TAB 3

Managing Family Class Applications

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19th Annual Immigration Law Summit – Day One

The Law Society of Upper Canada | Barreau du Haut-Canada

CONTINUING PROFESSIONAL DEVELOPMENT

19th Annual Immigration Law Summit Nov 2011

PRESENTATION OVERVIEW

1.Hot Off the Press

2.Practice tips

3.Recent jurisprudence

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HOT OFF THE PRESS!

PARENT/ GRANDPARENT SPONSORSHIP MORATORIUM

- No further processing of Parent/ Grandparent Sponsorship applications commencing November 5, 2011;
- Moratorium in place for 24 months;
- All applications submitted before November 5, 2011 will be processed to conclusion.

PARENT AND GRANDPARENT SUPER VISA

- In effect on December 1, 2011;
- Eight-weeks processing time;
- Valid for up to 10 years if issued;
- Will allow an applicant to remain in Canada for up to 24 months at a time without the need for renewal of status.

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PARENT/GRANDPARENT SPONSORSHIP MORATORIUM

OUTSTANDING QUESTIONS:

1. Is the super visa available only to those who cannot submit an application as a result of the moratorium?

2. Will Super Visa application require that applicants provide proof of pre-purchased private health care plan?

3. Will sponsorship applications for parents and grandparents be considered under the H&C category?

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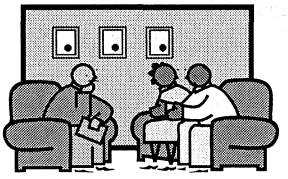
PRACTICE TIPS:
IN-CANADA *VS.* OVERSEAS SPOUSAL SPONSORSHIPS

Is your foreign national client best served by an In-Canada vs. an Overseas Sponsorship application?

Where you submit the application depends on a number of factors:

- Processing times (In–Canada – 20mo. *vs.* Overseas 5- 32 mos.)
- Client's nationality and current status in Canada;
- Client's need/preference for travel outside Canada;
- Risk of prolonged separation if application is refused.



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PRACTICE TIPS:
Implications of SPONSOR' STATUS

What restrictions are imposed on the sponsorship rights of Canadian Citizens vs. Permanent Residents?

➢**Canadian Citizen**: R130(2) - may sponsor a spouse, common-law partner or conjugal partner while residing abroad.

➢**Permanent Resident** – R130(1)(b) - PR applicants must reside in Canada on the day application submitted, throughout and on the day approved.

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PRACTICE TIPS:
IMPLICATIONS OF SPONSOR'S STATUS

What considerations must be made when a Canadian citizen seeks to sponsor from abroad - R130(2)?

Confirming intent to re-establish in Canada includes:

- Employment resignation letter/certificate;
- Confirmation that work or temporary visa has been cancelled in the country of current residence;
- Lease agreement or ownership documents of intended place of residence in Canada;
- Proof of commencement of employment contract in Canada;
- Canadian Bank account printouts;
- Other documents confirming re-settlement.

NOTE Manual IP 02 indicates: "If they [Canadian Citizens] have never worked in Canada and do not have the educational or language skills to find employment in Canada, refusal under A39 may be appropriate if arrangements for the care and support of the sponsored person are not satisfactory"

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PRACTICE TIPS: IMPLICATIONS OF SPONSOR'S STATUS

What considerations do officers make when assessing whether a Permanent Resident sponsor is considered a resident of Canada – R130(1)(b)?

- Whether residence is maintained in Canada;
- Whether spouse and/or children are resident in Canada;
- Assets in Canada;
- Payment of Canadian income tax on global income;
- Visits to Canada regularly;
- Maintaining investments, bank accounts, health insurance or club memberships in Canada.

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PRACTICE TIPS:
IMPLICATIONS OF SPONSOR'S STATUS

When may a Permanent Resident sponsor be found ineligible to sponsor – 130(1)(b)?

- Maintaining residences in two countries at the same time;
- Maintaining a house in Canada, but working abroad;
- Interrupting their residence in Canada or spending little time in Canada;
- Foreign stamps or post marks on correspondence envelopes;
- Non-Canadian address;
- Evidence that they will leave Canada soon after the sponsored applicant becomes a permanent resident.

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PRACTICE TIPS: ADMINISTRATIVE DEFERRALS OF REMOVAL

The Canada Border Services Agency will grant a temporary administrative deferral of removal to out of status spouses who qualify under the In-Canada Spousal Sponsorship Class public policy.

What are the bars to deferral?

- Applicant is inadmissible for security (A34), human or international rights violations (A35), serious criminality and criminality (A36), or organized criminality (A37);
- Applicant is excluded by the Refugee Protection Division under Article F of the Geneva Convention;
- Applicant has charges pending or where charges have been laid but dropped by the Crown in order to effect a removal order;
- Applicant already benefited from an administrative deferral of removal emanating from an H&C/Spousal application;
- Applicant has warrant outstanding for removal;
- Applicant previously hindered or delayed removal; and/or
- Applicant was previously deported from Canada and have not obtained permission to return (ARC).

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PRACTICE TIPS:
CHILD SPONSORSHIPS

What are some considerations to be made when a permanent resident is sponsoring a dependent child?

➢Children born to Permanent Residents outside Canada must be sponsored. Processing times for child sponsorships range from 4 - 24 months.

➢TRP options for sponsored minors – Permanent Residents must reside in Canada when submitting an application. Young children who cannot be left abroad while the parent travels to Canada to lodge a sponsorship application may apply for a Temporary Resident Permit.

➢Issuance of TRP has been a problem at certain visa posts – there is no consistency in the assessment of TRP applications submitted by parents of minors where the parents have indicated that they intend to have the child apply for permanent residence.

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MEETING LOW-INCOME CUT-OFF LEVELS (LICO)

Effective until December 31, 2011

Size of Family Unit	Minimum necessary income
1 person (the sponsor)	$22,229
2 persons	$27,674
3 persons	$34,022
4 persons	$41,307
5 persons	$46,850
6 persons	$52,838
7 persons	$58,827

More than 7 persons, for each additional person, add $5,989

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MEETING LICO

FINANCIAL RESOURCES

MAY INCLUDE:

- Resources of the sponsor's spouse or common-law partner if sponsor's financial resources are inadequate and sponsor's spouse or common-law partner declares their resources as income on their Canadian tax return;
- Cannot include pooled resources from other relatives to meet the income test.

FINANCIAL RESOURCES MUST ORIGINATE FROM CANADIAN SOURCES FOR THE FOLLOWING REASONS:

- Employment income abroad is not a reliable indicator of future or stable employment in Canada;
- CPC staff cannot easily verify if foreign income can be transferred to Canada;

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MEETING LICO

- Converting foreign income into Canadian dollars is resource-intensive;

- In cases of default, collection and litigation, it is easier to recover income from Canadian sources.

EXCEPTIONS TO THE CANADIAN INCOME RULE:

- Sponsors who commute from Canada to work in the U.S.A. can use their U.S. employment income provided it is declared as income on their Canadian income tax return;
-
- Sponsors living in Canada who declare income from foreign sources on their Canadian tax returns can use this foreign income to meet the financial requirements for sponsorship.

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EXCEPTIONS TO MEETING LICO

Regulation 133(4) outlines the exceptions to the requirement for a sponsor to meet the minimum necessary income test:

- Sponsors of dependent children and of spouses, common-law partners or conjugal partners (unless they have dependent children who have dependent children of their own) and persons under the age of 18 whom the sponsor intends to adopt in Canada do not have to meet financial requirements;
- Sponsor must undertake to provide for basic necessities of the sponsored applicants so that the applicants do not rely on social assistance;
- Applicants may be refused for financial reasons under A39 if they are unable or unwilling to support themselves and their dependent children and there are not adequate arrangements for their care and support.

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RECENT JURISPRUDENCE

REINTERPRETATION OF REGULATION 132(5)

Ruling in the decision of *Dokaj* v. *Canada* (Federal Court of Canada, 2009 FC 847) has led Citizenship and Immigration Canada (CIC) to review its interpretation of the *Immigration and Refugee Protection Regulations* concerning the adding of a co-signer to an existing family class sponsorship undertaking.

Under the new interpretation, **where a change in family composition is reported that would otherwise prevent the sponsor from continuing to meet the R133(1)(j)(i) minimum income requirement, the requirement can be considered to have been fulfilled if a co-signer is also being added to the sponsorship undertaking and the combined incomes of the sponsor and co-signer together satisfy the income requirement.**

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RECENT JURISPRUDENCE

***Canada (Attorney General)* v. *Mavi*, 2011 SCC 30, [2011] 2 SCR 504**
SCC RULES FULL SPONSORSHIP DEBT IS TO BE PAID BACK (REGULATION 132) DESPITE CROWN'S DUTY OF FAIRNESS

The content of the province's duty of procedural fairness in reclaiming sponsorship debt :

1. To notify a sponsor at his or her last known address of its claim;
2. To afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection;
3. To consider any relevant circumstances brought to its attention keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; and
4. To notify the sponsor of the government's decision.

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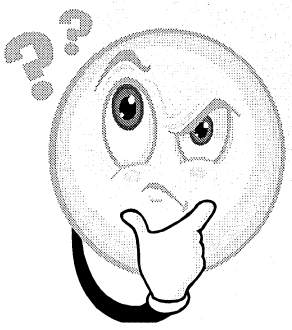
Q & A



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Thank You!

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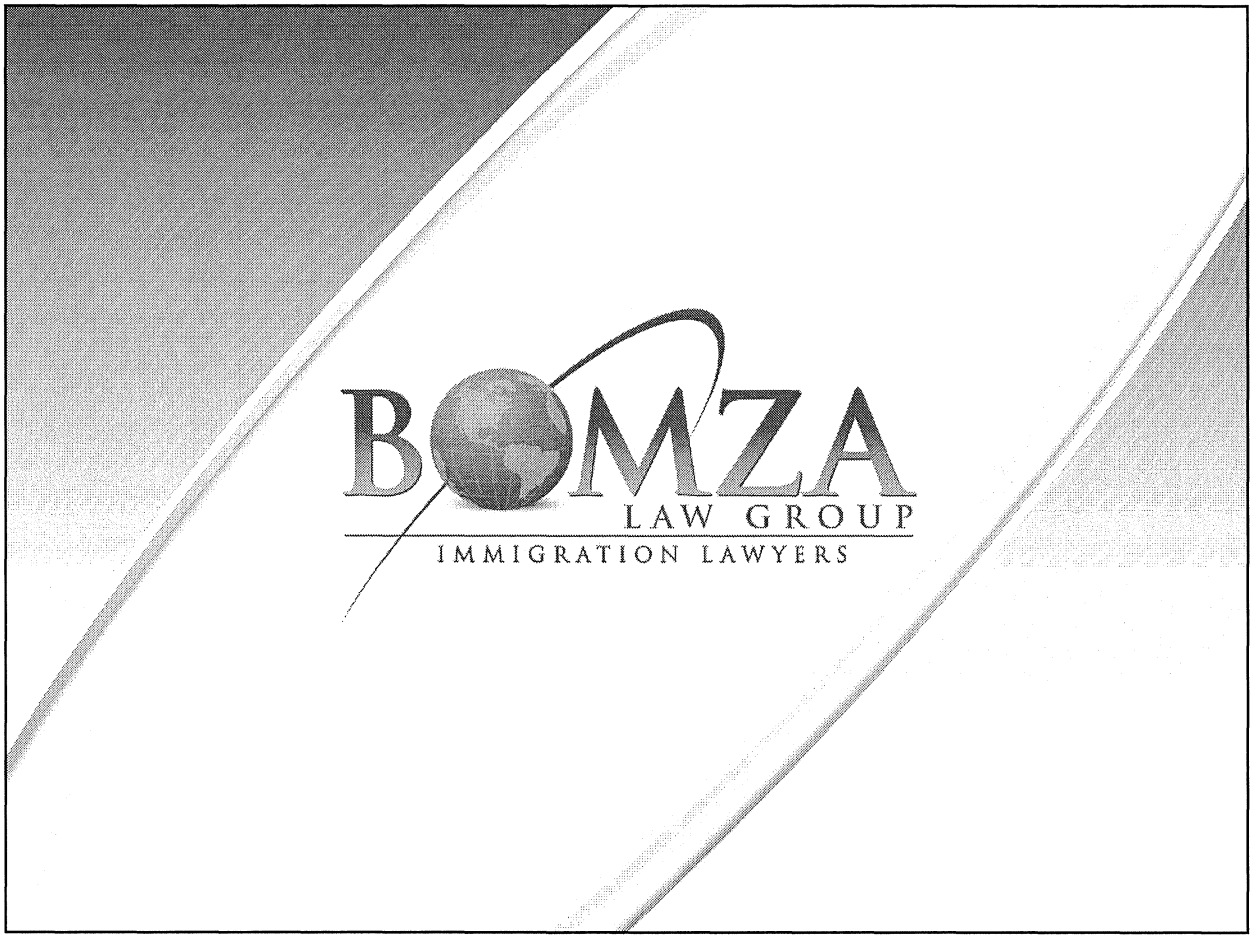
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Citizenship and Immigration Canada Citoyenneté et Immigration Canada

Canada

Operational Bulletin 324 – July 19, 2011

Instructions to officers on adding a co-signer to a family class sponsorship undertaking

Summary

The ruling in the decision of Dokaj v. Canada (Federal Court of Canada, 2009 FC 847) has led Citizenship and Immigration Canada (CIC) to review its interpretation of the *Immigration and Refugee Protection Regulations* (Regulations) concerning the adding of a co-signer to an existing family class sponsorship undertaking. This Operational Bulletin (OB) gives instructions to officers on adding a co-signer to a family class (FC) sponsorship undertaking.

Issue

The ruling in the decision of Dokaj v. Canada (Federal Court of Canada, 2009 FC 847) has led CIC to review its interpretation of the Regulations concerning the adding of a co-signer to an existing FC sponsorship undertaking.

Background

In the Dokaj case, the sponsor submitted an application to sponsor his parents and their eligible dependent children. Before receiving a response from CIC on the sponsorship application, the sponsor submitted an updated application, indicating that he was in a common-law relationship. The sponsor also included an updated undertaking co-signed by his common-law spouse. The application was refused, as the sponsor no longer met the minimum income requirements (R133(1)(j)(i)). As per the existing interpretation of R133(1), the common-law partner was ineligible to co-sign the application since she was not on the application when it was originally received at the Case Processing Centre in Mississauga (CPC-M). Her income could therefore not be considered toward the financial test.

Mr. Dokaj, the sponsor, filed an application to the Federal Court for leave and judicial review of the decision of the officer to refuse the applicant's application to sponsor a member of the FC. The officer found, as per the existing interpretation of R133(1), the applicant's common-law partner ineligible to co-sign the sponsorship application considering that she was not on the application when it was originally received by the CPC-M. The applicant argued that his common-law partner's income should have been considered in minimum necessary income calculations.

On August 27, 2009, the Federal Court found in favour of the applicant. Justice Beaudry concluded that: *"If an Applicant's common-law spouse is to be considered in the calculation of the size of the Applicant's family, her income should also be included in the sponsorship undertaking as per subsection 132(5) and paragraph 134(1)(c) of the Regulations. The statutory provisions do not provide for the exclusion of the spouse's income while including her as a dependent member of the applicant's family."*

Justice Beaudry's reasoning was that CIC could not take into account the additional expenses incurred when adding a family member to the household, such as a spouse or common-law partner, without also taking into consideration the income that the individual brings to the household, if they have co-signed an undertaking.

In order to comply with the court order in the Dokaj case, CIC has developed a reinterpretation of the existing Regulations to allow for the addition of a co-signer to a sponsorship application after it has been received by CIC.

Reinterpretation of the Regulations

With respect to the co-signing of a sponsorship undertaking, subsection 132(5) of the Regulations states the following:

> "(5) Subject to paragraph 137(*c*), the sponsor's undertaking may be co-signed by the spouse or common-law partner of the sponsor if the spouse or common-law partner meets the requirements set out in subsection 130(1), except paragraph 130(1)(*c*), and those set out in subsection 133(1), except paragraph 133(1)(*a*), and, in that case,
>
> (*a*) the sponsor's income shall be calculated in accordance with paragraph 134(1)(*b*) or (*c*); and
>
> (*b*) the co-signing spouse or common-law partner is jointly and severally or solidarily bound with the sponsor to perform the obligations in the undertaking and is jointly and severally or solidarily liable with the sponsor for any breach of those obligations."

