

**PROPOSED AMENDMENT TO *IMMIGRATION AND  
REFUGEE PROTECTION REGULATIONS:*  
INTRODUCTION OF 'CONDITIONAL' PERMANENT  
RESIDENCE PERIOD FOR SPOUSAL AND PARTNER  
SPONSORSHIPS**

**Submission by UNICEF Canada  
to the Director, Social Policy and Programs, Citizenship  
and Immigration Canada**

**25 April 2011**

**INTRODUCTION**

UNICEF Canada appreciates the opportunity to comment on a proposal to amend the *Immigration and Refugee Protection Regulations* to introduce a 'conditional' permanent residence period of two years or more for sponsored spouses and partners in a relationship of two years or less with their sponsors.

The stated objective of the proposed 'conditional' permanent residence period, as stated in the Notice published in the Canada Gazette, would be "to deter marriages of convenience while maintaining the spirit of the family reunification program by continuing to facilitate the reunification of genuine spouses and partners and their dependents...and to send a message that Canada is taking a strong stance against marriage fraud, and immigration fraud in general."<sup>i</sup> Elsewhere, the primary intent of the proposed amendments is described as "creat[ing] a disincentive for a sponsored spouse or partner to use a relationship of convenience as a means of circumventing Canada's immigration laws, abandoning their sponsor soon after arriving in the country, then seeking to sponsor a new spouse or partner."<sup>ii</sup> If the sponsored spouse or partner does not remain in a bona fide relationship with his or her sponsor during the 'conditional' period, his or her permanent residence could be revoked.<sup>iii</sup>

**ABOUT UNICEF**

UNICEF is the world's leading child-focused humanitarian and development agency. Through innovative programs and advocacy work, we save children's lives and secure their rights in virtually every country. Our global reach, unparalleled influence on policymakers, and diverse partnerships make us an instrumental force in shaping a world in which no child dies of a

preventable cause. UNICEF is entirely supported by voluntary donations and helps all children, regardless of race, religion or politics. For more information about UNICEF, please visit [www.unicef.ca](http://www.unicef.ca).

The only organization named in the United Nations Convention on the Rights of the Child as a source of expertise for governments, UNICEF has exceptional access to those whose decisions impact children's survival and quality of life. We are the world's advocate for children and their rights.

## **POSITION OF UNICEF CANADA**

It is UNICEF Canada's position that the proposed amendments to the *Immigration and Refugee Protection Regulations*, which would introduce a 'conditional' permanent residence period of two years or more for sponsored spouses and partners in a relationship of two years or less with their sponsors, should not be enacted in their present form and that alternative means be sought to attain the stated objectives.

While we acknowledge that the avoidance of marriage fraud is a legitimate and serious consideration, there are no firm figures on the extent of bad faith relationships in Canada<sup>iv</sup> and non bona fide relationships are already prohibited under current *Immigration and Refugee Protection Regulations*.<sup>v</sup>

In UNICEF Canada's opinion, the introduction of these proposed amendments would have the effect of increasing inequalities in relationships and power imbalances between spouses or partners, and would place women and children at heightened risk of violence. It would also act as an impediment to preserving important family relationships for children and exposing them to separation from sponsored parents who may be deported from Canada. Children would also be at greater risk of being physically abused themselves by abusive sponsoring parents and of suffering emotional and developmental harm from witnessing family violence within the sponsoring parental home.

The essential problem is that it would be very difficult for sponsored women to leave abusive relationships where violence is being directed at themselves and/or their children, without fear of being deported from Canada and the additional fear of having to leave their children behind. If, on the other hand, they were to leave the abusive relationship with their children, sometimes at the urging of child protection authorities, and lose their 'conditional' permanent residence status, there is also the potential risk of a withdrawal of health, social services and educational supports for themselves and their children. This, in turn, could lead to an additional risk that the children accompanying these mothers to shelters and transition homes could lose access to these services, and possibly access to one or both parents through the court process. Some of these women, who have lost their sponsorship, may even resort to alternative forms of illegally

supporting themselves and their children, such as by entering the sex trade out of necessity (referred to as 'survival sex'), thereby exposing their children to further risks of abuse, neglect and sexual exploitation.

