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52nd Annual Refresher: Family Law

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ISBN-10: 1-55093-719-7
ISBN-13: 978-1-55093-719-0

The Intersection of Immigration and Family Law: Immigration Tips for Family Lawyers

Prepared for: Legal Education Society of Alberta
52nd Annual Refresher: Family Law

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Prepared by:
Michael Greene QC
Sherritt Greene
Calgary, Alberta



Legal Education
Society of Alberta

For presentation in:
Lake Louise, Alberta – May 5 - 7, 2019

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IMMIGRATION TIPS FOR FAMILY LAWYERS

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INTRODUCTION

In recent years, Alberta has become increasingly diverse. Immigrants, foreign workers and foreign students have flocked to the province in ever increasing numbers. Just like everyone else, immigrants and temporary residents have family law issues, including marriage, divorce, custody, access and support. Family lawyers are increasingly presented with cases where issues arise because one or both parties are not citizens of Canada. This often gives rise to issues and factors that may not appear with typical family law matters. Moreover, missteps by family lawyers may have dire immigration consequences for their clients.

I do not pretend to know the first thing about family law. What I *have* learned is that many of my immigration clients have family law issues and many family law clients have immigration issues. Due to the intersection between family and immigration law, it is beneficial for family lawyers to be aware of immigration issues so that they can flag potential problems and know when to call or refer a client to an immigration specialist. The purpose of this paper is to highlight some of the immigration related issues that you may encounter in your practice as a family lawyer and to discuss implications from an immigration lawyer's perspective.

References are to the Immigration and Refugee Protection Act ("*IRPA*") or the Immigration and Refugee Protection Regulations ("*IRPR*")

Some of the relevant issues include:

1. The effect of immigration sponsorship undertakings on support obligations
2. Restrictions on ability to sponsor spouses or other family members
3. Bona Fides Requirement
4. Custody and access when one parent has foreign status
5. Foreign divorce law and implications for our courts
6. Marriage fraud, and allegations thereof
7. International adoptions
8. Misrepresentation
9. Maintaining permanent resident status when living abroad
10. Issues for Temporary Residents
11. The value of Canadian Citizenship

THE EFFECT OF IMMIGRATION SPONSORSHIP ON SPOUSAL/CHILD SUPPORT OBLIGATIONS

Sponsorship – An Unconditional Promise of Support

One key area of intersection between Family and Immigration law is the sponsorship of family members. Some of your clients may have sponsored family members for immigration to Canada, or may have themselves been sponsored. Both sponsors and sponsored persons carry certain responsibilities which could impact their obligations and/or entitlements in the event of a relationship breakdown.

Canadian citizens and permanent residents have the right to sponsor certain family members for immigration to Canada. With a few exceptions, the class of sponsorable family members is currently limited to spouses/common-law partners and dependent children, as well as parents and grandparents.

Sponsorship is intended to ensure that sponsored immigrants do not become a burden on the state. In a sponsorship application, the sponsor enters an undertaking to be financially responsible for the sponsored person for a specified period of time. For sponsored spouses, the sponsor's undertaking runs for three years from the date the applicant is landed as a permanent resident. For dependent children less than 22 years of age, the sponsorship period is either ten years from the date of landing or the date on which the child reaches the age of 25, whichever comes first.

In order to file a sponsorship application, the sponsor and applicant must sign an "Application to Sponsor, Sponsorship Agreement and Undertaking". In sponsorship of children or parents, this agreement may be co-signed by the sponsor's spouse. In signing this agreement, the sponsor/co-signer undertakes to provide for the "basic requirements of the sponsored person" including "food, clothing, shelter, fuel, utilities, household supplies, personal requirements, and other goods and services, including dental care, eye care, and other health needs not provided by health care". This undertaking is an unconditional promise of support, which is unaltered by a breakdown in the relationship or a deterioration of the sponsor's financial situation. For the applicant's part, s/he agrees "to make every reasonable effort to provide for my own basic requirements as well as those of my accompanying family members" and "to ask the sponsor... for help if I or my family members are having difficulty supporting themselves".

The principal purpose of the sponsorship agreement is to allow the government to recoup the cost of any social assistance obtained by a sponsored person during the period of the undertaking. If a sponsored person obtains social assistance while an undertaking is in effect, the sponsor is deemed to be in default and the cost of the social assistance becomes a debt to the Crown. According to s.