R133(1) requires that a sponsor be in compliance with the sponsorship requirements laid out in 133 (1) (a) to (k) from the day on which the application was received by CIC until the day on which a decision is made on their application. Since this provision requires an uninterrupted continuum of meeting the sponsorship criteria throughout the processing of the application, CIC has historically held that a co-signer could not be added to a sponsorship application after it was submitted to CPC-M. Under the new interpretation, where a change in family composition is reported that would otherwise prevent the sponsor from continuing to meet the R133(1)(j)(i) minimum income requirement, the requirement can be considered to have been fulfilled if a co-signer is also being added to the sponsorship undertaking and the combined incomes of the sponsor and co-signer together satisfy the income requirement.

With respect to income calculation, R134(1)(d) states that: *"if there is a co-signer, the income of the co-signer, as calculated in accordance with paragraphs (a) to (c), with any modifications that the circumstances require, shall be included in the calculation of the sponsor's income".*

Henceforth, a co-signer can be added between the day on which the sponsorship application was filed and the day on which a decision is made with respect to the application, if required, due to a change in circumstances related to family composition. When assessing the sponsor's income against the minimum necessary income requirement (R133(1)(j)(i)), both the increase in the minimum income requirements resulting from the addition of a family member, and the co-signer's income, calculated in accordance with R134 (*a*) to (*c*) against the Low Income Cut-off (LICO) in effect at that time, shall be considered.

It should be noted, however, that **a co-signer may not be added to the sponsorship application if the sponsorship was already assessed and at that assessment, the sponsor failed to meet the sponsorship requirements.** R133(1) requires that a sponsor be in compliance with the sponsorship requirements detailed in R133(1) (a) to (e) from the time the application was received by CIC until the time that a final decision is made on their application.

Operational instructions based on re-interpretation of R132(5)

The following instructions provide guidance to officers on assessing a sponsorship application where a reassessment is necessary due to a change in circumstances.

1. Co-signer included at time of filing

- When the co-signer is included at the time of filing, the income of both the sponsor and co-signer is assessed in accordance with R134(1)(a) and (b) – (test 1).
- If the sponsor and co-signer do not produce a document referred to in 134(a), their income is assessed in accordance with R134(1)(c) – (test 2)
- Where a reassessment, pursuant to R134(2), is required at a later date due to a change in circumstances, only test 2 described in R134(1)(c) applies. Line 150 of the last notice of assessment issued by the Minister of National Revenue cannot be used.
- R134(2) re-assessment is conducted for the 12 month period prior to the **most recent change in circumstances or, if request for reassessment is made by the visa office, the 12 month period prior to the visa office request being received at CPC-M.**

Example of most recent change in circumstances

A sponsor submitted an application on January 1, 2008, to CPC-M to sponsor his widowed father and has included his spouse in the application as a co-signer. He must meet the minimum income requirements for a family of 3. The application is in queue and waiting to be processed. In November 2008, the sponsor advises us that his wife has given birth to a baby and, as a result, his family has increased to 4 people (1st change in circumstance). Since the application is still in queue for processing, the correspondence is attached to the sponsor's application to be assessed when the sponsorship application comes to the front of the queue. In December 2009, the sponsor and his wife have a second child which increases the family size to 5 for the purpose of the financial test (2nd change in circumstance).

- CPC-M would assess the income of the sponsor and of the co-signer, based on the original 12 month period (January 1, 2007 to January 1, 2008) as per R134(1), to determine if the sponsor meets the financial test for 3 persons.

If sponsor does not meet original assessment

- If the sponsor does not meet the financial test, a NOT MET recommendation is rendered. There is no need for a section 134(2) reassessment, as the sponsor must satisfy the R133(1)(j) minimum income requirements **from the day on which the application was received by CIC** until the day on which a decision is made on their application.

If the sponsor meets the requirement to sponsor at time of filing (original assessment)

Both assessments (R134(1) initial assessment met and R134(2) reassessment, if applicable) and recommendation must be clearly recorded in the Global Case Management System (GCMS), and the visa office notified.

2. Co-signer not included at time of filing

Original application at time of filing does not include a co-signer; application is still in queue for processing at CPC-M (pre-recommendation stage) and has not been sent to the visa office; request to add a co-signer may or may not have been made by the sponsor.

- Sponsor did not include a co-signer at time of filing.
- Upon review of application, CPC-M notes that there has been a change in circumstances which warrants a re-assessment.
- CPC-M performs an initial assessment and verifies if the sponsor meets the financial test for the 12 month period prior to the filing/lock-in date.

If sponsor does not meet original assessment:

- If the sponsor does not meet the financial test, a NOT MET recommendation is rendered. The

option to include a co-signer at this point is not possible as the applicant has not satisfied R133(1)(j).

- Even if circumstances have improved from a financial perspective for the sponsor since his original submission, a reassessment cannot be made when the sponsor has failed to meet the financial test at the first assessment (R133(1)(j)). If the sponsor opted to proceed, the "NOT MET" recommendation is updated in GCMS.

If sponsor meets the original assessment:

- Sponsor meets the financial test in the original assessment period and, due to a change in circumstances, the family size has increased and the sponsor no longer meets MNI (sponsor has married, sponsor has had a child, etc)

R134(2) applies; CPC-M initiates a re-assessment of the 12 month period prior to receipt of the new information (the 12 month period prior to the **most recent change in circumstances)** and clearly records the established reassessment period in the Work in Progress (WIP) events.

Example:

A sponsor (single) submitted an application on January 1, 2008 to CPC-M to sponsor his widowed father. He must meet for a family of 2. The application is in queue and waiting to be processed. On January 1, 2009 he gets married and his family increases to 3 people (1st change in circumstance). He writes to our office and advises that he has married and that his wife is expecting a child. The correspondence is attached to his application for review once application comes up in queue. By the time CPC-M first reviews the application, the baby is born (2nd change in circumstance) and the family size is now 4 persons which includes himself, his spouse, his newborn child and his father.

- If the applicant meets the original R134(1) assessment based on a family of two, a reassessment is required based on the change in circumstances.

The sponsor will be advised that a reassessment is required, and

1. To submit new financial documentation for the applicable re-assessment period;
2. That he is eligible to include his spouse as a co-signer, if she meets the requirements of R132(5) and that the following documents must also be submitted if she is added as a co-signer:
    - A new/updated 1344A (application and undertaking) signed by the sponsor and co-signer;
    - A new 1344B (Agreement) signed by the sponsor, co-signer and principal applicant; and
    - An updated financial evaluation (IMM 1283) form completed by both the sponsor and co-signer

Note: If the sponsor chooses to proceed without adding a co-signer and a negative recommendation is rendered, the sponsor cannot request to add a co-signer after a negative recommendation is made by CPC-M.

Both assessments (initial assessment met and reassessment if applicable) must be clearly recorded in GCMS. Both the original and updated 1344A and 1344B forms should be kept on file.

3. Co-signer not included at time of filing, but application already at the visa office

CPC-M has already rendered a recommendation on the sponsorship application; the application for permanent residence is in process at the visa office when new information is received at CPC-M indicating that the sponsor wishes to add a co-signer to the sponsorship application in order to

meet the financial test .

If the visa office is informed or notes that there is a change in circumstances, CPC-M should be notified so that they can review the sponsorship and determine if a reassessment is necessary.

Initial or previous assessment NOT MET:

A co-signer cannot be included because we cannot do upward reassessments (change a former negative assessment to a positive assessment) since the sponsor must meet the financial requirements throughout the entire process (R133(1)(j)); the sponsor and the visa office are informed that the negative assessment remains intact.

Please refer to the following paragraph if a previous assessment was not met.

Initial assessment MET but reassessment NOT MET:

If a case is still in process where CPC-M rendered a Not Met reassessment and the officer is satisfied that the Dokaj decision applies to the specific circumstances of the case, in that

- The sponsor met the sponsorship requirements including the minimum necessary income when initially assessed; and
- Due to a change in family composition, the sponsor requested that their spouse or common-law partner be added as a co-signer; and
- The addition of a co-signer after the sponsorship application was submitted was not permitted in accordance with the existing interpretation of R133(1);

The sponsorship application should be reassessed with the addition of the co-signer.

If the co-signer meets the requirements of R132(5), the total income of the sponsor must be determined in accordance with R134(1)(d).

When the sponsorship requirements are met with the addition of the co-signer, the sponsor will be advised that a reassessment is required, and

1. To submit new financial documentation for the applicable re-assessment period (the 12 month period prior to CPC-M being advised of the change in circumstances);
2. That they are eligible to include their spouse or common-law partner as a co-signer, if that person meets the requirements of R132(5) and that the following documents must also be submitted if the spouse or common-law partner is added as a co-signer:
    - A new/updated 1344A (application and undertaking) signed by the sponsor and co-signer;
    - A new 1344B (Agreement) signed by the sponsor, co-signer and principal applicant; and
    - An updated financial evaluation (IMM 1283) form completed by both the sponsor and co-signer

Initial assessment MET:

- Re-assessment to be conducted for the 12 month period prior to CPC-M being advised of the **most recent change in circumstances** or, if the request for a reassessment was made by the visa office**, the 12 month period prior to receipt of the reassessment request at CPC-M from the visa office.**
- The sponsor will be advised that a reassessment is required, and

1. To submit new financial documentation for the applicable re-assessment period;
2. That they are eligible to include their spouse or common-law partner as a co-signer, if that person meets the requirements of R132(5) and that the following documents must also be submitted if the spouse or common-law partner is added as a co-signer:
    - A new/updated 1344A (application and undertaking) signed by the sponsor and co-signer;
    - A new 1344B (Agreement) signed by the sponsor, co-signer and principal applicant; and
    - An updated financial evaluation (IMM 1283) form completed by both the sponsor and co-signer

Note: If the sponsor chooses to proceed without adding a co-signer and a negative recommendation is rendered, the sponsor cannot request to add a co-signer after our negative recommendation is made.

4. Quebec cases

When a sponsor is a resident of Quebec, CPC-M does not have jurisdiction to assess the financial test, co-signers, bankruptcy, and defaults of undertakings or support payments. These eligibility requirements are not reviewed at the Federal level and the application is forwarded to the Ministère de l'immigration et des communautés culturelles (MICC) for provincial review and assessment of these eligibility requirements.

However, there are occasions where the sponsor moves out of the province of Quebec prior to MICC conducting an assessment and/or the visa office rendering their final decision.

For applications where the sponsor was a resident of Quebec at the time of filing but has since moved to another province (before a visa is issued); the sponsor will be advised that a financial assessment is required and that he is eligible to include his spouse or common-law partner as a co-signer at this time, provided that:

1. The co-signer meets all eligibility requirements to co-sign (as per R132(5));
2. a new/updated 1344A (application and undertaking) signed by the sponsor and co-signer is submitted;
3. A 1344B (Agreement) is provided signed by the sponsor, co-signer and principal applicant; and,
4. Updated financial evaluation form (IMM 1283) is completed by both the sponsor and co-signer.

Note: The assessment period will be the 12 month period prior to CPC-M receiving a new signed 1344A and signed agreement.

The lock-in date will remain the date on which the original signed sponsorship application and processing fees were received at CPC-M.

If MICC has rendered a negative financial assessment in a situation where the sponsor has moved to another province, please contact Operational Management and Coordination Branch (OMC) via the general mailbox at OMC-GOC-Immigration@cic.gc.ca for further instructions.

Summary of when a co-signer can be added to an existing sponsorship application:

i. In all cases, the sponsor must have met **all** sponsorship eligibility requirements at the initial sponsorship assessment.
ii. In all cases, a co-signer may not be added after a negative (Not Met) recommendation has been rendered on the initial assessment.

iii. In all cases, a co-signer may not be added after a negative (Not Met) recommendation has been rendered on a reassessment.
iv. CPC-M will add a co-signer after the initial assessment, even if the sponsor did not choose to include the co-signer at initial filing of the sponsorship application, as long as the sponsor met the original financial assessment and all other eligibility requirements on his own.
v. If the sponsor is given the opportunity to add a co-signer following a change in circumstances and chooses not to do so and a negative recommendation is rendered, on a reassessment, the sponsor cannot then request to add a co-signer.
vi. Although the facts in the Dokaj case were specific to the sponsorship of parents, the re-interpretation of the regulations, allowing the addition of the co-signer after filing, will apply to all family class categories where the financial test is applicable.

Cases before the Federal Court

In cases similar to the Dokaj case which are before the Federal Court (cases where the sponsor chose not to proceed with the application for permanent residence), CIC will consider whether or not it is appropriate to consent to the Judicial Review. If a case is consented on, it will be returned to CPC-M for reconsideration of the sponsorship requirements. The sponsor will then be advised by CPC-M that a reassessment is required, and

1. To submit new financial documentation for the applicable re-assessment period;
2. That they are eligible to include their spouse or common-law partner as a co-signer, if that person meets the requirements of R132(5) and that the following documents must also be submitted if the spouse or common-law partner is added as a co-signer:
    - A new/updated 1344A (application and undertaking) signed by the sponsor and co-signer;
    - A new 1344B (Agreement) signed by the sponsor, co-signer and principal applicant; and
    - An updated financial evaluation (IMM 1283) form completed by both the sponsor and co-signer

Cases before the Immigration Appeal Division (IAD)

Hearings Officers representing the Minister on cases similar to the Dokaj case must apply this new interpretation of the sponsorship Regulations. The elements which must be present to equate a case before the IAD to the Dokaj case are the following:

- The case was refused by a visa officer specifically because the sponsor did not satisfy the minimum income requirement (R133(1)(j)), and;
- Before the decision was made on the case, the sponsor had informed us of a change in family composition and asked to add a co-signer to the sponsorship undertaking.

If the Hearings Officer is satisfied that the Dokaj decision applies to the specific circumstances of the case being appealed, the Hearings Officer will inform the visa office that they believe a reassessment should apply and seek their position. Depending on the visa office response, the Hearings Officer will then either request that the sponsor withdraw the appeal or request an adjournment from the IAD. This way the appellant maintains their place in the "queue" to have their appeal heard. The reason for CIC's request for either the withdrawal or the adjournment will be explained to the appellant.

If the appellant agrees to withdraw their appeal or if there is an adjournment from the IAD, the Hearings Officer will inform the appropriate visa office and, accordingly, return the file to that office. The Hearings Officer will copy the CPC-M on their email communications with the visa office in this regard.

CPC-M will then notify the sponsor (appellant) to submit a new IMM 1344A, IMM 1344B and an updated financial evaluation form (IMM 1283), completed by both the sponsor and the co-signer, to the CPC-M. When CPC-M receives the new forms completed by the sponsor and co-signer, they will assess the co-signer in accordance with R132(5) and calculate the total income of the sponsor in accordance with R134(1)(b) or (c), taking into account the income of the co-signer as required in R134(1)(d). If the sponsorship requirements are met with the addition of the co-signer, CPC-M will notify the sponsor (by letter), the Hearings Officer and the visa office that the sponsorship requirements have been met.

If there is a withdrawal of the appeal, then the visa office will proceed to process the application(s) for permanent residence for the sponsored applicant(s). If there was an adjournment, then following the met reassessment, the Hearings Officer should be asking the appellant to withdraw their appeal. Following the withdrawal, the visa office will proceed to process the application for permanent residence for the sponsored applicant(s).

If the appellant does not opt to withdraw their appeal or if the appeal hearing is not adjourned, the case will be processed at the IAD taking into account the re-interpretation of the sponsorship Regulations. The Hearings Officer will advise the visa office and CPC-M accordingly and ask the appellant to submit to the CPC-M, a new IMM 1344A and IMM 1344B and an updated financial evaluation form (IMM 1283), completed by both the sponsor and the co-signer, to allow for a financial reassessment which takes into account the income of the co-signer. Where all of the sponsorship requirements are met by the sponsor and the co-signer, including the minimum necessary income requirement, the Hearings Officer is encouraged to consider consenting to the appeal. If the Hearings Officer consents to the appeal, the entire file, including any new documents submitted to the IAD by the appellant, will be transferred back to the appropriate office with instructions for the processing of the permanent resident application(s) to continue. CPC-M will then forward the new IMM 1344 A and B forms and the updated IMM 1283 to the same office.