## SUPPORTING POINTS

1. Entering into a marriage primarily for immigration purposes is already prohibited under the Regulations.
2. Making permanent residency conditional on staying in the marriage for at least two years traps mainly women into staying in abusive relationships for fear of losing their lawful status in Canada. Their children thus also are more likely to remain in abusive households.
3. Children may be physically hurt when they remain with their parent in an abusive home. This may occur in circumstances where these children are being physically abused themselves or inadvertently hurt as a result of family violence occurring in the parental home.
4. Children may be emotionally and developmentally harmed when they are forced to remain with a violent parent and are exposed to, or witness, family violence occurring in the parental home. According to the most recent Canadian Incidence Study<sup>vi</sup>, the third nation-wide study to examine the incidence of reported child maltreatment, exposure to domestic violence (34%) and neglect (34%) were the main reasons for child protection investigations across Canada, for a total of 68% of the cases. While in most cases, these situations do not jeopardize the immediate safety of children, their development and well-being are compromised. "These children are at risk of significant impacts on their cognitive, social and emotional development."<sup>vii</sup>
5. Children may be harmed if they face being separated from one parent in circumstances where the sponsored parent is removed from Canada. There could be double victimization where those children are themselves at risk of abuse at the hands of the remaining parent.
6. There may be obstacles to family reunification with a child of the sponsored spouse or partner, where that child has been left behind in the country of origin. This is because the parent with conditional permanent residence status would not likely be able to sponsor his or her child to enter Canada for a prolonged period of their childhood.
7. Making permanent residency for the sponsored spouse or partner conditional on continuing sponsorship puts all the power into the hands of the sponsor, who can use the tenuous quality of the other spouse's or partner's immigration status as a tool

- for manipulation and control of both the sponsored spouse or partner and any children residing in the parental home.
8. The threat of withdrawal of sponsorship and the loss of legal immigration status leading to probable deportation can be a constant threat and source of fear for both the sponsored spouse or partner and any children living in the parental home.
  9. If a sponsored spouse or partner, usually a woman, were to leave the abusive relationship with her children and lose her 'conditional' permanent residence status, there is also the potential risk of a withdrawal of health, social services and educational supports for her and her children. This, in turn, could lead to an additional risk that the children accompanying these mothers to shelters and transition homes could lose access to these services, and possibly access to one or both parents through the court system. Many of these concerns are documented in a recent report prepared by the YWCA of Vancouver, called "Single Mothers Without Legal Status in Canada: Caught in the Intersection Between Immigration Law and Family Law."<sup>viii</sup>
  10. Given that many sponsored immigrants, especially women, live in fear of losing their lawful immigration status and being deported, it is unlikely that they would come forward to report an abusive relationship.
  11. Given that many sponsored immigrants are not able to converse in the English language and are not aware of their own rights or their child protection reporting duties in the case of their children, it is unlikely that they would come forward to report any violence which is being directed against themselves or their children.
  12. The suggestion that some cases would be "targeted for fraud"<sup>ix</sup> raises fears of possible racial, national or ethnic stereotyping and discrimination.
  13. Laws should not be enacted on the basis of a few exceptional or high profile cases. They should be based on evidence and experience of what works, and what is not working.
  14. The proposed amendments would appear to be not fully compliant with the Convention on the Rights of the Child and do not treat the best interests of the child as a primary consideration. In particular, the published Regulatory Impact Analysis Statement does not specifically refer to 'the best interests of the child' and does not include a child impact assessment component.
  15. The challenges faced in the development and consideration of these proposed amendments demonstrate significant deficiencies in: 1) giving insufficient attention to children's rights and international standards in the development of these kinds of Regulations; 2) failing to apply a child impact analysis before a Regulation reaches this stage; and 3) the absence of an independent Children's Advocate or

Commissioner for Canada who has the authority to advocate on behalf of children who will be impacted by this kind of federal Regulation.

