertaking.

Finally, a sponsor cannot otherwise be ineligible for reasons outlined in section 133 of the Regulations.

## 3. **FAMILY CLASS VS. SPOUSE OR COMMON-LAW PARTNER IN CANADA CLASS**

"Family Class" is defined in section 117 of the *Immigration and Refugee Protection Regulations* ("Regulations"), and includes spouses, common-law partners and conjugal partners. "Spouse or Common-Law Partner in Canada Class" is defined in section 124 of the Regulations, and limited to spouses or common-law partners who are physically present in Canada.

A decision as to which class to file a sponsorship under is influenced by a number of factors, including:

- Processing times
- Physical location of the Applicant spouse
- Whether there is a choice at all
- The availability of appeal rights

A detailed interview with the sponsor and applicant is essential to determine which Class maximizes the chances of success.

---

<sup>4</sup> Regulations section 130

(a) **Processing Times**

(i) Family Class Applications

Family Class sponsorships are a two-stage process. The sponsor and applicant complete the application forms and gather all the supporting documentation. Once that is done, the entire package of documents is filed to the Case Processing Centre in Mississauga, Ontario (“CPC-M”). CPC-M’s only task is to evaluate the sponsor’s eligibility. At present, CPC-M is taking on approximately 60 days to process such applications.

If the sponsor is found eligible, the entire application is then forwarded to the visa office responsible for the applicant’s country of nationality. The applicant may also request that their application be processed at a visa office governing the country in which they are residing if they have been lawfully admitted as a temporary resident for a period of at least one year.<sup>5</sup>

Processing times vary depending on the visa office where the application for permanent residence is being processed. Estimated processing times are posted on the Citizenship and Immigration Canada (“CIC”) website at: <http://www.cic.gc.ca/english/information/times/perm/fc-spouses.asp>.

Applicants who are already residing in Canada, and have been admitted as temporary residents for a period of at least one year, have the option of filing their application to the visa office in Buffalo, NY, where processing times are considerably shorter than most other visa offices. Although spouses in Canada have the option of filing an application under the “Spouse or Common-Law Partner in Canada Class”, in certain circumstances (as discussed further below), it may be advantageous to file the application under the Family Class.

(ii) Spouse or Common-Law Partner in Canada Class  
 (“in-Canada Applications”)

The process for filing in-Canada applications is slightly different. The required application forms and supporting documents are largely the same as what is required for Family Class applications. The entire package is filed to the Case Processing Centre in Vegreville, Alberta (CPC-V), rather than the CPC-M.

CPC-V will assess both the sponsor’s eligibility as well as the applicant’s permanent residence application. If CPC-V can assess the application on paper, without the requirement for an interview, then approval in principle (also known as “Stage 1” approval) is granted within 9-10 months.<sup>6</sup> Applicants who receive approval in principle are also entitled to an open work permit while their permanent residence application is finalized (also known as “Stage 2”), including

---

<sup>5</sup> Regulations section 11

<sup>6</sup> <http://www.cic.gc.ca/english/information/times/perm-fc.asp>