Date Modified: 2011-07-19

Citizenship and Immigration Canada | Citoyenneté et Immigration Canada | Canada

Operational Bulletin 350 – November 4, 2011

Fourth Set of Ministerial Instructions: Temporary Pause on Family Class Sponsorship Applications for Parents and Grandparents

Summary

Effective November 5, 2011, a temporary pause has been placed on new Family Class sponsorship applications for parents and grandparents (FC4). Instructions are provided on what to do with FC4 sponsorship applications received before and after this date.

Issue

This Operational Bulletin (OB) provides guidance on FC4 sponsorship applications and the fourth set of Ministerial Instructions (MI-4) which come into force November 5, 2011.

Background

On June 18, 2008, the *Immigration and Refugee Protection Act* was amended to give the Minister of Citizenship and Immigration authority to issue instructions that would ensure the processing of applications and requests be conducted in a manner that, in the opinion of the Minister, will best support the attainment of immigration goals set by the Government of Canada.

The MI-4 comes into force on November 5, 2011 and includes changes to the following programs:

- **Family Class Sponsorship Applications:** A temporary pause on new sponsorship applications for parents and grandparents.
- **Federal Skilled Worker Program:** Introduction of a new PhD eligibility stream (see OB 351 for more information).

The full text of these instructions can be found at:
www.gazette.gc.ca/rp-pr/p1/2011/2011-11-05/html/notice-avis-eng.html#d108

Processing Instructions

Effective November 5, 2011, no new family class sponsorship applications for a sponsor's parents (R117(1)(c)) or grandparents (R117(1)(d)) will be accepted for processing. This temporary pause is being implemented to allow for application backlog reduction in the FC4 category to begin in 2012. This measure is being implemented as part of a broader strategy to address the large backlog and wait times in the FC4 category, supporting the attainment of immigration goals set by the Government of Canada.

The temporary pause will remain in place for up to 24 months while a more responsive, sustainable, and long-term approach for the program is being considered.

It does not affect sponsorship applications for spouses, partners, dependent or adopted children and other eligible relatives.

Applications received on or after November 5, 2011

New FC4 Sponsorship applications for parents or grandparents received by Centralized Processing Centre- Mississauga (CPC-M) on or after November 5, 2011, will be returned to the sponsor with a letter (see Appendix A) advising them of the temporary pause. Applications which are postmarked before November 5, 2011, but are received at CPC-M on or after November 5, 2011 will also be returned to the sponsor. In both cases, processing fees shall be returned.

Applications received before November 5, 2011

Complete FC4 sponsorship applications received by CPC-M prior to close of business (5 p.m. EST) on November 4, 2011, should continue to be processed as usual. Cases where FC4 sponsorship applications have been submitted to CPC-M, but the applications for permanent residence have not yet been submitted to the visa office are not affected by the temporary pause.

Cost recovery fee payment made before November 5, 2011

In cases where an applicant has submitted their cost recovery fee payment but CPC-M has not received the FC4 sponsorship application before close of business (5 p.m. EST) on November 4, 2011, the applicant will receive a refund of the processing fees.

Humanitarian and Compassionate Requests

Requests made on the basis of Humanitarian and Compassionate grounds made from outside Canada that accompany any permanent resident application affected by Ministerial Instructions but not identified for processing under the Instructions will not be processed.

Updates to the IP 2 manual are forthcoming.

For further information outlined in this OB, please contact your supervisor or your Regional Program Advisor (RPA). RPAs may in turn contact Operational Management and Coordination Branch at OMC-GOC-Immigration@cic.gc.ca.

Appendix A

Dear Madam/Sir,

We have received your application to sponsor a parent or grandparent to come to Canada. The date-received stamp on your application shows it was received at the Case Processing Centre – Mississauga (CPC-M) on or after November 5, 2011.

Effective November 5, 2011, Citizenship and Immigration Canada (CIC) has temporarily stopped accepting new applications for the sponsorship of parents and grandparents. Only applications to sponsor parents and grandparents received before November 5, 2011, will be processed at CPC-M. This temporary pause in accepting new applications will continue until further notice. For additional information, please visit our website at:
www.cic.gc.ca/english/department/media/releases/2011/2011-11-04.asp

As a result of this temporary pause, we are returning your application and any supporting documents you have submitted. No record of your application has been kept on file.

If you have paid your fees online, the fees will be refunded directly to your credit card. If you paid your fees at a financial institution and have an original payment receipt form (IMM 5401), you will

be issued a refund by mail. Please allow up to 16 weeks for the delivery of your refund.

Although you may not apply to sponsor your parent or grandparent for immigration to Canada at this time, effective December 1, 2011, a Parent and Grandparent Super Visa will be available to those who qualify. For additional information about visiting Canada, please refer to our website at: http://www.cic.gc.ca/english/index.asp.

Sincerely,

Case Processing Centre – Mississauga

Citizenship and Immigration Canada

Date Modified: 2011-11-04

Federal Court  Cour fédérale

Date: 20090827

Docket: IMM-968-09

Citation: 2009 FC 847

Ottawa, Ontario, August 27, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

GJOVALIN DOKAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) for judicial review of a decision by an immigration officer at the Case Processing Centre (CPC) in Mississauga, dated February 10, 2009, wherein the immigration officer refused the Applicant's application to sponsor a member of the family class.

Issue

[2] Did the immigration officer err in fact and law in his determination that the Applicant did not meet the financial requirements to sponsor his family members?

[3] The application for judicial review shall be allowed for the following reasons.

Factual Background

[4] On August 16, 2006, the Applicant submitted a family class sponsorship application with supporting documentation. The application was to sponsor his parents and eligible siblings, a total of seven persons.

[5] Not having received any response from the Respondent, the Applicant submitted an updated application on June 30, 2008, where he indicated that he has been in a common-law relationship, as defined by the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations), since September 25, 2006. The Applicant's updated application included a sponsorship application and sponsorship undertaking signed by the Applicant's common-law spouse.

[6] On October 2, 2008, the Applicant was requested by the CPC in Mississauga to provide updated information with respect to his family class sponsorship application.

[7] By letter dated October 28, 2008, the requested information was submitted for both the Applicant and his common-law wife.

Impugned Decision

[8] On February 10, 2009, the immigration officer found that the Applicant's income for the assessment period was less than the Low Income Cut-off (LICO) requirement for sponsorship purposes.

[9] The officer also informed the Applicant that the applicable minimum necessary income (MNI) had been modified to include his common-law partner in the calculation of his family size. The Applicant's common-law partner was ineligible to co-sign his application because she could not be added once the application was originally received, and thus, her income was not to be considered towards the financial test.

[10] Under the Regulations that came into effect on June 28, 2002, all sponsors residing outside of Quebec are assessed using the same LICO requirement. Regardless of the size of the population base in which a sponsor resides, the MNI requirement is the same. The Applicant's income for the period of assessment was $56,792.77 while the required income for a family of nine persons is $69,012.

[11] To determine if the MNI requirement has been met, consideration is first given to the amount indicated on Line 150 of the Applicant's Notice of Assessment for the most recent tax year prior to the submission of his sponsorship application. If this amount is not equal to or greater than

the MNI, consideration is then given to income earned in the 12 month period immediately preceding the date in which the application was submitted.

[12] As the amount listed on the Notice of Assessment was less than the MNI, the Applicant's income was assessed on the 12 month period preceding the date the sponsorship application was received by the CPC.

[13] The Regulations require that along with all the eligibility requirements, sponsors must meet the MNI requirement from the day the sponsorship is filed until the day a final decision is rendered by the visa office.

[14] All sponsors must meet the low-income requirement unless they are sponsoring a spouse, common-law partner, conjugal partner and/or dependent children who have no dependent children. The MNI required for sponsorship is determined by the size of the family of each individual sponsor. The officer explained that in accordance with the Regulations, the size of the family is composed of the following individuals:

> a) The sponsor and his/her family members*;
> b) The sponsored family member, and his/her family members*, whether they are accompanying the sponsored family member or not;
> c) Every other person, and their family members*, for whom the sponsor has given or co-signed and the undertaking is still in effect;
> d) Every other person and their family members*, for whom the sponsor's spouse or common-law partner has given or co-signed, if the sponsor's spouse or common-law partner is serving as a co-signer on the current application.
>
> * A family member is considered as any of the following individuals:

> i) A spouse or common-law partner;
> ii) A biological or adopted child less than 22 years of age who is not married or in a common-law relationship;
> iii) A biological or adopted child who is more than 22 years of age who has depended on the parent since before the age of 22 and has been continuously enrolled in and attending a post-secondary institution;
> iv) A child who is 22 years of age or older and has depended on the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition.

[15] In the case at bar, the size of the Applicant's family and the applicable MNI required has been modified as it was necessary to include Eleftheria Petroulias, the Applicant's common-law partner, in the calculation of his family size, as he indicated that he was in a common-law relationship when the sponsorship application was received.

[16] The officer found the Applicant's co-signer was ineligible to co-sign his application, as she was not on the application when it was originally received. A co-signer cannot be added to the application once it has been received at the CPC. Therefore, her income cannot be considered towards the financial test and the officer also did not have the authority to consider income earned outside the stated twelve month period.

Relevant Legislation

[17] The relevant legislative provisions are contained in Appendix A at the end of this document.

Standard of Review

[18] In the recent decision of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada concluded that there are only two standards of review: correctness and reasonableness. The Court described the new standard of reasonableness at paragraph 47. Following *Dunsmuir*, the question of whether an immigration officer erred in their factual assessment of the application is reviewable according to the new standard of reasonableness.

[19] As a result, this Court will only intervene to review a visa officer's decision if it does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47). For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process.

[20] The appropriate standard of review when a decision-maker is interpreting a statute is correctness (*Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 741 (T.D.); *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982).

Analysis

[21] It is my opinion that the immigration officer at the CPC has erred in its determination of whether the Applicant could sponsor members of the family class.

[22] The Applicant's initial application, submitted in August 2006, was to sponsor his parents and eligible siblings for a total of seven persons plus himself. When the immigration officer

rendered a final decision in February 2009, the LICO for the Applicant's family, which now included his common-law wife and totalled nine persons, was $69,012. The Applicant's income for the period of assessment was $56,792.77 without his common-law wife income.

[23] The officer found that the income of the Applicant's common-law spouse could not be included in the sponsorship undertaking because she was not his common-law spouse when the initial sponsorship application was remitted and therefore she could not be added once the application was received by the CPC.

[24] However, the Respondent argues that the common-law spouse must be considered in the calculation of the size of the Applicant's family, as she is now considered as a member of his family.

[25] If the Applicant's common-law spouse is to be considered in the calculation of the size of the Applicant's family, her income should also be included in the sponsorship undertaking as per subsection 132(5) and paragraph 134(1)(*c*) of the Regulations. The statutory provisions do not provide for the exclusion of the spouse's income while including her as a dependent member of the Applicant's family.

[26] Inclusive of his common-law spouse income, the Applicant met the LICO at the time the decision was made.

[27] No question of general importance was submitted and none arises.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed. The matter is remitted back for a redetermination by a newly appointed officer. No question is certified.

"Michel Beaudry"

Judge

APPENDIX A

Immigration and Refugee Protection Regulations, SOR/2002-227:

Division 3
Sponsors
Sponsor
130. (1) Subject to subsection (2), a sponsor, for the purpose of sponsoring a foreign national who makes an application for a permanent resident visa as a member of the family class or an application to remain in Canada as a member of the spouse or common-law partner in Canada class under subsection 13(1) of the Act, must be a Canadian citizen or permanent resident who

(a) is at least 18 years of age;

(b) resides in Canada; and

(c) has filed a sponsorship application in respect of a member of the family class or the spouse or common-law partner in Canada class in accordance with section 10.

Sponsor not residing in Canada
(2) A sponsor who is a Canadian citizen and does not reside in Canada may sponsor an application referred to in subsection (1) by their spouse, common-law partner, conjugal partner or dependent child who has no dependent children if the sponsor will reside in Canada when the applicant becomes a permanent resident.

Sponsorship undertaking
131. The sponsor's undertaking shall be given

(a) to the Minister; or

(b) if the sponsor resides in a province that has

Section 3
Parrainage
Qualité de répondant
130. (1) Sous réserve du paragraphe (2), a qualité de répondant pour le parrainage d'un étranger qui présente une demande de visa de résident permanent au titre de la catégorie du regroupement familial ou une demande de séjour au Canada au titre de la catégorie des époux ou conjoints de fait au Canada aux termes du paragraphe 13(1) de la Loi, le citoyen canadien ou résident permanent qui, à la fois :

a) est âgé d'au moins dix-huit ans;

b) réside au Canada;

c) a déposé une demande de parrainage pour le compte d'une personne appartenant à la catégorie du regroupement familial ou à celle des époux ou conjoints de fait au Canada conformément à l'article 10.

Répondant ne résidant pas au Canada
(2) Le citoyen canadien qui ne réside pas au Canada peut parrainer une demande visée au paragraphe (1) faite par son époux, son conjoint de fait, son partenaire conjugal ou son enfant à charge qui n'a pas d'enfant à charge à condition de résider au Canada au moment où le demandeur deviendra résident permanent.

Engagement de parrainage
131. L'engagement de parrainage est pris, selon le cas :

a) envers le ministre;

b) si la province de résidence du répondant a

entered into an agreement referred to in subsection 8(1) of the Act that enables the province to determine and apply financial criteria with respect to sponsorship and the administration of sponsorship undertakings, to the competent authority of the province.

conclu avec le ministre, en vertu du paragraphe 8(1) de la Loi, un accord l'habilitant à établir et à mettre en oeuvre les normes financières applicables à un tel engagement et à en assurer le suivi, envers les autorités compétentes de la province.

Undertaking — duration

132. (1) Subject to subsection (2), the sponsor's undertaking obliges the sponsor to reimburse Her Majesty in right of Canada or a province for every benefit provided as social assistance to or on behalf of the sponsored foreign national and their family members during the period

Engagement : durée

132. (1) Sous réserve du paragraphe (2), le répondant s'engage à rembourser à Sa Majesté du chef du Canada ou de la province en cause les prestations fournies à titre d'assistance sociale à l'étranger parrainé, ou pour son compte, ou aux membres de la famille de celui-ci, ou pour leur compte :

(a) beginning

a) à compter, selon le cas :

(i) if the foreign national enters Canada with a temporary resident permit, on the day of that entry,

(i) si l'étranger parrainé est entré au Canada muni d'un permis de séjour temporaire, du jour de son entrée,

(ii) if the foreign national is in Canada, on the day on which the foreign national obtains a temporary resident permit following an application to remain in Canada as a permanent resident, and

(ii) si l'étranger parrainé est déjà au Canada, du jour où il obtient un permis de séjour temporaire à la suite d'une demande de séjour au Canada à titre de résident permanent,

(iii) in any other case, on the day on which the foreign national becomes a permanent resident; and

(iii) dans tout autre cas, de la date à laquelle l'étranger devient résident permanent;

(b) ending

b) jusqu'à, selon le cas :

(i) if the foreign national is the sponsor's spouse, common-law partner or conjugal partner, on the last day of the period of three years following the day on which the foreign national becomes a permanent resident,

(i) si l'étranger est l'époux, le conjoint de fait ou le partenaire conjugal du répondant, la date d'expiration de la période de trois ans suivant la date où il devient résident permanent,

(ii) if the foreign national is a dependent child of the sponsor or of the sponsor's spouse, common-law partner or conjugal partner or is a person referred to in paragraph 117(1)(g), and is less

(ii) si l'étranger est l'enfant à charge du répondant ou de l'époux, du conjoint de fait ou du partenaire conjugal de ce dernier, ou est la personne visée à l'alinéa 117(1)g), et est âgé de

than 22 years of age when they become a permanent resident, on the earlier of

(A) the last day of the period of 10 years following the day on which the foreign national becomes a permanent resident, and

(B) the day on which the foreign national reaches 25 years of age,

(iii) if the foreign national is a dependent child of the sponsor or of the sponsor's spouse, common-law partner or conjugal partner and is 22 years of age or older when they become a permanent resident, on the last day of the period of three years following the day on which the foreign national becomes a permanent resident; and

(iv) if the foreign national is a person other than a person referred to in subparagraph (i), (ii) or (iii), on the last day of the period of 10 years following the day on which the foreign national becomes a permanent resident.

