



Statement on Amendment to the Immigration and Refugee Protection Regulations

Proposed Conditional Permanent Residence Period for Sponsored Spouses

April 6, 2012

Introduction

On March 10, 2012 Citizenship and Immigration Canada published proposed regulations in the Canada Gazette (Part I, Vol. 146, No. 10 – March 10, 2012) to amend the *Immigration and Refugee Protection Regulations* and introduce a *conditional* permanent residence period of *two years* for sponsored spouses, common law and conjugal partners. The conditional measure will apply to sponsored spouses and partners who have been in a relationship of two years or less with their sponsors and who have no children in common with their sponsors at the time of the sponsorship application. The proposed conditional measure requires that sponsored spouses or partners cohabit in a conjugal relationship with their sponsors for a period of two years following receipt of their permanent resident status in Canada.

If the sponsored spouses or partners do not remain in a conjugal relationship living with their sponsors during the conditional period, their permanent residence could be revoked, which would initiate actions that may lead to their removal from Canada.

Included in the proposed amendments is an exemption for abused spouses and partners. The two-year cohabitation period would not be required for sponsored permanent residents who provide evidence of:

- abuse or neglect by their sponsor
- a failure by the sponsor to protect them from abuse or neglect by another person related to the sponsor during the conditional period, whether or not that person is residing in the household.

The government states that the objective of the proposed changes to the Regulations is to curb “marriage fraud”.¹

METRAC submitted a letter to Citizenship and Immigration Canada on April 6, 2012, in response to the government’s invitation to comment on the proposed conditional permanent residence requirement. The letter set out METRAC’s grave concerns about the implementation and effects of this policy and regulatory amendment, which METRAC believes will produce safety risks and harm

to the health, well being and equality of women and children. The following was included in the letter.

Background on METRAC

The Metropolitan Action Committee on Violence Against Women and Children (METRAC) is a non-profit, community-based organization that works to prevent violence against women and youth from diverse backgrounds. Established in 1984, METRAC has delivered Safety Audits and training, peer-directed violence prevention for youth, innovative public education, and legal information for service providers and women. METRAC's work has garnered public awards in recognition of our service to the community to increase safety and address violence.

Position of METRAC

METRAC is strongly opposed to the proposed amendments to the *Immigration and Refugee Protection Regulations*, which would introduce a period of conditional permanent residence for sponsored spouses and partners.

Summary of METRAC's Opposition to the Proposed Conditional Permanent Residence Requirement

- METRAC is deeply concerned that the proposed conditional measure will, in effect, trap vulnerable women into staying in abusive relationships for fear of losing their status in Canada. It will force sponsored spouses and partners to make a difficult choice between personal safety and life in Canada, for themselves and their children.
- The exemption for abused spouses and partners will not be effective in helping women escape abusive relationships.
- Women are more likely than men to be sponsored as a spouse to settle in Canada.² The most serious forms of domestic violence still happen against women.³ Sponsored immigrant women are dependent upon their partners for immigration status and economic support, which makes them especially vulnerable to abusive relationships. Barriers arising from language, isolation, and discrimination often increase the vulnerability of newcomer women.⁴ Making permanent residency for sponsored partners conditional upon co-habitation with their sponsor for two years will disproportionately impact and discriminate against an already marginalized, vulnerable group.
- Making "final" permanent residence conditional on cohabiting for two years with the sponsoring spouse or partner will increase inequalities in relationships and foster power imbalances between all sponsoring and sponsored partners. Abuse includes threats and coercion as well as physical violence. The proposed conditional permanent residence period of two years will subject all sponsored spouses and partners to the risk of abuse.

- Children born during the application and conditional permanent residence period, as well as any other children under the care of the sponsored spouse or partner, will be at risk of harm. Where there is abuse or violence against a partner who feels trapped to stay, children will suffer from exposure to abuse. Where a spouse or partner leaves the sponsor's home to escape abuse or for other relationship breakdown, children will be at risk of being separated from a parent/caregiver.
- The proposed conditional residence will foster negative stereotypes and discrimination against immigrants to Canada. Many immigrants -- family-sponsored immigrants in particular -- constitute a group already at risk of facing stereotypes and discrimination.⁵ Creating a class of conditional permanent residents will create a sub-group of partner-sponsored immigrants who will likely be pre-judged as “frauds” who “take advantage of the system”.

Main Concerns with the Legislation

1. Conditional Permanent Residence Will Trap Women in Abusive Relationships

Requiring a sponsored spouse or partner to stay in a relationship and live with the sponsor for two years in order to be granted permanent residence will have the effect of forcing women to stay in abusive relationships to secure their status in Canada.

