



# Rules of Reunification: Spousal Sponsorship Issues

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## *Definitional elements: Sponsors (R. 130)*

- ▶ Canadian citizen or permanent resident,
- ▶ 18 years of age or older,
- ▶ Resides in Canada (unless sponsor is a Canadian citizen who undertakes to reside in Canada when spouse/partner becomes a permanent resident).

## *Definitional elements: Sponsors (R. 130) – intention to reside*

*Practice tip:* explore documentation establishing intent to reside in Canada when filing the application, such as:

- ▶ Letter confirming cessation of employment abroad;
- ▶ Foreign immigration status document with expiry date;
- ▶ Lease/deed for property in Canada or letter explaining offer of accommodation;
- ▶ Proof of commencing employment in Canada;
- ▶ Copies of Canadian bank or investment statements;
- ▶ Letter from sponsor explaining intent to return, with explanation of motivation.

# *Definitional elements: Sponsors*

## Who cannot sponsor?

- ▶ in default of court-ordered child or spousal support obligation,
- ▶ indebted to HMRC (may include deposit, removal costs, social assistance repayments),
- ▶ undischarged bankrupt,
- ▶ detained in jail/prison,
- ▶ convicted in or outside Canada during previous 5 years of a sexual offence/offence against the person in relation to a dependent,
- ▶ permanent resident who obtained permanent residency through spouse/partner partnership within last five years,
- ▶ in receipt of social assistance except for reasons of disability.

### *Practice Tip:*

- ▶ when dealing with a sponsor on disability or with limited income, thoroughly document assets or other sources of financial support.

## *Definitional elements:*

# Qualifying spousal-type relationships

- ▶ Married relationship [R.2] – if outside Canada, must be valid under local law and Canadian law,
- ▶ Common law relationship [R.1(1)] – continuous cohabitation of one year; or conjugal relationship with inability to cohabit due to fear of persecution/penal control,
- ▶ Conjugal partner relationship [R.2] – relationship between sponsor and someone outside Canada that is conjugal for > 1 year.

## Contrast with:

- ▶ “Family member” definition [R.1(3)] – only includes spouse or common law partner.

# *Definitional elements: what is conjugality?*

- ▶ OP2, s. 5.25: The word “conjugal” does not mean “sexual relations” alone. It signifies that there is a significant degree of attachment between two partners. The word “conjugal” comes from two Latin words, one meaning “join” and the other meaning “yoke”, thus, literally, the term means “joined together” or “yoked together”. In the *M. v. H.* decision, the Supreme Court adopts the list of factors that must be considered in determining whether any two individuals are actually in a conjugal relationship from the decision of the Ontario Court of Appeal in *Moldowich v. Penttinen*. They include:
  - ▶ shared shelter (e.g., sleeping arrangements);
  - ▶ sexual and personal behaviour (e.g., fidelity, commitment, feelings towards each other);
  - ▶ services (e.g., conduct and habit with respect to the sharing of household chores)
  - ▶ social activities (e.g., their attitude and conduct as a couple in the community and with their families);
  - ▶ economic support (e.g., financial arrangements, ownership of property);
  - ▶ children (e.g., attitude and conduct concerning children)
  - ▶ the societal perception of the two as a couple.
- ▶ From the language used by the Supreme Court throughout *M. v. H.*, it is clear that a conjugal relationship is one of some permanence, where individuals are interdependent – financially, socially, emotionally, and physically – where they share household and related responsibilities, and where they have made a serious commitment to one another.

## *Definitional elements: common law relationships*

- ▶ Basic requirement: continuous cohabitation of one year
- ▶ After one year of cohabitation, separate residences are possible if:
  - ▶ Valid reason provided for break in cohabitation,
  - ▶ Evidence of continuing conjugal (committed) relationship,
  - ▶ Intent to resume cohabitation as soon as possible.
- ▶ A person in a common law relationship can be married to someone else as long as they are separated from the married partner for the period of the common law relationship.

### *Practice Tips:*

- ▶ Focus on establishing evidence of a primary shared household
- ▶ Look for important mail addressed to common address, government registrations at address, joint leases, etc.
- ▶ Keep in mind that cohabitation is not required for couples who cannot cohabit due to persecution or penal control [R. 1(2)]

# *Definitional elements: conjugal partner relationships*

- ▶ Basic requirement: a committed, interdependent “marriage-like” relationship of more than one year,
- ▶ No need for marriage or cohabitation,
- ▶ Policy manual says that there should be an impediment to marriage and cohabitation,
- ▶ Cannot be a substitute for fiancés

## *Practice Tips:*

- ▶ Try to “date” the relationship, i.e. provide as much evidence as possible regarding beginning of relationship,
- ▶ Emphasize evidence that shows time spent together (internet relationships are suspect),
- ▶ The longer the relationship, the easier to prove a conjugal partner relationship,
- ▶ Financial interdependence (i.e. transfers of money) is important,
- ▶ Showing proof of denial of visas helps prove immigration barriers to cohabitation or marriage.



## *Definitional elements: Excluded relationships [R. 117(9)]*

- ▶ Applicants under 18,
- ▶ Sponsor with an existing undertaking for a spouse, common law or conjugal partner,
- ▶ Sponsors or applicants with other partners,
- ▶ Proxy marriages (except for members of the armed services)[see OB 613 – June 11, 2015],
- ▶ Applicants not declared on sponsor's previous permanent residence applications,
- ▶ Non-genuine relationships or those entered into for immigration purposes (R.4).

# *Processing Issues: In Canada or Outside Canada?*

## Inside Canada

- ▶ Pros:
  - ▶ Work permit (for those in status)
  - ▶ Potential for OHIP
  - ▶ Extension of status throughout processing
- ▶ Cons:
  - ▶ Lengthy processing time to permanent residence
  - ▶ Ineligibility for certain inadmissibilities
  - ▶ Must cohabit with spouse/partner in Canada
  - ▶ No prolonged absences from Canada
  - ▶ No access to IAD if refused

## Outside Canada

- ▶ Pros:
  - ▶ Shorter processing time to permanent residence
  - ▶ Flexibility re: place of residence
  - ▶ Access to IAD if refused
- ▶ Cons:
  - ▶ No interim work permit/health care
  - ▶ Risk of prolonged separation if application refused