Undertaking to province — duration
(2) In the case of an undertaking to a competent authority of a province referred to in paragraph 131(b), the period referred to in subsection (1) shall end not later than

(a) if the foreign national is a dependent child and is less than 22 years of age on the day on which they become a permanent resident, the later of

(i) the day on which they reach 22 years of age, and

(ii) the last day of the period of 10 years following the day they become a permanent resident; and

moins de vingt-deux ans lorsqu'il devient résident permanent, celle des dates suivantes qui est antérieure à l'autre :

(A) celle où expire la période de dix ans suivant la date où il devient résident permanent,

(B) le jour où il atteint l'âge de vingt-cinq ans,

(iii) si l'étranger est l'enfant à charge du répondant ou de l'époux, du conjoint de fait ou du partenaire conjugal de ce dernier et est âgé d'au moins vingt-deux ans au moment où il devient résident permanent, la date d'expiration de la période de trois ans suivant la date où il devient résident permanent,

(iv) si l'étranger n'est pas visé aux sous-alinéas (i), (ii) ou (iii), l'expiration de la période de dix ans suivant la date où il devient résident permanent.

Durée de l'engagement : province
(2) Dans le cas de l'engagement pris envers les autorités compétentes d'une province conformément à l'alinéa 131b), la période visée au paragraphe (1) prend fin au plus tard, selon le cas :

a) si l'étranger est un enfant à charge âgé de moins de vingt-deux ans au moment où il devient résident permanent, du dernier en date des événements suivants :

(i) le jour où il atteint l'âge de vingt-deux ans,

(ii) l'expiration de la période de dix ans suivant la date où l'étranger devient résident permanent;

(b) if the foreign national is a person other than a dependent child and is less than 22 years of age on the day on which they become a permanent resident, on the last day of the period of 10 years following the day on which the foreign national becomes a permanent resident.

b) dans tout autre cas, l'expiration de la période de dix ans suivant la date où il devient résident permanent.

Undertaking to province — alternate duration
(3) Notwithstanding subsection (2), the period referred to in subsection (1) shall end on the day provided for by the laws of the province if that day is earlier than the later of the days referred to in subsection (2).

Durée subsidiaire : province
(3) Malgré le paragraphe (2), la période prend fin le jour prévu par le droit provincial si ce jour survient avant celle des dates fixées au paragraphe (2) qui est postérieure à l'autre.

Agreement
(4) Subject to paragraph 137(c), if the person is to be sponsored as a member of the family class or of the spouse or common-law partner in Canada class and is at least 22 years of age, or is less than 22 years of age and is the sponsor's spouse, common-law partner or conjugal partner, the sponsor, the co-signer, if any, and the person must, before the sponsorship application is approved, enter into a written agreement that includes

Accord
(4) Sous réserve de l'alinéa 137c), si le répondant parraine, au titre de la catégorie du regroupement familial ou de celle des époux ou conjoints de fait au Canada, une personne qui est âgée d'au moins vingt-deux ans ou qui, ayant moins de vingt-deux ans, est son époux, son conjoint de fait ou son partenaire conjugal, le répondant et le cosignataire, le cas échéant, doivent, avant que la demande de parrainage ne soit approuvée, conclure avec cette personne un accord écrit selon lequel, entre autres :

(a) a statement by the sponsor and the co-signer, if any, that they will provide for the basic requirements of the person and their accompanying family members during the applicable period referred to in subsection (1);

a) ils s'engagent à subvenir, pendant la période applicable visée au paragraphe (1), aux besoins fondamentaux de cette personne et des membres de sa famille qui l'accompagnent;

(b) a declaration by the sponsor and the co-signer, if any, that their financial obligations do not prevent them from honouring their agreement with the person and their undertaking to the Minister in respect of the person's application; and

b) ils déclarent que leurs obligations financières ne les empêchent pas d'honorer l'accord en question et l'engagement qu'ils ont pris envers le ministre à l'égard de la demande de la personne;

(c) a statement by the person that they will make every reasonable effort to provide for their own basic requirements as well as those of their

c) la personne s'engage à faire tout son possible pour subvenir à ses besoins fondamentaux et à ceux des membres de sa famille qui

accompanying family members.

Co-signature — undertaking
(5) Subject to paragraph 137(c), the sponsor's undertaking may be co-signed by the spouse or common-law partner of the sponsor if the spouse or common-law partner meets the requirements set out in subsection 130(1), except paragraph 130(1)(c), and those set out in subsection 133(1), except paragraph 133(1)(a), and, in that case,

(a) the sponsor's income shall be calculated in accordance with paragraph 134(1)(b) or (c); and

(b) the co-signing spouse or common-law partner is jointly and severally or solidarily bound with the sponsor to perform the obligations in the undertaking and is jointly and severally or solidarily liable with the sponsor for any breach of those obligations.

Requirements for sponsor
133. (1) A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor

(a) is a sponsor as described in section 130;

(b) intends to fulfil the obligations in the sponsorship undertaking;

(c) is not subject to a removal order;

(d) is not detained in any penitentiary, jail, reformatory or prison;

(e) has not been convicted under the Criminal Code of

(i) an offence of a sexual nature, or an attempt or a threat to commit such an offence, against any

l'accompagnent.

Cosignataire — engagement
(5) Sous réserve de l'alinéa 137c), l'engagement peut être cosigné par l'époux ou le conjoint de fait du répondant s'il satisfait aux critères prévus par le paragraphe 130(1), compte non tenu de l'alinéa 130(1)c), et par le paragraphe 133(1), compte non tenu de l'alinéa 133(1)a), auquel cas :

a) le revenu du répondant est déterminé conformément aux alinéas 134(1)b) ou c);

b) le cosignataire et le répondant sont solidairement responsables des obligations prévues par l'engagement et de leur exécution.

Exigences : répondant
133. (1) L'agent n'accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu'à celle de la décision, le répondant, à la fois :

a) avait la qualité de répondant aux termes de l'article 130;

b) avait l'intention de remplir les obligations qu'il a prises dans son engagement;

c) n'a pas fait l'objet d'une mesure de renvoi;

d) n'a pas été détenu dans un pénitencier, une prison ou une maison de correction;

e) n'a pas été déclaré coupable, sous le régime du Code criminel :

(i) d'une infraction d'ordre sexuel ou d'une tentative ou menace de commettre une telle

person, or

(ii) an offence that results in bodily harm, as defined in section 2 of the Criminal Code, to any of the following persons or an attempt or a threat to commit such an offence against any of the following persons, namely,

(A) a relative of the sponsor, including a dependent child or other family member of the sponsor,

(B) a relative of the sponsor's spouse or of the sponsor's common-law partner, including a dependent child or other family member of the sponsor's spouse or of the sponsor's common-law partner, or

(C) the conjugal partner of the sponsor or a relative of that conjugal partner, including a dependent child or other family member of that conjugal partner;

(f) has not been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence referred to in paragraph (e);

(g) subject to paragraph 137(c), is not in default of

(i) any undertaking, or

(ii) any support payment obligations ordered by a court;

(h) is not in default in respect of the repayment of any debt referred to in subsection 145(1) of the Act payable to Her Majesty in right of Canada;

(i) subject to paragraph 137(c), is not an undischarged bankrupt under the Bankruptcy and Insolvency Act;

infraction, à l'égard de quiconque,

(ii) d'une infraction entraînant des lésions corporelles, au sens de l'article 2 de cette loi, ou d'une tentative ou menace de commettre une telle infraction, à l'égard de l'une ou l'autre des personnes suivantes :

(A) un membre de sa parenté, notamment un enfant à sa charge ou un autre membre de sa famille,

(B) un membre de la parenté de son époux ou de son conjoint de fait, notamment un enfant à charge ou un autre membre de la famille de son époux ou de son conjoint de fait,

(C) son partenaire conjugal ou un membre de la parenté de celui-ci, notamment un enfant à charge ou un autre membre de la famille de ce partenaire conjugal;

f) n'a pas été déclaré coupable, dans un pays étranger, d'avoir commis un acte constituant une infraction dans ce pays et, au Canada, une infraction visée à l'alinéa e);

g) sous réserve de l'alinéa 137c), n'a pas manqué :

(i) soit à un engagement de parrainage,

(ii) soit à une obligation alimentaire imposée par un tribunal;

h) n'a pas été en défaut quant au remboursement d'une créance visée au paragraphe 145(1) de la Loi dont il est redevable à Sa Majesté du chef du Canada;

i) sous réserve de l'alinéa 137c), n'a pas été un failli non libéré aux termes de la Loi sur la faillite et l'insolvabilité;

(j) if the sponsor resides

(i) in a province other than a province referred to in paragraph 131(b), has a total income that is at least equal to the minimum necessary income, and

(ii) in a province referred to in paragraph 131(b), is able, within the meaning of the laws of that province and as determined by the competent authority of that province, to fulfil the undertaking referred to in that paragraph; and

(k) is not in receipt of social assistance for a reason other than disability.

Exception — conviction in Canada
(2) Despite paragraph (1)(e), a sponsorship application may not be refused

(a) on the basis of a conviction in Canada in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the Criminal Records Act, or in respect of which there has been a final determination of an acquittal; or

(b) if a period of five years or more has elapsed since the completion of the sentence imposed for an offence in Canada referred to in paragraph (1)(e).

Exception — conviction outside Canada
(3) Despite paragraph (1)(f), a sponsorship application may not be refused

(a) on the basis of a conviction outside Canada in respect of which there has been a final determination of an acquittal; or

j) dans le cas où il réside :

(i) dans une province autre qu'une province visée à l'alinéa 131b), a eu un revenu total au moins égal à son revenu vital minimum,

(ii) dans une province visée à l'alinéa 131b), a été en mesure, aux termes du droit provincial et de l'avis des autorités provinciales compétentes, de respecter l'engagement visé à cet alinéa;

k) n'a pas été bénéficiaire d'assistance sociale, sauf pour cause d'invalidité.

Exception : déclaration de culpabilité au Canada
(2) Malgré l'alinéa (1)e), la déclaration de culpabilité au Canada n'emporte pas rejet de la demande de parrainage dans les cas suivants :

a) la réhabilitation — sauf révocation ou nullité — a été octroyée au titre de la Loi sur le casier judiciaire ou un verdict d'acquittement a été rendu en dernier ressort à l'égard de l'infraction;

b) le répondant a fini de purger sa peine au moins cinq ans avant le dépôt de la demande de parrainage.

Exception : déclaration de culpabilité à l'extérieur du Canada
(3) Malgré l'alinéa (1)f), la déclaration de culpabilité à l'extérieur du Canada n'emporte pas rejet de la demande de parrainage dans les cas suivants :

a) un verdict d'acquittement a été rendu en dernier ressort à l'égard de l'infraction;

(b) if a period of five years or more has elapsed since the completion of the sentence imposed for an offence outside Canada referred to in that paragraph and the sponsor has demonstrated that they have been rehabilitated.

b) le répondant a fini de purger sa peine au moins cinq ans avant le dépôt de la demande de parrainage et a justifié de sa réadaptation.

Exception to minimum necessary income
(4) Paragraph (1)(j) does not apply if the sponsored person is

(a) the sponsor's spouse, common-law partner or conjugal partner and has no dependent children;

(b) the sponsor's spouse, common-law partner or conjugal partner and has a dependent child who has no dependent children; or

(c) a dependent child of the sponsor who has no dependent children or a person referred to in paragraph 117(1)(g).

Exception au revenu minimal
(4) L'alinéa (1)j) ne s'applique pas dans le cas où le répondant parraine l'une ou plusieurs des personnes suivantes :

a) son époux, conjoint de fait ou partenaire conjugal, à condition que cette personne n'ait pas d'enfant à charge;

b) son époux, conjoint de fait ou partenaire conjugal, dans le cas où cette personne a un enfant à charge qui n'a pas d'enfant à charge;

c) son enfant à charge qui n'a pas lui-même d'enfant à charge ou une personne visée à l'alinéa 117(1)g).

Adopted sponsor
(5) A person who is adopted outside Canada and whose adoption is subsequently revoked by a foreign authority or by a court in Canada of competent jurisdiction may sponsor an application for a permanent resident visa that is made by a member of the family class only if the revocation of the adoption was not obtained for the purpose of sponsoring that application.

Répondant adopté
(5) La personne adoptée à l'étranger et dont l'adoption a été annulée par des autorités étrangères ou un tribunal canadien compétent ne peut parrainer la demande de visa de résident permanent présentée par une personne au titre de la catégorie du regroupement familial que si l'annulation de l'adoption n'a pas été obtenue dans le but de pouvoir parrainer cette demande.

Income calculation rules
134. (1) For the purpose of subparagraph 133(1)(j)(i), the total income of the sponsor shall be determined in accordance with the following rules:

(a) the sponsor's income shall be calculated on the basis of the last notice of assessment, or an equivalent document, issued by the Minister of National Revenue in respect of the most recent

Règles de calcul du revenu
134. (1) Pour l'application du sous-alinéa 133(1)j)(i), le revenu total du répondant est déterminé selon les règles suivantes :

a) le calcul du revenu se fait sur la base du dernier avis de cotisation qui lui a été délivré par le ministre du Revenu national avant la date de dépôt de la demande de parrainage, à l'égard de

taxation year preceding the date of filing of the sponsorship application;

(b) if the sponsor produces a document referred to in paragraph (a), the sponsor's income is the income earned as reported in that document less the amounts referred to in subparagraphs (c)(i) to (v);

(c) if the sponsor does not produce a document referred to in paragraph (a), or if the sponsor's income as calculated under paragraph (b) is less than their minimum necessary income, the sponsor's Canadian income for the 12-month period preceding the date of filing of the sponsorship application is the income earned by the sponsor not including

(i) any provincial allowance received by the sponsor for a program of instruction or training,

(ii) any social assistance received by the sponsor from a province,

(iii) any financial assistance received by the sponsor from the Government of Canada under a resettlement assistance program,

(iv) any amounts paid to the sponsor under the Employment Insurance Act, other than special benefits,

(v) any monthly guaranteed income supplement paid to the sponsor under the Old Age Security Act, and

(vi) any Canada child tax benefit paid to the sponsor under the Income Tax Act; and

(d) if there is a co-signer, the income of the co-signer, as calculated in accordance with paragraphs (a) to (c), with any modifications that the circumstances require, shall be included in

l'année d'imposition la plus récente, ou tout document équivalent délivré par celui-ci;

b) si le répondant produit un document visé à l'alinéa a), son revenu équivaut à la différence entre la somme indiquée sur ce document et les sommes visées aux sous-alinéas c)(i) à (v);

c) si le répondant ne produit pas de document visé à l'alinéa a) ou si son revenu calculé conformément à l'alinéa b) est inférieur à son revenu vital minimum, son revenu correspond à l'ensemble de ses revenus canadiens gagnés au cours des douze mois précédant la date du dépôt de la demande de parrainage, exclusion faite de ce qui suit :

(i) les allocations provinciales reçues au titre de tout programme d'éducation ou de formation,

(ii) toute somme reçue d'une province au titre de l'assistance sociale,

(iii) toute somme reçue du gouvernement du Canada dans le cadre d'un programme d'aide pour la réinstallation,

(iv) les sommes, autres que les prestations spéciales, reçues au titre de la Loi sur l'assurance-emploi,

(v) tout supplément de revenu mensuel garanti reçu au titre de la Loi sur la sécurité de la vieillesse,

(vi) les prestations fiscales canadiennes pour enfants reçues au titre de la Loi de l'impôt sur le revenu;

d) le revenu du cosignataire, calculé conformément aux alinéas a) à c), avec les adaptations nécessaires, est, le cas échéant, inclus dans le calcul du revenu du répondant.

the calculation of the sponsor's income.

Change in circumstances
(2) If an officer receives information indicating that the sponsor is no longer able to fulfil the sponsorship undertaking, the Canadian income of the sponsor shall be calculated in accordance with paragraph (1)(c) on the basis of the 12-month period preceding the day the officer receives that information rather than the 12-month period referred to in that paragraph.

Changement de situation
(2) Dans le cas où l'agent reçoit des renseignements montrant que le répondant ne peut plus respecter son engagement à l'égard du parrainage, le revenu canadien du répondant est calculé conformément à l'alinéa (1)c) comme si la période de douze mois était celle qui précède le jour où l'agent a reçu les renseignements au lieu de la période de douze mois visée à cet alinéa.