Studies list many reasons that make it difficult for abused women to leave their abuser, including: no safe place to go; no source of income; fear for well-being of children; stigma associated with abuse and relationship breakdown; family and religious restrictions; poor understanding of legal rights and poor understanding of available support resources.⁶ Added to these challenges, newcomer women often experience language barriers, stereotyping, discrimination and isolation, all of which contribute to making sponsored spouses among the most vulnerable women in Canada.

Women are more likely to experience death and more serious injuries from spousal violence than men.⁷

Thus the conditional permanent resident proposal will disproportionately disadvantage women by exacerbating their vulnerability, and by compromising the safety of sponsored women and their children.

It is important to recognize that violence in intimate relationships is not limited to heterosexual relationships and can occur in same sex relationships. As such, the problem of abuse between sponsors and sponsored partners arising from the proposal for conditional permanent residence will also have an adverse effect on lesbian, gay, bisexual and transgendered (LGBT) sponsored partners. LGBT persons are frequently exposed to discrimination based on gender and sexual orientation, which adds to their vulnerability and marginalization. For all of these reasons, LGBT sponsored partners are also at high risk of being trapped in violent relationships as a result of the proposed amendment.

There is the additional risk that sponsored spouses and partners will not have access to full information about the conditional permanent residence rules and that some may not understand that the condition is limited to two years. As a result, some sponsored spouses and partners may feel compelled to stay in abusive relationships forever, believing that living with their sponsor is a permanent condition of residency.

Finally, we note that the proposal for conditional permanent residence will not have any effect in situations where one or both partners knowingly set out to circumvent the purposes of genuine family reunification by remaining in a relationship of “convenience” for two years. Such individuals who are informed of the rules are unlikely to be caught in an abusive situation, whereas those who are most vulnerable will be.

2. The Exemption for Abused Spouses and Partners Will Not Be Effective

Although the government has introduced an “exemption” from the conditional measure for abused spouses and partners, we do not believe this exemption will be effective.

Abused partners, especially women, often suffer from low self-esteem and are typically both physically and mentally depleted by virtue of living and coping with violence.⁸ Abusive partners often bar women’s access to money and to contact with friends and community. It is known that abused women face incredible obstacles to leaving an abusive relationship.⁹

As newcomer women face added barriers to equality in combination with the effects of trauma, it is very unlikely that abused spouses and partners will be able to take advantage of the exemption. Some specific barriers include:

- inability to get information on the exemption;
- inability to get information about, and access to the legal system;
- difficulty getting language and culturally-appropriate legal assistance;
- difficulty getting support;
- the burden of proving their own abuse;
- the burden of proving they had been living with their sponsor before leaving because of abuse; and,
- cost.

The government concedes, “it is recognized that there would be some costs to the sponsored spouses or partners in obtaining and providing evidence in instances of abuse or neglect.”¹⁰

Furthermore, meeting the burden of establishing many forms of abuse may also be difficult. Emotional and psychological abuse do not carry the overt signs of physical aggression, yet are severely damaging. Difficulties establishing sexual assault in the context of existing spousal and other intimate relationships will be imported into the immigration context, where decision-makers may lack expertise in such issues.

In light of the many barriers that abused sponsored partners will likely face, it is expected that meeting the demands to rely on the exemption will be all but insurmountable.

3. Conditional Permanent Residence Creates a Power Imbalance Disadvantaging All Sponsored Spouses

Requiring a conditional permanent residence period for sponsored partners and spouses will increase inequalities in relationships and foster power imbalances between sponsoring and sponsored partners. This will potentially have a negative impact on all sponsored partners, regardless of the “genuineness” of the relationship.

The proposal places a great deal of power into the hands of the sponsor, who can use the precarious nature of his or her partner’s status as a tool for control and manipulation. The power imbalance is created by the fact that at any time during the conditional two-year period, the sponsor can simply declare the relationship to be fraudulent. This can be a constant threat and source of fear for the sponsored person who faces the risk of losing immigration status. Oppression and abuse may take many forms in addition to physical violence. Coercion into unwanted sexual and other activities, as well as living under constant threat, have been recognized as elements of violence.¹¹ Newcomer women have reported many cases of their sponsors wielding the threat of deportation over them.¹²

While the power imbalance created by the proposed conditional measure affects all sponsored partners, the majority of sponsored spouses entering Canada are women.¹³ Therefore the proposed measure will reinforce unequal gendered power dynamics by increasing the tenuous nature of women’s immigration status in Canada and jeopardizing the personal safety and security of women and their children.

