



Legal Education  
Society of Alberta

62120.00

## 52nd Annual Refresher: Family Law

Lake Louise, Alberta

### Honorary Chair

**Hon. Justice M. David Gates**

Court of Queen's Bench of Alberta  
Calgary, Alberta

### Keynote Speaker

**Hon. Chief Justice Mary Moreau**

Court of Queen's Bench of Alberta  
Edmonton, Alberta

### Sessional Chairs

**Hon. Justice Debbie A. Yungwirth**

Court of Queen's Bench of Alberta  
Edmonton, Alberta

**Heather L. McKay QC**

Daunais McKay + Harms  
Calgary, Alberta

**Pam L. Bell**

Bell and Stock LLP  
Calgary, Alberta

**John-Paul E. Boyd**

John-Paul Boyd Arbitration Chambers  
Calgary, Alberta

**Tina Huizinga**

Huizinga Di Toppa Coles & Layton  
Edmonton, Alberta

**Michelle Mackay**

Gordon Zwaenepoel  
Edmonton, Alberta

## Faculty

**Hon. Justice C.S. Anderson**

Court of Queen's Bench of Alberta  
Calgary, Alberta

**Deputy Chief Judge Lillian K. McLellan**

Provincial Court of Alberta  
Calgary, Alberta

**Assistant Chief Judge Ken A. Holmstrom**

Provincial Court of Alberta  
Edmonton, Alberta

**Patricia L. Daunais QC**

Daunais McKay + Harms  
Calgary, Alberta

**Michael Greene QC**

Sherritt Greene  
Calgary, Alberta

**Sherry L. Kachur QC**

Widdowson Kachur Ostwald Menzies LLP  
Calgary, Alberta

**Doug Moe QC**

Moe Hannah LLP  
Calgary, Alberta

**Wayne A. Barkauskas**

Wise Scheible Barkauskas  
Calgary, Alberta

**Catherine Gerrits**

Dunphy Best Blocksom LLP  
Calgary, Alberta

**Jonathan F. Griffith**

Daunais McKay + Harms  
Calgary, Alberta

**Peter Hryniuk**

Allen Hryniuk  
Calgary, Alberta

**Daniel Jukes**

Miles Davison LLP  
Calgary, Alberta

**Jessica A. MacDonald**

Widdowson Kachur Ostwald Menzies LLP  
Calgary, Alberta

**Aaron D. Martens**

Dunphy Best Blocksom LLP  
Calgary, Alberta

**Brad Mustard**

Moe Hannah LLP  
Calgary, Alberta

**Sharon Numerow**

Alberta Divorce Finances  
Calgary, Alberta

**Krysta H. Ostwald**

Widdowson Kachur Ostwald Menzies LLP  
Calgary, Alberta

**Michele J. Reeves**

Attia Reeves  
Edmonton, Alberta

**John Tobin**

KPMG LLP  
Calgary, Alberta

## LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2019, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2019. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

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  
*52<sup>nd</sup> Annual Refresher: Family Law*

LESA LIBRARY

Prepared by:  
**Michael Greene QC**  
**Sherritt Greene**  
**Calgary, Alberta**



Legal Education  
Society of Alberta

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

**THE INTERSECTION OF IMMIGRATION AND FAMILY LAW:**  
**IMMIGRATION TIPS FOR FAMILY LAWYERS**

Introduction .....	2
The Effect of Immigration Sponsorship on Spousal/Child Support Obligations .....	3
Sponsorship – An Unconditional Promise of Support .....	3
Effect of Sponsorship on Spousal/Child Support Obligations .....	4
Spousal Support .....	5
Child Support .....	7
Restrictions on Ability to Sponsor a Family Member .....	8
Bona Fides Test for Sponsored Spouses .....	10
Marriage Fraud and Allegations Thereof .....	11
Misrepresentation .....	12
Custody and Access When One Parent has Foreign Status .....	13
Foreign Divorce Law and Implications for our Courts .....	13
Severing Corollary Relief .....	14
Divorces of Convenience .....	14
International adoptions .....	14
Issues for Temporary Residents .....	16
The Effect of Separation upon the Status of an Accompanying Spouse .....	16
Considerations When Separation Occurs While an Application for Permanent Residence is in Progress .....	17
Maintaining Permanent Residence Status When Living Abroad .....	17
The Value of Canadian Citizenship .....	18
Conclusion .....	18

## 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.