Default
135. For the purpose of subparagraph 133(1)(g)(i), the default of a sponsorship undertaking

(a) begins when

(i) a government makes a payment that the sponsor has in the undertaking promised to repay, or

(ii) an obligation set out in the undertaking is breached; and

(b) ends, as the case may be, when

(i) the sponsor reimburses the government concerned, in full or in accordance with an agreement with that government, for amounts paid by it, or

(ii) the sponsor ceases to be in breach of the obligation set out in the undertaking.

Défaut
135. Pour l'application du sous-alinéa 133(1)g)(i), le manquement à un engagement de parrainage :

a) commence, selon le cas :

(i) dès qu'un paiement auquel le répondant est tenu au titre de l'engagement est effectué par une administration,

(ii) dès qu'il y a manquement à quelque autre obligation prévue par l'engagement;

b) prend fin dès que le répondant :

(i) d'une part, rembourse en totalité ou selon tout accord conclu avec l'administration intéressée les sommes payées par celle-ci,

(ii) d'autre part, s'acquitte de l'obligation prévue par l'engagement à l'égard de laquelle il y avait manquement.

Suspension during proceedings against sponsor or co-signer
136. (1) If any of the following proceedings are brought against a sponsor or co-signer, the sponsorship application shall not be processed until there has been a final determination of the

Sursis — procédure introduite à l'égard du répondant ou du cosignataire
136. (1) Si l'une des procédures ci-après est introduite à l'égard du répondant ou du cosignataire, la demande de parrainage ne peut être traitée tant qu'il n'a pas été statué sur cette

proceeding:

(a) an application for revocation of citizenship under the Citizenship Act;

(b) a report prepared under subsection 44(1) of the Act; or

(c) a charge alleging the commission of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

Suspension during appeal by sponsor or co-signer
(2) If a sponsor or co-signer has made an appeal under subsection 63(4) of the Act, the sponsorship application shall not be processed until the period for making the appeal has expired or there has been a final determination of the appeal.

Undertaking — Province of Quebec
137. If the sponsor resides in the Province of Quebec, the government of which has entered into an agreement referred to in paragraph 131(b),

(a) the sponsor's undertaking, given in accordance with section 131, is the undertaking required by An Act respecting immigration to Québec, R.S.Q., c.I-0.2, as amended from time to time;

(b) an officer shall approve the sponsorship application only if there is evidence that the competent authority of the Province has determined that the sponsor, on the day the undertaking was given as well as on the day a decision was made with respect to the application, was able to fulfil the undertaking; and

(c) subsections 132(4) and (5) and paragraphs

procédure en dernier ressort :

a) l'annulation ou la révocation de la citoyenneté au titre de la Loi sur la citoyenneté;

b) le rapport prévu au paragraphe 44(1) de la Loi;

c) des poursuites pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Sursis — appel interjeté par le répondant ou le cosignataire
(2) Si le répondant ou le cosignataire interjette appel au titre du paragraphe 63(4) de la Loi, la demande de parrainage ne peut être traitée tant que le délai d'appel n'a pas expiré ou que l'appel n'a pas été tranché en dernier ressort.

Engagement : cas de la province de Québec
137. Les règles suivantes s'appliquent si le répondant réside dans la province de Québec et que celle-ci a conclu l'accord visé à l'alinéa 131b) :

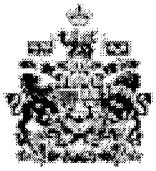
a) l'engagement de parrainage pris conformément à l'article 131 est un engagement requis par la Loi sur l'immigration au Québec, L.R.Q., ch. I-0.2, compte tenu de ses modifications successives;

b) l'agent n'accorde la demande de parrainage que sur preuve que les autorités compétentes de la province étaient d'avis que le répondant était en mesure, à la date à laquelle l'engagement a été pris et à celle à laquelle il a été statué sur la demande de parrainage, de se conformer à l'engagement;

c) les paragraphes 132(4) et (5) et les alinéas

133(1)(g) and (i) do not apply.

133(1)g) et i) ne s'appliquent pas.



SUPREME COURT OF CANADA

CITATION: Canada (Attorney General) *v.* Mavi, 2011 SCC 30, [2011] 2 S.C.R. 504

DATE: 20110610
DOCKET: 33520

BETWEEN:

Attorney General of Canada
Appellant
and
Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano, Nedzad Dzihic, Rania El-Murr, Oleg Grankin, Raymond Hince, Homa Vossoughi and Hamid Zebaradami
Respondents

AND BETWEEN:

Attorney General of Ontario
Appellant
and
Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano, Nedzad Dzihic, Rania El-Murr, Oleg Grankin, Raymond Hince, Homa Vossoughi and Hamid Zebaradami
Respondents
- and -
South Asian Legal Clinic of Ontario, Canadian Council for Refugees, Metropolitan Action Committee on Violence against Women and Children and Canadian Civil Liberties Association
Interveners

CORAM: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

REASONS FOR JUDGMENT: (paras. 1 to 80) Binnie J. (McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ. concurring)

Canada (Attorney General) *v.* Mavi, 2011 SCC 30, [2011] 2 S.C.R. 504

Attorney General of Canada *Appellant*

v.

Pritpal Singh Mavi,
Maria Cristina Jatuff de Altamirano,
Nedzad Dzihic, Rania El-Murr,
Oleg Grankin, Raymond Hince,
Homa Vossoughi and
Hamid Zebaradami *Respondents*

- and between -

Attorney General of Ontario *Appellant*

v.

Pritpal Singh Mavi,
Maria Cristina Jatuff de Altamirano,
Nedzad Dzihic, Rania El-Murr,
Oleg Grankin, Raymond Hince,
Homa Vossoughi and
Hamid Zebaradami *Respondents*

and

South Asian Legal Clinic of Ontario,

Canadian Council for Refugees,
Metropolitan Action Committee on Violence against Women and Children and
Canadian Civil Liberties Association *Interveners*

Indexed as: Canada (Attorney General) *v.* Mavi

2011 SCC 30

File No.: 33520.

2010: December 9; 2011: June 10.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Immigration — Sponsorship — Family class — Sponsors signing undertakings promising to provide for sponsored relative's essential needs and ensuring that relative would not require social assistance during sponsorship period — Legislation providing that social assistance paid to relative during sponsorship period constitutes debt that "may be recovered" either by federal or provincial government — Ontario seeking repayment of debts — Sponsors seeking declaration discharging them from debt — Whether Immigration and Refugee Protection Act provides discretion to enforce sponsorship debt — Whether Ontario debt recovery

policy improperly fettering exercise of statutory discretion — Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 145 — Immigration and Refugee Protection Regulations, SOR/2002-227, s. 132.

Administrative law — Natural justice — Procedural fairness — Doctrine of legitimate expectations — Debt enforcement — Sponsors signing undertakings promising to provide for sponsored relative's essential needs and ensuring that relative would not require social assistance during sponsorship period — Legislation providing that social assistance paid to relative during sponsorship period constitutes debt that "may be recovered" either by federal or provincial government — Ontario seeking repayment of debts under policy incorporating significant procedural protections in terms of sponsorship undertakings — Sponsors seeking declaration discharging them from debt — Whether duty of procedural fairness applied to enforcement of debt — Whether legitimate expectations created by terms of undertaking were enforceable and satisfied.

Since 1978, Canada has allowed Canadian citizens or permanent residents to sponsor their relatives to immigrate to Canada. If such persons after arriving in Canada obtain social assistance (contrary to their sponsor's undertaking of support), the sponsor is deemed to have defaulted on the undertaking and either the provincial or federal government may recover from the sponsor the cost of providing social assistance. The present proceedings were initiated by eight sponsors whose relatives received social assistance and are therefore deemed to have defaulted on

their undertakings. The sponsors deny liability under the undertakings and seek various declarations the result of which, if granted, would be to avoid payment, either temporarily or permanently. The sponsors contend that s. 145(2) of the *Immigration and Refugee Protection Act* ("*IRPA*") which states that an amount that a sponsor is required to pay under the terms of an undertaking "may be recovered" indicates the existence of a Crown discretion to collect or not to collect the debt. The applications judge concluded that the government was not vested with a discretion to consider on a case-by-case basis whether or not to enforce the debt. The government's duty is to collect and the legislation does not impose any duty of fairness towards sponsors in default. The Court of Appeal allowed the appeal and held that the word "may" in the legislation indicates some degree of discretion on the part of the government. Furthermore, the province had improperly fettered or abused the exercise of its discretion because its policy prohibited a settlement for less than the full amount of the debt which is an option expressly contemplated by the *Immigration and Refugee Protection Regulations*. It was also held that the governments do owe a duty of procedural fairness to the sponsors.

Held: The appeal should be allowed in part.

Parliament's legislation manifests an unambiguous intent to require the full sponsorship debt to be paid if and when the sponsor is in a position to do so, even incrementally over many years pursuant to an agreement under the Regulations. In dealing with defaulting sponsors, the government must however act fairly having

regard to their financial means to pay and the existence of circumstances that would militate against enforcement of immediate payment. In the exercise of this discretion, which Parliament has made clear is narrow in scope, the Crown is bound by a duty of procedural fairness. Nevertheless the content of the duty of fairness in these circumstances is less ample than was contemplated in the decision of the Court of Appeal and, contrary to its opinion, the requirements of procedural fairness were met in the cases of the eight respondent sponsors.

The undertakings are valid contracts but they are also structured, controlled and supplemented by federal legislation. The debts created thereby are not only contractual but statutory, and as such their enforcement is not exclusively governed by the private law of contract.

The doctrine of procedural fairness has been a fundamental component of Canadian administrative law for over 30 years. As a general common law principle, it applies to every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges, or interests of an individual (subject of course to clear statutory language or necessary implication to the contrary). *Dunsmuir* does not detract from the general duty of fairness owed by administrative decision makers. Rather it acknowledged that in the specific context of the contract of employment at issue in the circumstances of that case dismissal was governed by contract law rather than public law. Here, in contrast, the terms of sponsorship are dictated and controlled by public law. The undertaking is required by

statute. While there are some contractual aspects, it is the statutory framework that closely governs the rights and obligations of the parties and opens the door to the requirements of procedural fairness.

Section 132 of the Regulations obligates a sponsor to reimburse the Crown in right of Canada or a province for the cost of every benefit provided as social assistance to the sponsored family member during the term of the undertaking. The undertakings set out the obligations of the sponsor, the duration of the undertaking and the consequences of the default. They are binding notwithstanding any change in the sponsor's personal circumstances.

On a proper interpretation of the governing legislation, the Crown does have a limited discretion to delay enforcement action having regard to the sponsor's circumstances and to enter into agreements respecting terms of payment, but this discretion does not extend to the forgiveness of the statutory debt. Debt collection without any discretion would not advance the purposes of the *IRPA*. It would hardly promote "successful integration" to require individuals to remain in abusive relationships. Nor would the attempted enforcement of a debt against individuals without any means to pay further the interest of "Canadian society". Excessively harsh treatment of defaulting sponsors may risk discouraging others from bringing their relatives to Canada, which would undermine the policy of promoting family reunification.

Once the duty of procedural fairness has been found to exist, the particular legislative and administrative context is crucial to determining its content. It is clear from the legislative history of the *IRPA* that over the years Parliament has become increasingly concerned about the shift to the public treasury of a significant portion of the cost of supporting sponsored relatives. Family reunification is based on the essential condition that in exchange for admission to this country the needs of the immigrant will be looked after by the sponsor, not by the public purse. Sponsors undertake these obligations in writing. They understand or ought to understand from the outset that default may have serious financial consequences for them. Here, the nature of the decision is final and specific in nature. It may result in the filing of a ministerial certificate in the Federal Court which is enforceable as if it were a judgment of that court. The *IRPA* does not provide a mechanism for sponsors to appeal the enforcement decision. This absence of other remedies militates in favour of a duty of fairness at the time of the enforcement decision. The effect of the decision on the sponsors is significant as sponsorship debts can be very large and accumulate quickly.

The content of the duty of procedural fairness in these cases is fairly minimal. It does not require an elaborate adjudicative process but it does oblige the Crown, prior to filing a certificate of debt with the Federal Court, (i) to notify a sponsor at his or her last known address of its claim; (ii) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection; (iii) to

consider any relevant circumstances brought to its attention keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; and (iv) to notify the sponsor of the government's decision. It is a purely administrative process and is a matter of debt collection. There is no obligation on the government decision maker to give reasons. The existence of the debt is reason enough to proceed.

Ontario did not improperly fetter its exercise of statutory discretion in adopting its current policy. Its terms are consistent with the requirements of the statutory regime and met the legitimate procedural expectations of the sponsors created by the text of their respective undertakings. Ontario's policy seeks to balance the interests of promoting immigration and family reunification on the one hand, and preventing abuse of the sponsorship scheme on the other. There is no evidence that the limited procedural protections afforded by Ontario have in any way undermined or frustrated the debt collection objective or resulted in unfairness to family sponsors.

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Distinguished: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; **discussed:** *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; **referred to:** *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311; *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643; *Knight v. Indian Head School Division No. 19*,

[1990] 1 S.C.R. 653; *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781; *Rhine v. The Queen*, [1980] 2 S.C.R. 442; *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, 2006 FCA 190, [2007] 2 F.C.R. 475; *Canada v. Crosson* (1999), 169 F.T.R. 218; *Optical Recording Corp. v. Canada*, [1991] 1 F.C. 309; *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152; *Greater Toronto Airports Authority v. International Lease Finance Corp.* (2004), 69 O.R. (3d) 1; *Ward-Price v. Mariners Haven Inc.* (2001), 57 O.R. (3d) 410; *Houde v. Quebec Catholic School Commission*, [1978] 1 S.C.R. 937; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539.

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Immigration Regulations, 1978, SOR/78-172, s. 5(2)(*g*) [ad. SOR/97-145, s. 3].

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APPEAL from a judgment of the Ontario Court of Appeal (Laskin, Simmons and Lang JJ.A.), 2009 ONCA 794, 98 O.R. (3d) 1, 313 D.L.R. (4th) 137, 259 O.A.C. 33, 5 Admin. L.R. (5th) 184, 85 Imm. L.R. (3d) 1, [2009] O.J. No. 4792 (QL), 2009 CarswellOnt 6992, setting aside a decision of Wilson J., Superior Court of Justice, September 11, 2008, unreported. Appeal allowed in part.

Urszula Kaczmarczyk and *Christine Mohr*, for the appellant the Attorney General of Canada.

Robert H. Ratcliffe, *Sara Blake* and *Baaba Forson*, for the appellant the Attorney General of Ontario.

Lucas E. Lung and *Lisa Loader*, for the respondents Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano, Oleg Grankin, Raymond Hince and Homa Vossoughi.

Lorne Waldman and *Jacqueline Swaisland*, for the respondent Nedzad Dzihic.

Hugh M. Evans, for the respondents Rania El-Murr and Hamid Zebaradami.

Ranjan K. Agarwal and *Daniel T. Holden*, for the intervener the South Asian Legal Clinic of Ontario.

Chantal Tie, *Carole Simone Dahan* and *Aviva Basman*, for the intervener the Canadian Council for Refugees.

Geraldine Sadoway, for the intervener the Metropolitan Action Committee on Violence against Women and Children.

Guy Régimbald, for the intervener the Canadian Civil Liberties Association.

The judgment of the Court was delivered by

[1] BINNIE J. — Since 1978, Canada has allowed Canadian citizens or permanent residents to sponsor their relatives to immigrate to Canada. Family reunification was an important objective of the former *Immigration Act*, R.S.C. 1985, c. I-2, and remains so under the successor legislation enacted in 2001 as the

Immigration and Refugee Protection Act, S.C. 2001, c. 27 ("*IRPA*"). Of the over 2 million permanent residents admitted to this country between 1997 and 2007, 615,000 (or 27%) are members of the family class. If such persons after arriving in Canada obtain social assistance (contrary to their sponsor's undertaking of support), the sponsor is deemed to have defaulted and either the provincial or federal government may recover from the sponsor the cost of providing social assistance.

[2] The present proceedings were initiated by eight sponsors who denied liability under their undertakings. As will be explained, the undertakings are valid contracts but they are also structured, controlled and supplemented by federal legislation. The debts created thereby are not only contractual but statutory, and as such their enforcement is not exclusively governed by the private law of contract. The issue raised by this appeal is the extent to which, if at all, the government is constrained by considerations of procedural fairness in making enforcement decisions in relation to these statutory debts.