4. Conditional Permanent Residence Will Harm Children

The proposed regulatory amendments will apply to relationships of two years or less where partners have no children in common at the time of the sponsorship application. It is possible, however, that during the period that the application is being processed (for inland applicants), and during the two-year conditional period of cohabitation, children will be born.

The conditional permanent residence requirement puts the sponsored person’s children, as well as any children under her care, at risk. Children may be in danger, for example, when they remain with their parent who lives in an abusive home for fear of losing status. Children who remain in abusive households face a greater risk of being physically hurt and suffer emotional and developmental harm.¹⁴

In addition, if the sponsored parent of the child does leave the abusive relationship but is unable to get an exemption from the two-year cohabitation requirement, the proposed measure would also harm children who are separated from the sponsored parent who is removed from Canada.

Under the proposed conditional permanent residence requirement, sponsored women in abusive relationships could be faced with impossible decisions, caught between abuse, possible deportation, and possible intervention of child protection services. If a woman stays in an abusive relationship for fear of risking immigration status, child protection officials can become involved and separate child from mother.

5. Other Gender-Based Discrimination

Whether or not a sponsored relationship breaks down due to abuse, women whose partnerships dissolve before the two year conditional period expires could be exposed to removal from Canada and may face discrimination and victimization upon returning to their country of origin. Many societies are not as accepting of divorce or separation as Canadian society. The proposed measure ignores the impact on women forced to return to situations where they may undergo stigma and social isolation from family breakdown.

6. Negative Portrayal of Immigrants

The government's rationale for introducing the conditional permanent residence measure is to reduce fraudulent entry into Canada through abuse of the family sponsorship program. The conditional permanent residence measure creates a sub-class of permanent residents who are singled out as frauds intending to take advantage of Canada.

Further, the conditional permanent resident proposal does not provide for circumstances in which genuine relationships break down for legitimate reasons other than abuse. The proposal responds to all reasons for relationship breakdown during the two-year conditional period with a cancellation of permanent residence, unless there is proof that the exemption applies. The measure furthers the stereotype that spousal sponsorships in Canada are most often fraudulent.

Notwithstanding, the government does not have firm numbers on the extent of marriage fraud, as discussed in the following section. The introduction of the measure without the sound basis of a problem also reinforces the stereotype that immigrants seek to abuse Canada's immigration system, especially through the family sponsorship program.

The proposal thus fosters unfounded, negative stereotypes about immigrants and reinforces xenophobia and discrimination against newcomers.

7. Lack of Evidence That There Is a Significant Problem

The government states that the purpose of the amendments is to reduce "marriage fraud" and to improve the "integrity of Canada's immigration system".¹⁵

The Minister has used town hall meetings to hear claims from sponsors that they have been victims of marriage fraud, as justification that the problem is widespread. We caution that there is no objective evidence to substantiate these claims, nor is there any apparent consideration of whether these sponsorship breakdowns are related to abuse or violence towards the sponsored partner.

The government concedes that "firm figures on the extent of marriage fraud are not available."¹⁶ It cites a 16% refusal rate for spousal sponsorships and explains that many sponsorships are refused because relationships are not found to be *bona fide*. The government also states that there are other reasons that sponsorships may be refused, such as criminality, security, medical issues and sponsor ineligibility.¹⁷

Canada currently devotes significant resources at its visa offices abroad, as well as in Canada, to screen relationships for “genuineness”. As a result, it appears that these efforts are effective in screening out 16% of all applications.

Nevertheless, should cases of fraud occur, Canadian law already has provisions to charge immigrants under both immigration and criminal law for misrepresentation. Furthermore, the government is considering the introduction of an additional disincentive to abusing sponsorship rules. Another amendment to the Regulations would bar permanent residents who gain status as a sponsored spouse or partner from sponsoring a subsequent spouse or partner for a period of five years, following the date they become a permanent resident.¹⁸

Given that there is no reliable evidence of a widespread problem of “marriage fraud” and given the existing and proposed legislation to screen out, penalize and create disincentives to abuse the family sponsorship system, the proposed conditional permanent resident regulation merely creates unnecessary barriers to legitimate family reunification.