## A CHILDREN'S RIGHTS PERSPECTIVE

UNICEF Canada's concerns about the proposed amendments to the *Immigration and Refugee Protection Regulations* are also rooted in the recognition that Canada has assumed international obligations to respect and promote the rights of all children in Canada. In this regard, Canada signed the Convention on the Rights of the Child<sup>x</sup> on May 28, 1990 and ratified it on December 13, 1991. Due to the nature of treaty obligations and customary law, there is a general duty to bring internal law into conformity with obligations under international law."<sup>xi</sup>

The Convention on the Rights of the Child affirms the status of all children as equal holders of human rights and it includes explicit rights to protection from all forms of violence, abuse, neglect and exploitation.

Article 19 of the Convention on the Rights of the Child speaks to the child protection obligations of signatory States and provides:

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

Article 2 of the Convention on the Rights of the Child guarantees that there shall be non-discrimination against any child on the basis of any status:

"1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”

It is imperative, then, that a full range of services, supports and benefits be provided to all children residing in Canada, whether separated or as part of a family, and regardless of their immigration status. In the YWCA Vancouver Report mentioned earlier, this point is clearly stated:

“Mothers without status and their children deserve the same protection and rights of others in our country. In cases where mothers have lost status as a result of abuse and broken sponsorship promises, they should be provided with access to income, a temporary social insurance number, housing and basic medical care. This would enable them to provide for themselves and their children while they wait for immigration decisions regarding their applications for status. This would also influence the outcome of family law cases so that children can live with stability and not lose their primary caregivers.”<sup>xii</sup>

The same YWCA Vancouver Report also recommends that Citizenship and Immigration Canada implement a ‘women-at-risk’ program. This program would “allow women who have been abused to be issued work permits while they await the results of their applications based on humanitarian and compassionate grounds, providing them with a temporary form of status.”<sup>xiii</sup>

As examples of discrimination, the YWCA Vancouver Report indicates that it found discrimination against children living with mothers without status in the context of access to health care and education. In the case of health care, some children were not receiving adequate health care because their mothers could not afford the medical premiums. In the case of access to education, some children were not attending school because their mothers had been told they must pay the \$12,000 annual fee charged to foreign students.<sup>xiv</sup>

Article 9 of the Convention on the Rights of the Child recognizes that children have a right to family, and should not be separated against their will, unless it is in their best interests:

“1. States parties shall ensure that a child not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child...”

...3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”

In the Notice published in the Canada Gazette, there is a statement that “one of the objectives of the *Immigration and Refugee Protection Act* (IRPA) is to facilitate family reunification”.<sup>xv</sup> However, in our view, these proposed amendments would appear to run contrary to the principle of family reunification and continuity in the preservation of positive parental and caregiver relationships.

Article 3 of the Convention on the Rights of the Child is also relevant here and speaks to the importance of signatory States treating the best interests of the child as a primary consideration in all actions undertaken by legislative bodies, such as the enactment of the proposed amendments to the *Immigration and Refugee Protection Regulations*:

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

It is noteworthy that the proposed amendments under consideration make no reference to ‘the best interests of the child’ and their enactment may result in children being subjected to an increased risk of physical harm through direct abusive treatment or inadvertently through errant violent acts directed at another person, or harmed emotionally and developmentally through witnessing family violence or being separated from a deported parent. Risk to children’s development would also result from the loss of access to health, education and other services in different family separation scenarios that are made more likely with the proposed change in the Regulations. In this regard, the published Regulatory Impact Analysis Statement does not appear to consider the best interests impacts upon children of the enactment of these proposed amendments.

As well, in the YWCA Vancouver Report, the point is made that mothers without status situations are judged by two different systems – family law and immigration law – in two different ways and that there is a disconnect between these two legal systems. Whereas family law decisions about custody, access, guardianship and child protection are decided upon the basis of the child’s best interests being paramount, the best interests of the child is only a single consideration, among many, in immigration cases.<sup>xvi</sup> It is then suggested that this problem could be corrected if the *Immigration and Refugee Protection Act* were amended to make the best interests of the child a primary consideration, particularly within the context of applications for permanent residence based on humanitarian and compassionate grounds, and that amending the legislation in this way “is consistent with Canada’s obligations under the UN Convention on the Rights of the Child”.<sup>xvii</sup>

## LIST OF RECOMMENDATIONS

**Recommendation 1:** That the proposed amendments to the *Immigration and Refugee Protection Regulations*, which would introduce a ‘conditional’ permanent residence period of two years or more for sponsored spouses and partners in a relationship of two years or less with their sponsors, not be enacted in their present form and that alternative means be sought to attain the stated objectives.