[3] The Attorney General of Canada argues (and the applications judge agreed) that the Crown is not required even to notify an allegedly defaulting sponsor of its claim prior to filing with the Federal Court a ministerial certificate of the alleged debt which becomes, automatically, enforceable as if it were a judgment of that court. He argues that the legislation imposes on the Crown a *duty* (not a discretion) to collect sponsorship debts in full. He denies that in carrying out this duty there is any obligation of procedural fairness.

[4] On a proper interpretation of the governing legislation, however, I believe the Crown *does* have a limited discretion in these collections. The discretion enables the governments to delay enforcement action having regard to the sponsor's circumstances and to enter into agreements respecting terms of payment, but not simply to forgive the statutory debt. On the evidence, Ontario has had in place a discretionary policy respecting the collection of family sponsorship debts for many years, both before and after the enactment of the *IRPA* in 2001.

[5] In the exercise of this discretion, which Parliament has made clear is narrow in scope, the Crown is bound by a duty of procedural fairness. The content of this duty is fairly minimal. The Crown is obliged prior to filing a certificate of debt with the Federal Court (i) to notify a sponsor at his or her last known address of its claim; (ii) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection; (iii) to consider any relevant circumstances brought to its attention keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; and (iv) to notify the sponsor of the government's decision. This is a purely administrative process. It is a matter of debt collection. There is no obligation on the government decision maker to give reasons. The existence of the debt is, in the context of this particular program, reason enough to proceed.

[6] Although the respondents took the position in the courts below that they should be altogether "discharged from their sponsorship obligations" (2009 ONCA 794, 98 O.R. (3d) 1, at para. 6), they took the less extravagant position in this Court that they

> do not dispute that undertakings are enforceable. Nor do they dispute that undertakings should be enforced in the overwhelming majority of cases. They are merely asking that the [governments] properly exercise the discretion that was granted to them and consider their circumstances before making the decision to enforce. [R.F., at para. 5]

[7] The Ontario Court of Appeal held that the Ontario government's deferral policy improperly fettered its statutory discretion in a manner "inconsistent with the overall legislative scheme" (para. 132). While I agree (as stated) with the court below that the sponsors are entitled to a basic level of procedural fairness, my view is that the Ontario guidelines are quite adequate in that regard and are consistent with the statutory scheme. Moreover, the contention of the respondent sponsors that they are entitled to a more elaborate "process" of decision making must be rejected. We are, after all, dealing with statutory debt collection. I would allow the appeal in part but as these appeals can properly be characterized as test cases, I would do so without costs.

I. Facts

[8] Foreign nationals may apply to become permanent residents and eventually citizens, under three broad categories: the family class, the economic class and the refugee class (*IRPA*, s. 12). A permanent resident or citizen wishing to sponsor a family member initiates the process by making a sponsorship application. Sponsors must be over 18 years of age, and meet detailed financial and other requirements. Family class members are not assessed independently on their ability to support themselves. Since they obtain their permanent residence status on the sole basis of being in a familial relationship with a sponsor, they are not required to meet the financial or other selection requirements which are imposed on other classes of immigrants.

A. *The Sponsors*

[9] The respondents to this appeal are eight sponsors whose relatives received social assistance and who are therefore deemed to have defaulted on their undertaking.

[10] The respondent Dzihic sponsored his fiancée in 2002. His allegation is that when she arrived in Canada she refused to live with him or marry him. Mr. Dzihic notified the immigration department and an order was made for her deportation. However, his fiancée appealed the order successfully without any notice to or input from Mr. Dzihic. He says he was unaware of her success or the fact that

she subsequently received social assistance totalling $10,510.65 as of July 2007, for which he is now responsible.

[11] The respondent El-Murr sponsored her father, mother and two brothers in 1995 while she was unemployed. Her husband was employed at the time and he co-signed the undertaking. After the family members arrived in Canada, Ms. El-Murr left her husband because of alleged abuse and she went on social assistance as did her parents and one brother. The debt amount as of February 2006 is $94,242.16 and she says she cannot afford to repay this amount.

[12] The respondent Grankin sponsored his mother in 1999. He claims that he subsequently lost his job and had to apply for social assistance. He was thus unable to support his mother after her arrival in Canada. His mother applied for social assistance and received it. Mr. Grankin states that had he known he was responsible for repaying the benefits, he would not have permitted his mother to apply for assistance. As of June 2007 his total debt was $54,426.39.

[13] The respondent Hince married Ms. Patel who was on a visitor's visa in 2002. She returned to India and Mr. Hince sponsored her and her daughter to return to Canada. They did so in 2006 and lived briefly with Mr. Hince, then left. He says he was unaware that she subsequently received social assistance. His job is low paying and does not permit him, he says, to repay the social assistance amount due as

of June 2007 of $10,547.65. He believes he was exploited by Ms. Patel to enable her to gain immigration status.

[14] The respondent de Altamirano and her husband sponsored her mother in 2000. After arriving in Canada, her mother suffered a stroke. Ms. de Altamirano applied for benefits to pay for her mother's institutional care. She alleges that she was encouraged to do so by a case worker and did not realize that she would have a responsibility to repay the benefits — as of May 2007 said to be $54,559.99.

[15] The respondent Mavi sponsored his father in 1996. He alleges he did not read the application or understand it. His father arrived in Canada in 1997 and lived with Mr. Mavi. There was a falling out and the father left. Mr. Mavi learned in 2005 that his father had collected benefits and he contacted the government to advise that his own health was not good, which limited his ability to work. The amount of benefits said to be owed as of June 2005 is $17,818.08.

[16] The respondent Vossoughi applied to sponsor her mother at a time when she was married. In 2002, she left her husband because, she says, of abuse. In 2003, her mother arrived in Canada. Ms. Vossoughi says she could not support her mother and her mother went on social assistance. She alleges she did not realize she was responsible for repaying the benefits. The amount said to be owed pursuant to the undertaking as of July 2007 is $28,754.71.

[17] The respondent Zebaradami sponsored his fiancée in 2000. She arrived in Canada in 2001 but only stayed with him for a few weeks, then left him for another man. She received social assistance benefits of $22,158.02 as of July 2007. Mr. Zebaradami says he was duped and that his former fiancée only used him to gain status in Canada.

[18] The Government of Ontario, which in each case paid the social assistance to the needy relative, took steps to enforce the debt against each of the sponsors. In applications filed in the Ontario Superior Court of Justice, the eight sponsors sought various declarations the result of which, if granted, would be to avoid payment, either temporarily or permanently.

B. *The Undertakings*

[19] The undertakings signed by Mr. Grankin, Mr. Zebaradami and Ms. de Altamirano contained the following statement with respect to the possibility that enforcement might be deferred (with similar statements made in the undertakings signed by Ms. Vossoughi, Mr. Dzihic and Mr. Hince):

> The Minister may choose not to take action to recover money from a Sponsor or a Sponsor's spouse (if Co-signer) who has defaulted in a situation of abuse or in other appropriate circumstances. The decision of the Minister not to act at a particular time does not cancel the debt, which may be recovered by the Minister when circumstances have changed. [Emphasis added.]

C. *Federal and Provincial Policies*

[20] The Canada-Ontario Memorandum of Understanding on Information Sharing — 2004 ("MOU"), provides for the sharing of information in order to facilitate, *inter alia*, the enforcement of sponsorship debts. Section 6 of the MOU states that sponsorship debts are "payable on demand", but that default may be cured in cases where a province accepts partial payment of the debt. Ontario will apply its own guidelines to determine whether collection action should be undertaken immediately or deferred, e.g. in cases of family violence.

[21] The Ontario policy itself states that certain cases of default would not be referred for collection, namely where the person is incapacitated and unable to pay, where there is evidence of domestic violence, where the sponsor himself or herself is in receipt of social assistance, or where other "documented extraordinary circumstances" exist. The Attorney General of Ontario contends (unlike his federal counterpart) that the federal legislation does permit a measure of discretion, and that Ontario's policies are fully compliant. He claims however that relations between Ontario and the sponsors are governed only by rules applicable to private contracts.

[22] The respondent sponsors contend (and the Court of Appeal agreed) that the wording of the undertakings should be taken into account in the interpretation of the governing legislation.

II. Statutory Framework

[23] Pursuant to s. 132 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, a sponsor is obliged to reimburse the Crown in right of Canada or a province, for the cost of every benefit provided as social assistance to the sponsored family member during the term of undertaking — formerly 10 years but now 3 years for a spouse or a dependent child 22 years of age or older and 10 years for a dependent child less than 22 years of age and all other family members (s. 132(1)). The undertakings set out the obligations of the sponsor, the duration of the undertaking and the consequences of default, and stated that the undertaking would be binding notwithstanding any change in the sponsor's personal circumstances.

[24] Section 108(2) of the former *Immigration Act* authorized the federal government to enter into agreements with the provinces for the purposes of implementing immigration programs. Section 114(1)(*c*) authorized the executive to create regulations with respect to sponsorships and s. 115 allowed the Minister to create forms necessary to implement the program (such Ministerial authority was the basis for the undertakings at issue here, which were drafted by the Department of Citizenship and Immigration and signed by each sponsor). Pursuant to s. 118(1) of the former Act, the federal government could assign an undertaking to a province in order to allow that province to recover social assistance payments from the sponsor directly. The new *IRPA* eliminated the need for such an assignment of the debt.

[25] The collection procedure under the old *Immigration Act* was also more cumbersome than under the new *IRPA*. The former s. 118(2) required governments to obtain a judgment from a court of competent jurisdiction in order to enforce the sponsorship debt. Public monies spent as a result of a breach of an undertaking were deemed to be a "debt due to Her Majesty in right of Canada or in right of the province to which the undertaking is assigned" and "may be recovered from the person or organization that gave the undertaking". Section 5(2)(*g*) of the old Regulations stated that default on an existing undertaking was a bar to additional sponsorships (*Immigration Regulations, 1978*, SOR/78-172, as amended by SOR/97-145, s. 3).

[26] In 2002, the *IRPA* made important changes to the rules governing the family immigration class. Section 14(2)(*e*) confers broad powers to make regulations with respect to sponsorship undertakings. Section 145(2) is central to the issue of the Minister's discretion on this appeal. It states in relevant part:

> . . . an amount that a sponsor is required to pay under the terms of an undertaking is payable on demand to Her Majesty in right of Canada and Her Majesty in right of the province concerned and <u>may be recovered</u> by Her Majesty in either or both of those rights.

The respondent sponsors contend that "may" is permissive and indicates, they say, the existence of a Crown discretion to collect or not to collect the debt.

[27] The *IRPA* streamlined the enforcement of sponsorship debt. It is no longer necessary for the federal undertakings to be assigned to the provinces before

they can be enforced by the province. Furthermore, s. 145(3) negates the effect of limitations statutes by prescribing that the debt may be recovered "at any time".

[28] Governments no longer even have to obtain a judgment to engage Federal Court processes to enforce the debt. Section 146 allows the Minister to certify the debt immediately or within 30 days of default, depending on the circumstances, and register that certificate with the Federal Court, giving it the same force as a judgment.

[29] The new Regulations provide in s. 135 that default begins when the government makes a payment and ends when the sponsor either reimburses the government "in full or in accordance with an agreement with that government", or when the sponsor ceases to be in breach of the undertaking. The Attorney General of Canada takes comfort from the *IRPA*'s elimination of any judicial process prior to the Minister's authority to invoke Federal Court enforcement. The respondent sponsors, on the other hand, argue that elimination of prior judicial authorization makes it all the more important that the Minister act fairly and get the facts straight before initiating what they regard as an overly harsh statutory collection procedure.

III. Judicial History

A. *Ontario Superior Court of Justice (Wilson J.), No. 07-CV-331628PD3, September 11, 2008, unreported*

[30] The applications judge found that the *IRPA* and its Regulations, when viewed as a whole, showed a Parliamentary intent to create a collection procedure that was "purely administrative in nature" (para. 52). The government is not vested with a discretion to consider on a case-by-case basis whether or not to enforce the debt. The government's duty is to collect. The legislation does not impose any duty of fairness towards sponsors in default. Neither the statute nor the regulations permit sponsors to make submissions before their debts are collected (para. 54).

[31] According to the applications judge, the sponsorship agreements are governed by contract law (para. 55). The sponsors entered into the agreements voluntarily (para. 57). The contractual undertakings should be construed in light of the purpose of the statute which is debt collection (para. 58). The doctrine of frustration does not apply (para. 59). The Applicants were aware that they would be liable if a sponsored relative became financially dependent on the state (para. 59). The applications for various declarations sought by the sponsors were therefore dismissed.

B. *Ontario Court of Appeal (Laskin, Simmons and Lang JJ.A.), 2009 ONCA 794, 98 O.R. (3d) 1*

[32] On appeal, the issues were restricted to administrative law grounds, specifically: (1) whether the Acts confer upon the governments a case-by-case discretion concerning the recovery of sponsorship debt; (2) whether Canada and Ontario abused this discretion; (3) whether Canada and Ontario owe sponsors a duty

of procedural fairness; and (4) whether the undertakings given under the old Act are enforceable under the new Act. The Court of Appeal allowed the appeal.

[33] On the first issue, the Court of Appeal found that both Acts confer a case-by-case discretion in the collection of sponsorship debt (para. 89). In construing s. 118(2) of the old Act and s. 145(2) of the new Act, the word "may" indicates some degree of discretion on the part of the Minister.

[34] According to the Court of Appeal, the applications judge erred "in part, because she failed to take proper account of the Regulations and forms" which are "essential components of an integrated [immigration] scheme" (paras. 91 and 95). The Court of Appeal noted that since 1999 the undertakings have included a provision that allowed a sponsor to negotiate a settlement with the government concerned (para. 98). In addition, the undertakings under both Acts stated that the governments "may" choose not to collect the debt (para. 103). Since Parliament did not eliminate this discretion in the 2002 amendments, it is reasonable to infer that it intended there to be some flexibility in terms of debt collection.

[35] On the second issue, the Court of Appeal went further. In light of the wording of the undertaking, Ontario had improperly "fettered or abused the exercise of its discretion" in part because its policy required that a "'defaulting sponsor . . . repay the full amount of the debt'" (paras. 125-26). This prohibited a settlement for less than the full amount, an option which is expressly contemplated by s. 135(*b*)(i) of

the new Regulations. Since the policy required full repayment in every case, regardless of the circumstances, this amounted to an improper fettering of the Minister's discretion under the statute (para. 127).

[36] Furthermore, Ontario's policy of only granting deferrals based on "documented extraordinary circumstances" was a more onerous standard than the existence merely of "appropriate circumstances" contemplated by the undertakings (paras. 132-33), and was to that extent invalid.

[37] On the third issue, the Court of Appeal held that the governments owed a duty of procedural fairness to the sponsors (para. 135). It was held that the government was obliged to provide "a process" for individual sponsors to explain their relevant personal and financial circumstances, to consider those circumstances, and to inform the sponsor that their submissions had been considered and to tell them of the decision (para. 147). The provision in the undertakings that the government will consider "other appropriate circumstances" in exercising its discretion created a legitimate expectation that the government will consider their individual circumstances (para. 148). Finally, the court held that undertakings given under the old *Immigration Act* are enforceable under the *IRPA*.

IV. Analysis

[38] The doctrine of procedural fairness has been a fundamental component of Canadian administrative law since *Nicholson v. Haldimand-Norfolk Regional Board*

of Commissioners of Police, [1979] 1 S.C.R. 311, where Chief Justice Laskin for the majority adopted the proposition that "in the administrative or executive field there is a general duty of fairness" (p. 324). Six years later this principle was affirmed by a unanimous Court, *per* Le Dain J.: ". . . there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual": *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, at p. 653. The question in every case is "what the duty of procedural fairness may reasonably require of an authority in the way of specific procedural rights in a particular legislative and administrative context" (*Cardinal*, at p. 654). See also *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 669; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 20; and *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281, at para. 18. More recently, in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, Bastarache and LeBel JJ. adopted the proposition that "[t]he observance of fair procedures is central to the notion of the 'just' exercise of power" (para. 90) (citing D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at p. 7-3).