8. Experience of Other Countries

The government relies on the fact that similar policies are already in place in the United Kingdom, Australia and the United States and argues that the introduction of conditional permanent residence will bring Canada in line with other nations. We note, however, that studies of these policies in those countries have found that conditional status creates the problems mentioned above, putting abused partners at risk and giving increased power to abusive sponsors.¹⁹

In particular, an exemption for domestic abuse in other jurisdictions has been found of little protection, where women bear the burden of proving abuse and the *bona fides* of their relationship. The following excerpts from international reports provide a poignant picture:

Despite the *Family Violence Provisions* in Australia to lessen the vulnerability produced by conditionality on abused sponsored partners, the Australia Immigrant and Refugee Women’s Alliance reported:

For many immigrant women without permanent residency living in a domestic violence situation, one of the major restrictions that they face in accessing support services is the threat of deportation from sources such as their spouse and host family. In addition, withholding vital information from women about the status of their visa or application for permanent residency plus, if applicable, their rights to custody over their children may be considered manipulative and can cause further stress and anxiety for women in domestic violence situations.

The UK also has a *Domestic Violence Immigration Rule* intended to mitigate the vulnerability produced by conditionality for abused sponsored partners. However, Southall Black Sisters expressed similar concerns, providing the following example:

An Asian woman was too afraid of being removed from the UK and of violent reprisals, and ignorant of her rights and services available, to report domestic violence while she lived with her husband during the probationary period.

Regarding the issue of providing evidence, the same UK organization stated:

[T]he type of evidence needed to prove domestic violence is not easily available. Due to the hidden nature of domestic violence and numerous problems with reporting, some victims are unable to provide the type of evidence currently required to qualify under the domestic violence rule.²⁰

We caution the Canadian government against borrowing foreign policies, in light of evidence that they lead to negative consequences.

9. Possible breach of the *Canadian Charter of Rights and Freedoms*

Section 15

In light of the many and severe negative effects of the proposed conditional permanent residence, which will have a disproportionately greater impact on women sponsored spouses and partners, we believe that the proposed regulations may violate the equality rights of immigrant women protected under s. 15 of the *Charter of Rights and Freedoms*.²¹

The greatest number of immigrants sponsored by a spouse or partner and subject to the conditional permanent residence rule are women. Immigrant women constitute a group identifiable by a number of grounds protected under s. 15, including sex, national or ethnic origin, possibly race or colour, and non-citizen status itself. The intersection of these personal characteristics makes these women particularly vulnerable, and an historically disadvantaged group which the *Charter* is clearly intended to protect from discrimination.

The effects of the measure will subject these women to oppressive relationships, and trap some in abusive and violent homes. Where there is actual domestic violence, statistics indicate that the effects are significantly more severe on women than on men. The exemption from the proposed measure is unlikely to protect these immigrant women from the many forms of physical, sexual, emotional and psychological abuse to which they will be subjected.

The proposed conditional permanent residence will expose women to harm, and will perpetuate negative stereotypes about women who immigrate as sponsored spouses and partners, as likely fraudsters who take advantage of the system.

The lack of evidence about the extent of fraudulent sponsorships, combined with the failure of the measure to deter true fraudsters who simply wait out the two-year conditional period, indicate there is little ameliorative effect of the proposal.

According to the Supreme Court of Canada's contextual analysis,²² there is a strong argument that the proposed regulations for conditional permanent residence are in breach of s. 15 of the *Charter*.

Section 7

The proposed conditional permanent residence poses serious threats to the safety, health and well-being of sponsored spouses and partners, and their children. As already discussed, the proposed measures will expose sponsored spouses and partners to psychological and physical risk, which the exemption will not effectively prevent.

The measures appear arbitrary, unsupported by firm evidence, and irrationally related to the government's purpose. There is little evidence to support the extent of the problem of marriage

fraud, and therefore little justification for the conditions to be imposed on sponsorship relationships that are less than two years long, for a period of two years following acceptance of the permanent resident.

We therefore believe that the proposed regulations may violate the *Charter's* s. 7 rights to life, liberty and security of the person of the affected women and children, in a manner which is not in accordance with the principles of fundamental justice.

In the case of each *Charter* breach, under sections 15 and 7, there is little evidence to suggest that the government's purpose is pressing and substantial. Further, the negative effects of the proposed regulations greatly outweigh any positive one. Accordingly, it is unlikely that either breach could be justified under *Charter* s. 1.

Conclusion

Introducing “conditional permanent residence” is a major step backwards in Canadian immigration policy. Instead of bolstering the integrity of the system, it increases inequalities in relationships and puts women and children at heightened risk of violence. It reinforces stereotypes that immigrants are often fraudsters and searching for a “free ride”, despite the lack of evidence to support widespread immigration fraud under family sponsorship. The experience in other countries that have imposed similar measures substantiates the concerns raised by critics of the conditional permanent residence proposal. Indeed, it is likely that the government's proposed regulations would violate the rights to equality, and life, liberty and security of the person, as protected under sections 15 and 7 of the *Charter*.