**Recommendation 2:** That the existing regulatory impact analysis statement be expanded to include a valid child rights impact assessment process, which should be made public for transparency and accountability purposes. As part of this process, or minimally as part of the existing requirements for the review of policy under the federal Cabinet Directive on Streamlining Regulations (compliance with international obligations), the proposed amendments to the *Immigration and Refugee Protection Regulations* should be evaluated for compliance with the Convention on the Rights of the Child, with particular emphasis on Articles 2, 3, 9 and 19.

**Recommendation 3:** That the federal government take steps towards amending the *Immigration and Refugee Protection Act* so that any decision affecting a child must treat the best interests of the child as a primary consideration.

**Recommendation 4:** That where parents have lost their legal status in Canada as a result of leaving a sponsored relationship with a spouse or partner because of abuse or other degrading treatment, they should be provided with special ‘at-risk’ status upon proper documentary proof, and given access to income, a temporary social insurance number, a temporary work permit, housing, basic medical care, legal aid and free education, thus enabling them to provide for themselves and their children while they wait for immigration decisions regarding their applications for status.

**Recommendation 5:** That the federal government adopt and apply an ‘equity focus’ by investing more heavily in its outreach to the poorest and most vulnerable children in Canada, including migrant children, and by refocusing its energies on alleviating the risks to their protection and development opportunities.

**Recommendation 6:** That all parliamentarians work towards consensus to ensure that an independent Children’s Advocate or Commissioner for Canada is established so that the rights, interests and voice of all Canadian children can be properly safeguarded.



## SUMMARY

Given the lack of evidence that marriage fraud is a pervasive problem, it is unfortunate that the federal government is introducing the concept of a 'conditional' period of permanent residence for sponsored spouses. The proposed measure to reduce fraudulent marriages in the context of immigration is likely to have the greatest impact on the children of abusive sponsoring parents. UNICEF Canada recommends a more robust regulatory impact analysis that specifically addresses the best interests of children and seeks alternative means to attain the stated objectives.

Submission prepared by:  
Marvin M. Bernstein, B.A., J.D., LL.M.  
Chief Advisor, Advocacy  
UNICEF Canada

## ENDNOTES

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- <sup>i</sup> Canada Gazette, Notice of Proposed Amendments to Subsections 130 (1) and (2) of the *Immigration and Refugee Protection Regulations*, March 26, 2011.
- <sup>ii</sup> Canada Gazette, Regulations Amending the *Immigration and Refugee Protection Regulations*, Regulatory Impact Analysis Statement, April 2, 2011.
- <sup>iii</sup> *Supra*, note i.
- <sup>iv</sup> *Supra*, note ii.
- <sup>v</sup> *Ibid.*
- <sup>vi</sup> Public Health Agency of Canada, *Canadian Incidence Study of Reported Child Abuse and Neglect-2008: Major Findings*. Ottawa, 2010.
- <sup>vii</sup> Canadian Child Welfare Research Portal, *Canadian Incidence Study 2008*, at [www.cecw-cepb.ca/cis-2008](http://www.cecw-cepb.ca/cis-2008).
- <sup>viii</sup> YWCA Vancouver, *Single Mothers Without Legal Status In Canada: Caught in the Intersection Between Immigration and Family Law*, March 2010.
- <sup>ix</sup> *Supra*, note i.
- <sup>x</sup> United Nations, Convention on the Rights of the Child, A/RES/44/25, United Nations, New York, 20 November 1989.
- <sup>xi</sup> Brownlie, Ian, *Principles of Public International Law* (New York: Oxford University Press, fifth ed., 1998) at 35.
- <sup>xii</sup> *Supra*, note viii, at 6.
- <sup>xiii</sup> *Ibid.* at 34.
- <sup>xiv</sup> *Ibid.* at
- <sup>xv</sup> *Supra*, note i.
- <sup>xvi</sup> *Supra*, note viii, at 35.
- <sup>xvii</sup> *Ibid.* at 44, 46.