[39] Accordingly, while the content of procedural fairness varies with circumstances and the legislative and administrative context, it is certainly not to be presumed that Parliament intended that administrative officials be free to deal unfairly with people subject to their decisions. On the contrary, the general rule is

that a duty of fairness applies. See G. Régimbald, *Canadian Administrative Law* (2008), at pp. 226-27, but the general rule will yield to clear statutory language or necessary implication to the contrary: *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781, at para. 22. There is no such exclusionary language in the *IRPA* and its predecessor legislation.

[40] In determining the content of procedural fairness a balance must be struck. Administering a "fair" process inevitably slows matters down and costs the taxpayer money. On the other hand, the public also suffers a cost if government is perceived to act unfairly, or administrative action is based on "erroneous, incomplete or ill-considered findings of fact, conclusions of law, or exercises of discretion" (Brown and Evans, at p. 7-3; see also D. J. Mullan, *Administrative Law* (2001), at p. 178).

[41] Once the duty of procedural fairness has been found to exist, the particular legislative and administrative context is crucial to determining its content. We are dealing here with ordinary debt, not a government benefits or licensing program. It is clear from the legislative history of the *IRPA* that over the years Parliament has become increasingly concerned about the shift to the public treasury of a significant portion of the cost of supporting sponsored relatives. Family reunification is based on the essential condition that in exchange for admission to this country the needs of the immigrant will be looked after by the sponsor, not by the

public purse. Sponsors undertake these obligations in writing. They understand or ought to understand from the outset that default may have serious financial consequences for them.

[42] A number of factors help to determine the content of procedural fairness in a particular legislative and administrative context. Some of these were discussed in *Cardinal*, a case involving an inmate's challenge to prison discipline which stressed the need to respect the requirements of effective and sound public administration while giving effect to the overarching requirement of fairness. The duty of fairness is not a "one-size-fits-all" doctrine. Some of the elements to be considered were set out in a non-exhaustive list in *Baker* to include (i) "the nature of the decision being made and the process followed in making it" (para. 23); (ii) "the nature of the statutory scheme and the 'terms of the statute pursuant to which the body operates'" (para. 24); (iii) "the importance of the decision to the individual or individuals affected" (para. 25); (iv) "the legitimate expectations of the person challenging the decision" (para. 26); and (v) "the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances" (para. 27). Other cases helpfully provide additional elements for courts to consider but the obvious point is that the requirements of the duty in particular cases are driven by their particular circumstances. The simple overarching requirement is fairness, and this "central" notion of the "just exercise of power"

should not be diluted or obscured by jurisprudential lists developed to be helpful but *not* exhaustive.

[43] Here the nature of the administrative decision is a straightforward debt collection. Parliament has made clear in the statutory scheme its intention to avoid a complicated administrative review process. Nevertheless, as the Court of Appeal correctly observed, the nature of the decision in this case is final and specific in nature. It may result in the filing of a ministerial certificate in the Federal Court which is enforceable as if it were a judgment of that court. The *IRPA* does not provide a mechanism for sponsors to appeal the enforcement decision. Here, as in *Knight*, the absence of other remedies militates in favour of a duty of fairness at the time of the enforcement decision (see also *Baker*, at para. 24). The effect of the decision on the sponsors is significant. Sponsorship debts can be very large and accumulate quickly, as is evident from the amounts the respondents are said to owe the government in this case.

[44] The legislation leaves the governments with a measure of discretion in carrying out their enforcement duties, and in this case Ontario's procedure is perfectly compatible with both efficient debt collection and fairness to the defaulting sponsors. I will deal separately below with the issue of legitimate expectations.

[45] In these circumstances I believe the *content* of the duty of procedural fairness does not require an elaborate adjudicative process but it *does* (as stated

earlier) oblige a government, prior to filing a certificate of debt with the Federal Court, (i) to notify a sponsor at his or her last known address of its claim; (ii) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection; (iii) to consider any relevant circumstances brought to its attention keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; and (iv) to notify the sponsor of the government's decision. Given the legislative and regulatory framework, the non-judicial nature of the process and the absence of any statutory right of appeal, the government's duty of fairness in this situation does not extend to providing reasons in each case (*Baker*, at para. 43). This is a situation, after all, merely of holding sponsors accountable for their undertakings so that the public purse would not suffer by reason of permitting the entry of family members who would otherwise not qualify for admission.

[46] Ontario has adopted a collection policy along these lines. There is no evidence before us that the minimal procedural protections afforded by Ontario have in any way undermined or frustrated the debt collection objective or resulted in unfairness to family sponsors.

A. *The Contract Argument*

[47] The Attorneys General resist the application of a duty of procedural fairness in part on a theory that the claims against the sponsors are essentially contractual in nature. *Dunsmuir*, they say, stands for the proposition that procedural fairness does not apply to situations governed by contract. However, in this case, unlike *Dunsmuir*, the governments' cause of action is essentially statutory.

[48] *Dunsmuir* dealt with an employment relationship that was found by the Court to be governed by contract. The fact the contracting employee was a senior public servant did not turn a private claim for breach of contract into a public law adjudication. Here, on the other hand, the terms of sponsorship are dictated and controlled by statute. The undertaking is required by statute and reflects terms fixed by the Minister under his or her statutory power. The Attorneys General characterize sponsors as mere contract debtors but even contract debtors are ordinarily entitled to receive notice of a claim and the opportunity to defend against it.

[49] The existence of the undertaking does not extricate the present disputes from their public law context. There is ample precedent for contracts closely controlled by statute to be enforced as a matter of *public* law. In *Rhine v. The Queen*, [1980] 2 S.C.R. 442, for example, the Court dealt with two appeals for breach of contract: the first was a claim to recover an advance payment under the *Prairie Grain Advance Payments Act*, and the second was a government claim to recover principle and interest owing on a student loan made pursuant to the *Canada Student Loans Act*. The defendants took the position that enforcement of a private law

contract is a matter of provincial law and thus outside the jurisdiction of the Federal Court. In both appeals, the jurisdictional challenge was rejected. The contracts were creatures of statute. Laskin C.J. noted:

> What we have here is a detailed statutory framework under which advances for prospective grain deliveries are authorized as part of an overall scheme for the marketing of grain produced in Canada. An examination of the *Prairie Grain Advance Payments Act* itself lends emphasis to its place in the overall scheme. True, there is an undertaking or a contractual consequence of the application of the Act but that does not mean that the Act is left behind once the undertaking or contract is made. At every turn, the Act has its impact on the undertaking so as to make it proper to say that there is here existing and valid federal law [i.e. the statute] to govern the transaction which became the subject of litigation in the Federal Court. [p. 447]

See also *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, 2006 FCA 190, [2007] 2 F.C.R. 475, at para. 72; *Canada v. Crosson* (1999), 169 F.T.R. 218, at para. 36.

[50] Similarly, while the sponsors' undertakings here have some contractual aspects, it is the statutory framework that closely governs the rights and obligations of the parties and opens the door to the requirements of procedural fairness. As stated earlier, s. 145(2) of the *IRPA* makes any debt owing pursuant to an undertaking payable to and recoverable by either federal or provincial Crown. Furthermore, s. 132(1) of the Regulations makes sponsors liable for any social assistance paid to the sponsored relative. Section 135 of the Regulations defines "default". Finally, the

enforcement of the undertaking in Federal Court is governed by s. 146 of the *IRPA*. Just as in *Rhine*, the undertaking at every turn is a creature of statute.

[51] The situation here does not come close to the rather narrow *Dunsmuir* employment contract exception from the obligation of procedural fairness. As the *Dunsmuir* majority itself emphasized:

> This conclusion does not detract from the general duty of fairness owed by administrative decision makers. Rather it acknowledges that in the specific context of dismissal from public employment, disputes should be viewed through the lens of contract law rather than public law. [Emphasis added; para. 82.]

Dunsmuir was not intended to and did not otherwise diminish the requirements of procedural fairness in the exercise of administrative authority.

B. *The Statutory Exclusion Argument*

[52] There is no doubt that the duty of fairness, being a doctrine of the common law, can be overridden by statute. The Attorneys General argue that the legislation does so in the present case. I do not agree. Such a conclusion is not consistent with the legislative text, context or purpose.

(1) The Statutory Text

[53] Central to the collection procedure is s. 145(2) of the new Act and, to a lesser extent, its predecessor s. 118(2) of the old Act, which provide (with emphasis added) as follows:

> **145.** . . .
>
> (2) [Debts due — sponsors] Subject to any federal-provincial agreement, an amount that a sponsor is required to pay under the terms of an undertaking is payable on demand to Her Majesty in right of Canada and Her Majesty in right of the province concerned and may be recovered by Her Majesty in either or both of those rights.
>
> **118.** . . .
>
> (2) [Recovery for breach of undertaking] Any payments of a prescribed nature made directly or indirectly to an immigrant that result from a breach of an undertaking referred to in subsection (1) may be recovered from the person or organization that gave the undertaking in any court of competent jurisdiction as a debt due to Her Majesty in right of Canada or in right of the province to which the undertaking is assigned.

The statements that the "sponsor is required to pay" and that the amount owing is "payable on demand" leave no doubt about the existence of a statutory debt. The words "may be recovered" occur in both Acts.

[54] The applications judge thought the word "may" simply enables *either* level of government to enforce the undertaking. The point, however, is that nothing in the relevant sections explicitly *requires* Her Majesty to pursue collection of debts irrespective of the circumstances. Legislative use of the word "may" usually connotes a measure of discretion (*Interpretation Act*, R.S.C. 1985, c. I-21, s. 11).

This is as one would expect. It seems too clear for argument that Parliament intended the federal and provincial Crowns to deal with debt collection in a rational, reasonable and cost-effective way. The Attorney General of Canada concedes that Ministers have a "management discretion" in the conduct of departmental affairs. See, e.g., *Optical Recording Corp. v. Canada*, [1991] 1 F.C. 309 (C.A.), at p. 323. Effective management requires some measure of flexibility. Flexibility necessarily entails discretion.

[55] However circumscribed, the existence of a discretion attracts a level of procedural fairness appropriate to its exercise.

(2) The Statutory Context

[56] As the Attorneys General point out, several provisions of the *IRPA* affirm the obligatory nature of the undertaking and strengthen enforcement measures as compared to the old *Immigration Act*. Nevertheless, the evidence that Parliament intended in the new Act to facilitate the collection of sponsorship debts does not mean it intended this to be done unfairly.

[57] The Regulations are also an important part of the statutory context. In *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152, Deschamps J. noted that regulations "can assist in ascertaining the legislature's intention", particularly where the statute and the

regulations form an integrated scheme (para. 35). See also *Greater Toronto Airports Authority v. International Lease Finance Corp.* (2004), 69 O.R. (3d) 1 (C.A.), at paras. 102-4; *Ward-Price v. Mariners Haven Inc.* (2001), 57 O.R. (3d) 410 (C.A.), at para. 29. Professor Sullivan notes at p. 370 of her treatise that "[w]hen regulations are made to complete the statutory scheme, they are clearly intended to operate together [with the enabling statute] and to be mutually informing" (*Sullivan on the Construction of Statutes* (5th ed. 2008) (emphasis added)). Section 2(2) of the *IRPA* states that references to "this Act" include the Regulations.

[58] Regulations under the *IRPA* are made under a broad authority with respect to a number of matters including family class immigration and sponsorship undertakings. Section 135 of the Regulations, which informed the Court of Appeal's finding of a Ministerial discretion states:

> **135.** [Default] For the purpose of subparagraph 133(1)(*g*)(i), the default of a sponsorship undertaking
>
> . . .
>
> (*b*) ends, as the case may be, when
>
> (i) the sponsor reimburses the government concerned, in full or in accordance with an agreement with that government, for amounts paid by it, or
>
> (ii) the sponsor ceases to be in breach of the obligation set out in the undertaking.

The Attorney General of Canada argues that this provision does not mean that the government can make "an agreement" to forgive the debt, which he says can only be

done under the terms of the *Financial Administration Act*, R.S.C. 1985, c. F-11, s. 23 ("*FAA*"). Rather, he says, this provision merely defines default for the purpose of a person's eligibility to sponsor additional family members.

[59] The fact is however that the Regulations *do* distinguish between payment "in full" and payments "in accordance with an agreement with that government". This can only mean that the government is authorized to limit enforcement to whatever amount is agreed upon with the sponsor, and no floor or ceiling (short of forgiveness) is fixed by the Regulations. The amount and terms of repayment are therefore within the discretion of the government decision maker. An agreement requiring a sponsor to pay $20 a month on a $20,000 debt may never result in the full amount being paid, but it would nevertheless be an "agreement" within s. 135(*b*)(i) which governments are authorized to make.

[60] The Attorney General of Canada contends that agreements for less than the full amount would be tantamount to a write-off in violation of the procedures set out in the *FAA*. However, in my view, what is contemplated in s. 135(*b*)(i) of the Regulations is not a write-off but "agreed" levels of deferred enforcement. The *FAA* is a statute of very general application. It does not preclude Parliament from enacting more specialized legislative schemes for the management and enforcement of debts owed to the Crown under particular statutory programs. The *IRPA* is an example of such a specialized collection regime.

[61] Unlike the Court of Appeal, I interpret the *IRPA* and its regulations without reference to the terms of the sponsorship undertakings themselves, which are drafted by the Minister and his officials and can be (and are) modified from time to time. At best the undertakings reflect an administrative interpretation of the legislative framework. It would be different in the case of forms that are actually appended to statutes, and which therefore carry the authority of Parliament, which is not the case here. See *Houde v. Quebec Catholic School Commission*, [1978] 1 S.C.R. 937, at p. 947; Sullivan, at pp. 408-9.

(3) The Statutory Purpose

[62] Section 3 of the *IRPA* states that the Act is intended to encourage family reunification but also recognizes that successful integration of immigrants involves "mutual obligations for new immigrants and Canadian society", as follows:

> **3.** (1) [Objectives — immigration] The objectives of this Act with respect to immigration are
>
> . . .
>
> (*d*) to see that families are reunited in Canada;
>
> (*e*) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;
>
> . . .
>
> (*j*) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

. . .

(3) [Application] This Act is to be construed and applied in a manner that

. . .

(*f*) complies with international human rights instruments to which Canada is signatory.

Debt collection without any discretion in relation either to sponsors or their relatives would not advance the purposes of the *IRPA*. It would hardly promote "successful integration" to require individuals to remain in abusive relationships. Nor would the attempted enforcement of a debt against individuals without means to pay further the interest of "Canadian society". Forcing a sponsor into bankruptcy may or may not deliver a short-term return, but hardly enhances the bankrupt's chances of becoming a positive contributor to Canadian society. Excessively harsh treatment of defaulting sponsors may risk discouraging others from bringing their relatives to Canada, which would undermine the policy of promoting family reunification. Clearly Parliament's intent is to require the full debt to be paid if and when the sponsor is in a position to do so, even incrementally over many years pursuant to an "agreement" under s. 135(*b*)(i) of the Regulations. There is no reason why a sponsor who eventually wins a lottery should be relieved of the full measure of the debt at the expense of the taxpayer regardless of when the win occurs.

[63] Nevertheless, in dealing with defaulting sponsors, the government must act fairly having regard to their financial means to pay and the existence of circumstances that would militate against enforcement of immediate payment (such

as abuse). Ontario's policy seeks to balance the interests of promoting immigration and family reunification on the one hand, and preventing abuse of the sponsorship scheme on the other. Discretion in the enforcement of sponsorship debt allows the government to further this objective.

[64] For these reasons, I would reject the Attorneys General's argument that the existence of an administrative discretion that attracts procedural fairness is excluded by the text, context and purpose of the legislation.

C. *Did Ontario Improperly Fetter the Exercise of Its Statutory Discretion?*

[65] The Court of Appeal noted that "[d]iscretion is fettered or abused when a policy is adopted that does not allow the decision-maker to consider the relevant facts of the case, but instead compels an inflexible and arbitrary application of policy" (para. 124). The court concluded that the Ontario collection policy conflicts with the intended scope of the discretion. With respect, I do not agree that there is a conflict. As discussed earlier, the legislation allows the Minister to defer but not forgive sponsorship debt. This is also Ontario's policy. The policy provides that "[t]he defaulting sponsor is required to repay the full amount of debt. There is no forgiveness of the debt by the Ministry".