Many sponsored immigrants, particularly women, have little knowledge of their rights and are often isolated and alone. They may be afraid to speak out about abuse for fear of compromising their immigration status, and may face barriers that create shame and fear of reporting their abusers. Rather than removing these barriers, the government's proposed exemption in cases of abuse places the burden of proving the abuse on the abused woman herself. As a result, the measure significantly reduces a newcomer woman's chance to escape violence, further victimizing her and her children.

¹ Canada Gazette, Regulations Amending the Immigration and Refugee protection Regulations, Regulatory Impact Analysis Statement, Part I, Vol. 146, No. 10 – March 10, 2012.

² Citizenship and Immigration Canada, *Canada Facts and Figures 2010 – Immigration overview: Permanent and Temporary residents* (Public Works and Government Services Canada, 2011) at 4-10.

³ Statistics Canada, *Family Violence in Canada: A Statistical Profile* (Industry Canada, 2011) at 10.

⁴ Canadian Council for Refugees, Ontario Council of Agencies Serving Immigrants, Metro Chinese and Southeast Asian Legal Clinic *et al.*, *State of Immigrant and Refugee Women's Status in Canada-2012: A Joint Report*, (Toronto, 2012), See also Canadian Research Institute for the Advancement of Women, “Immigrant and Refugee Women Fact Sheet,” (Ottawa, 2003), Andrée Côté, Michèle Kerisit, and Marie-Louise Côté, *Sponsorship. For Better or For Worse: The Impact of Sponsorship on the Equality Rights of Immigrant Women* (Ottawa, 2001) at 47-63.

⁵ Sponsorship: For Better or Worse, *ibid.* at 41-43, 66, 72-76. See also Ontario Council of Agencies Serving Immigrants, *Prevention of Violence Against Immigrant and Refugee Women, Resource Book* (Toronto, 2006) at 26, 28-32.

⁶ *Ibid.* See also Canadian Resource Centre for Victims of Crime, *Spousal Abuse*, online: <http://crcvc.ca/docs/spousalabuse.pdf> at 6-8.

⁷ *Supra* note 3 at 10.

⁸ METRAC, *No Cherries Grow on Our Trees: A Social Policy Research Paper for the Take Action Project to Address Women's Poverty and Violence Against Women* (Toronto, 2008) at 38-41. See also Health Canada, *Immigration and Health, Working Paper 01-05* (Public Works and Government Services Canada, 2001) at 13.

⁹ *Supra* note 6.

¹⁰ *Supra* note 1.

¹¹ Resource Book, *supra* note 5, United Nations Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, UN WOMEN, (Beijing, 1995) at ss. 112-130.

¹² Sponsorship: For Better or Worse, *supra* note 4 at 55-60.

¹³ *Supra* note 2.

¹⁴ Public Health Agency of Canada, *Canadian Incidence Study of Reported Child Abuse and Neglect-2008: Major Findings*, (Ottawa, 2010) at 2-6.

¹⁵ Citizenship and Immigration Canada News Release-Conditional permanent residence proposed to deter marriages of convenience, Ottawa, March 9, 2012.

¹⁶ *Supra* note 1.

¹⁷ *Ibid.*

¹⁸ Canada Gazette, Regulations Amending the Immigration and Refugee protection Regulations, Part 1, Vol. 146, No. 6 -March 14, 2012.

¹⁹ AIRWA Submission to the Australian Parliamentary Group on Population and Development, 16 March 2011,

http://www.pgpd.asn.au/9%20May%202011%20Submissions/AIRWA_Submission.doc, “Domestic Violence, Immigration and No Recourse to Public Funds: A Briefing to amend the Domestic Violence, Crime and Victims Bill”, April 2004,

<http://www.southallblacksisters.org.uk/research.html>. See also Olga Grosh, “Foreign wives, Domestic Violence: US Law Stigmatizes and Fails to Protect “Mail Order Brides”, (2011) 22 *Hastings Women’s Law Journal* 81-111 at 97-99, UK House of Commons, *Select Committee on Home Affairs, Fifth Report, Session 2005-6*.

²⁰ *Ibid.*, Canadian Council for Refugees, “Submissions on Proposed ‘Conditional Permanent Residence’ for sponsored spouses”, 30 March 2012.

²¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, ss. 7, 15.

²² *Wühler v. Canada (Attorney General)*, 2011 SCC 12; *R. v. Kapp*, 2008 SCC 41; *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.