[66] The federal Minister of Citizenship and Immigration can change the content of the undertakings, as indeed he has over the years, just as the provincial

Minister of Community and Social Services changes the enforcement policy from time to time. Policies are necessary to guide the action of the multitude of civil servants who operate government programs. The Minister is entitled to set policy within legal limits. It cannot be said that the Ontario policy here so "fetters" the discretion as to be invalid.

[67] The Court of Appeal also concluded that Ontario's policies were less favourable to the sponsors than the terms of some of the sponsorship undertakings. However, as discussed above, the terms of the undertakings are merely expressions of administrative interpretation. They are not, in my view, tools to construe the statutory framework itself. The importance of the signed undertakings in the administrative law context is that they lay the foundation for the application of the doctrine of legitimate expectations, as discussed below. However, with great respect for the Court of Appeal, I do not agree that the federal legislative framework mandates a broader discretion in favour of defaulting sponsors than Ontario permits. It was quite open to Ontario to adopt the collection policy that it did, in my opinion.

D. *The Doctrine of Legitimate Expectations*

[68] Where a government official makes representations within the scope of his or her authority to an individual about an administrative process that the government will follow, and the representations said to give rise to the legitimate expectations are clear, unambiguous and unqualified, the government may be held to

its word, provided the representations are procedural in nature and do not conflict with the decision maker's statutory duty. Proof of reliance is not a requisite. See *Mount Sinai Hospital Center*, at paras. 29-30; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249, at para. 78; and *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539, at para. 131. It will be a breach of the duty of fairness for the decision maker to fail in a substantial way to live up to its undertaking: Brown and Evans, at pp. 7-25 and 7-26.

[69] Indeed it would be somewhat ironic if the government were able to insist on the sponsor living up to his or her undertaking to the letter while at the same time walking away from its own undertakings given in the same document. Generally speaking, government representations will be considered sufficiently precise for purposes of the doctrine of legitimate expectations if, had they been made in the context of a private law contract, they would be sufficiently certain to be capable of enforcement.

[70] Here the undertakings reaffirm that the government can defer, but not forgive, sponsorship debt. The respondents Grankin, Zebaradami, and de Altamirano, signed undertakings under the old *Immigration Act* in which the federal government represented that it possessed and would exercise a measure of discretion in the matter of enforcement:

CONSEQUENCES OF DEFAULT

. . .

> The Minister may choose not to take action to recover money from a Sponsor or a Sponsor's spouse (if Co-signer) who has defaulted in a situation of abuse or in other appropriate circumstances. The decision of the Minister not to act at a particular time does not cancel the debt, which may be recovered by the Minister when circumstances have changed. [Emphasis added.]

While *default* can be cured by making arrangements for repayment, it is clear that no representation is made that the *debt* will be cancelled, even when the Minister exercises his or her discretion to defer enforcement with or without a s. 135(*b*)(i) agreement. The Vossoughi and Dzihic undertakings are substantially the same.

[71] The essential elements of the undertakings remained unchanged under the new Act. The Hince undertaking of November 20, 2002, signed under the *IRPA*, reads in relevant part as follows:

> I understand that all social assistance paid to the sponsored person or his or her family members becomes a debt owed by me to Her Majesty in right of Canada and Her Majesty in right of the province concerned. As a result, the Minister and the province concerned have a right to take enforcement action against me (as sponsor or co-signer) alone, or against both of us.
>
> The Minister and the province concerned may choose not to take enforcement action to recover money from me if the default is the result of abuse or in other circumstances. The decision not to act at a particular time does not cancel the debt. The Minister and the province concerned may recover the debt when circumstances have changed. [Emphasis added.]

[72] While the terms of the *IRPA* undertakings support the position of the Attorneys General that the debt is not forgiven, they also support the sponsors' contention of a government representation to them that there exists a discretion not to take enforcement action "in a situation of abuse or in other appropriate circumstances" (pre-2002) or "if the default is the result of abuse or in other circumstances" (post-2002). Such representations do not conflict with any statutory duty and are sufficiently clear to preclude the government from denying to the sponsor signatories the existence of a discretion to defer enforcement. Given the legitimate expectations created by the wording of these undertakings I do not think it open to the bureaucracy to proceed without notice and without permitting sponsors to make a case for deferral or other modification of enforcement procedures.

E. *Ontario's Policy Provides an Appropriate Measure of Procedural Fairness*

[73] The Ontario procedure takes the form of a series of letters notifying sponsors that a sponsored relative has applied for social assistance and that he or she is now in default. The letters in most cases made clear Ontario's openness to consideration of mitigating factors or financial circumstances or other reasons why the debt should not immediately be enforced. This is the correct practice because under the Ontario policy the local social assistance agents are supposed to consider these factors *before* deciding to refer the matter for collection. Ontario Works and the Ontario Disability Support Program set out a process for dealing with family abuse between a sponsor and sponsored person. The Family Violence and

Sponsorship Debt Recovery information sheet describes how the officers should deal with alleged abuse and/or family violence cases. Ontario requires that if such information comes to the officer's attention collection efforts are to stop immediately.

[74] If the sponsor does not agree to repay the debt and resume supporting his or her sponsored relative, the matter is ordinarily referred to the Overpayment Recovery Unit ("ORU") for collection. The ORU will then send additional notice letters and if the sponsor responds, the ORU will solicit the sponsor's financial information to determine his or her ability to support his or her relative and repay the debt. If the sponsor does not cooperate, the matter is referred to Canada Revenue Agency's Refund Set-Off Program, which withholds any tax refunds or credits for the benefit of the province.

[75] In this process there is a limited but real opportunity for the sponsor to make representations to the government regarding the particular circumstances surrounding a default. There is no hearing and no appeal procedure but there is a legitimate expectation that the government will consider relevant circumstances in making its enforcement decision and a duty of procedural fairness to do so. However, the wording of the government's representations in the undertaking are sufficiently vague to leave the government's choice of procedure very broad. Clearly no promises are made of a positive outcome from the sponsors' point of view. The Ontario guidelines fully comply with the statutory requirements, in my opinion, but this is not to say that each province and territory must proceed in an identical fashion.

The essential requirements are that procedural fairness be observed and that the terms of the undertakings be respected by governments as well as by the sponsors who are alleged to be in default.

[76] The sponsors contend that the government is under a duty to inform them as soon as a sponsored relative obtains public assistance. It is unfair, they say, for the government to allow debt to accumulate unbeknownst to them. This is of particular concern when the relationship between sponsor and relative has broken down and the sponsor is unaware that the relative is seeking or receiving social assistance. Counsel point out that demand for payment from a number of the sponsors was not made before their indebtedness became relatively large and after the passage of a considerable period of time (for example, Mr. Grankin, four and a half years after his mother was first granted social assistance; Ms. de Altamirano, three years from the application for social assistance for her mother; Ms. Vossoughi, close to two years after the sponsor applied for social assistance for her sponsored mother). I agree that good debt management practice would suggest that demand be made as soon as the government payments to or on behalf of the sponsored relative commence. Nonetheless, it is inherent in the sponsor's support obligation that the sponsor is to keep track of the sponsored relative he or she has undertaken to support. Family class immigrants are admitted solely on the basis of their relationship to the sponsor. In return, the *sponsor*, not the government, is "responsible for preventing the family member and any accompanying dependents from becoming dependent on public

social assistance programs". Accordingly, the risk of a rogue relative properly lies on the sponsor, not the taxpayer.

[77] In the material before us it is clear that each of the eight sponsors was notified of the default and was in communication with the Ministry, in some cases through legal counsel. The facts considered relevant by the sponsors were put forward by some of the respondents. Others simply ignored the government's reasonable requests. Mr. Hince, for example, declined to disclose his financial situation on the financial assessment forms and did not respond to the government's letters. Ms. Vossoughi did not reply to the two notification letters sent to her after she had been advised that her mother had applied for social assistance.

[78] The Ministry, after consideration of whatever information was provided, generally advised each of the respondent sponsors that the sponsorship undertakings remained in effect but that the government was open to the negotiation of a repayment plan. At least one of the respondent sponsors did negotiate a repayment plan and, it seems, has been making monthly payments. However, the respondents then initiated these proceedings. In my respectful view the policies adopted by Ontario would, if respected in its collection efforts, satisfy the legitimate procedural expectations of the sponsors, and meet the basic requirements of procedural fairness. The respondent sponsors' claims to the contrary should be rejected.

V. Disposition

[79] These actions arose out of claims for declaratory relief. In light of the foregoing reasons, the appeal is allowed in part and the following declarations will issue:

(i) Canada and Ontario have a discretion under the *IRPA* and its Regulations to defer but not forgive debt after taking into account a sponsor's submissions concerning the sponsor's circumstances and those of his or her sponsored relatives.

(ii) Ontario did not improperly fetter its exercise of statutory discretion in adopting its policy. Its terms are consistent with the requirements of the statutory regime and met the legitimate procedural expectations of the respondent sponsors created by the text of their respective undertakings.

(iii) Canada and Ontario owe sponsors a duty of procedural fairness when enforcing sponsorship debt.

(iv) The content of this duty of procedural fairness include the following obligations: (a) to notify a sponsor at his or her last known address of the claim; (b) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection; (c) to consider any relevant circumstances brought to its attention keeping

in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; (d) to notify the sponsor of the government's decision; (e) without the need to provide reasons.

(v) That the above requirements of procedural fairness were met in the cases of the eight respondent sponsors.

[80] As these proceedings can properly be characterized as test cases to resolve certain legal issues of public importance all parties will bear their own costs on the appeal and on the application for leave to appeal.

Appeal allowed in part.

Solicitor for the appellant the Attorney General of Canada: Attorney General of Canada, Toronto.

Solicitor for the appellant the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitors for the respondents Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano, Oleg Grankin, Raymond Hince and Homa Vossoughi: Lerners, Toronto; Community Legal Clinic — Simcoe, Haliburton, Kawartha Lakes, Orillia.

Solicitors for the respondent Nedzad Dzihic: Waldman & Associates, Toronto.

Solicitor for the respondents Rania El-Murr and Hamid Zebaradami: Hugh M. Evans, North York, Ontario.

Solicitors for the intervener the South Asian Legal Clinic of Ontario: Bennett Jones, Toronto.

Solicitor for the intervener the Canadian Council for Refugees: South Ottawa Community Legal Services, Ottawa.

Solicitor for the intervener the Metropolitan Action Committee on Violence against Women and Children: Parkdale Community Legal Services, Toronto.

Solicitors for the intervener the Canadian Civil Liberties Association: Gowling Lafleur Henderson, Ottawa.

TAB 3a

Case Processing Centre Mississauga

Charlene Burton
Operations Manager, case Processing Centre
Citizenship and Immigration Canada

19th Annual Immigration Law Summit – Day One

The Law Society of Upper Canada | Barreau du Haut-Canada

3a

CONTINUING PROFESSIONAL DEVELOPMENT

Citizenship and Immigration Canada | Citoyenneté et Immigration Canada

Citizenship and Immigration Canada

CPC MISSISSAUGA

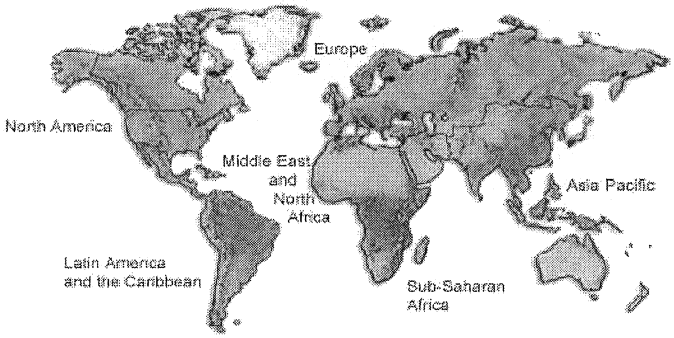
19th Annual Immigration Law Summit

November 23, 2011

Canada

Case Processing Centre Mississauga

- The Case Processing Centre in Mississauga (CPC-M) is the national processing centre for all family class sponsorships where applicants reside outside of Canada.



Citizenship and Immigration Canada | Citoyenneté et Immigration Canada

Canada

FC	Members of the Family Class
FC1 FCC FCE	Spouse Common law partner Conjugal partner
FC3	Dependant children of the sponsor, the applicant or a dependant child and must be either: •Under 22 years of age with no spouse or common law partner. •Full-time student since before the age of 22 and continuously enrolled and in attendance on a full time basis. •Unable to support themselves due to a medical condition and financially supported by their parents since before the age of 22.

FC	Members of the Family Class Cont'd
FC4	Parents and Grandparents
FC5	Brother, sister, nephew, niece, grandson and granddaughter who are orphaned of both parents, under 18 years of age, unmarried and not a common law partner.
FC6/9	Adopted children or children to be adopted in Canada
FC7	"Other Relative" means a person who is related to the sponsor by blood or adoption. Sponsors may sponsor one other relative as long as they have no spouse, common-law partner, conjugal partner, son, daughter, father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew or niece who is: a Canadian Citizen, a registered Indian, a permanent resident of Canada or a person whom they could sponsor in the family class.

The Sponsorship Undertaking

- All Family Class applications requires an eligible sponsors as the first step
- The "Application to Sponsor and Undertaking" is a legal contract between the sponsor and CIC.

Effective Date of Undertaking

In most cases, the sponsorship obligations come into effect on the day the sponsored relative(s) becomes a permanent resident.

Lengths of Undertaking

Relationship to sponsor	Length of Undertaking
Spouse, common-law or conjugal partner	3 years
Dependent Children under 22 years of age when landing	10 years or until age of 25 - whichever comes first
Dependent children 22 years of age or older when landing	3 years
Parents, grandparents, adopted children orphans or other relatives	10 years

Sponsorship Default - Social Assistance Payments

Sponsorship Default occurs when the respective province informs CIC that a debt exists

- Recovery of debt is pursued by the respective provincial authority
- Outstanding debt is considered a sponsorship bar until repaid

Debt Recovery Process

- CIC has an MOU with ON, AB and BC to share information about social assistance clients.
- Provincial ministries verify the status of clients who are seeking assistance and inform CPC-M of any debts.

MEETING MINIMUM NECESSARY INCOME (MNI)

Change in Circumstances - R134(2)

- Any changes that may affect a sponsor's ability to continue to meet the MNI will result in a reassessment
- Period of Reassessment is the 12 month period preceding the most recent change

Dokaj Decision

- Eligible co-signers may now be included post filing
- Co-signer must meet all eligibility criteria
- New sponsorship application signed by co-signer required
- Co-signer will be held equally responsible for obligations outlined in undertaking

Changing Principal Applicant

No provision with one exception:

Parent/Grandparent applications:

- Death of Principal Applicant prior to visa issuance
- Surviving spouse may become principal applicant
  - New application, undertaking and agreement required
  - No new fees

Top 10 Visa Offices *(FCP)*

	2009	2010
1)	*New Delhi*	*New Delhi*
2)	*Hong Kong*	*Hong Kong*
3)	*Manila*	*Buffalo*
4)	*Islamabad*	*Manila*
5)	*Singapore*	*Singapore*
6)	*Beijing*	*Islamabad*
7)	*Buffalo*	*Beijing*
8)	*Damascus*	Port-au-Prince*
9)	*Kingston*	*Kingston*
10)	*Other*	*Damascus*

Top 10 Visa Offices *(FC4)*

	2009	2010
1)	*New Delhi*	*New Delhi*
2)	*Beijing*	*Port-au-Prince**
3)	*Manila*	*Beijing*
4)	*Hong Kong*	*Manila*
5)	*Damascus*	*Hong Kong*
6)	*Islamabad*	*Damascus*
7)	*Singapore*	*Islamabad*
8)	*Colombo*	*Singapore*
9)	*Bucharest*	*Colombo*
10)	*Other*	*Buffalo*

Top 5 Reasons for Returns

- No fees or Insufficient fees
- Missing signatures
- Missing sponsor or applicant forms
- Missing Medicals
- Insufficient documentation for financial test assessment

Best Practices for Enhanced Efficiencies

- Submit complete package (if item is forgotten wait until solicited)
- CPCM receives over 30000 pieces of white mail

Contacting CPCM

In July 2011, CPCM implemented two-way email communication to receive specific case enquiries from clients.

FC Priority:

http://www.cic.gc.ca/english/immigrate/sponsor/spouse-apply-after.asp

Parents and Grandparents:

http://www.cic.gc.ca/english/immigrate/sponsor/relatives-apply-after.asp

Wrap Up

Question and Answer Period