
Sponsoring Your Partner to Immigrate to Canada

An Out/Law Legal Guide

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If you are a Canadian citizen or permanent resident, and your partner lives in another country, you are entitled to sponsor your partner to immigrate to Canada and become a permanent resident.

As of November 1, 2012 Canada has added a new restriction: to be a sponsor, you must be someone who was not sponsored for permanent residence in the spousal sponsorship category within the last five years.

Who is a Partner?

Anyone of the same or opposite gender as you, with whom you have a committed long term relationship, if

- a. you are married (spouse) OR
- b. you have lived together for at least one year (common law spouse) OR
- c. you have been in a relationship for one year or more, but your partner comes from a country where you cannot live together or marry because of homophobic laws or attitudes (conjugal partner).

Note: from Immigration Canada's point of view, a relationship does not begin until you have met your partner in person. Though you may date your relationship from the time you fell in love over the internet, Immigration will not count time before you met physically.

If you have a same-sex marriage, the marriage must either have been performed in Canada, or else it must be legally recognized according to both the law of the place where the marriage occurred, and the law of Canada. "Registered domestic partnerships", available to same sex partners in some countries where same sex marriages are not available, are not recognized as marriages. However if you live together they are valuable evidence of a common law relationship.

What Do I Have to Do to Sponsor?

The requirements of a sponsor are:

- that you sign a sponsorship agreement with your partner and the federal government
- you are over 16 years of age
- if you have sponsored a spouse (or common law or conjugal spouse) before, at least three years have passed since that person got permanent residence
- if you are not currently living in Canada, you must be intending to return to Canada in order to be eligible to sponsor your partner

Are There Factors Which Could Disqualify Me as a Sponsor?

Yes. You will be disqualified as a sponsor if:

- you are receiving social assistance (unless it is because of a disability)
- you are an undischarged bankrupt
- you are in prison
- you have had a conviction for sexual assault against a family member in the last 5 years
- you have been convicted of another serious offence
- you are behind in child support or spousal support payments
- either you or your partner were married to someone else at the time of your marriage to each other, (in other words, that one of you committed bigamy)
- you have lived separate from your partner for more than one year (with some exceptions)
- you have committed an Immigration violation yourself, for example by gaining permanent residence for yourself when you were actually disqualified
- you have been ordered to leave Canada
- you sponsored someone else, and they received social assistance during the time they were covered by your sponsorship

What is Involved?

You and your partner must demonstrate to Canada Immigration that your relationship is a genuine one, and that you have not filed this application for the sole purpose of getting immigration status in Canada (eg a sham marriage).

What If my Partner has Children?

You can sponsor your partner's unmarried children at the same time as you sponsor your partner. A 'child' is, generally, someone under 19. There are some exceptions for dependent children over 19.

If your partner has children he or she is NOT planning to bring to Canada as part of your spousal sponsorship, there is an important rule. Anyone who applies for permanent residence must have their dependents assessed for eligibility also. That means that if partner has children, they must have medical assessments even if your partner is not planning to bring them to immigrate to Canada. Unless your non-Canadian partner declares that he or she has children, AND has their medical eligibility assessed as part of the spousal sponsorship application, he or she will NEVER be able to sponsor that child in the future for permanent residence in Canada.

How do we Show that our Relationship is Genuine?

You gather documents that demonstrate that your relationship has been ongoing for at least a year (or, that the marriage is not a sham) because people have known of your relationship for a long time and know it to be serious.

Such documents could include travel vouchers from trips you have made to see each other; photos of your times together; letters from friends and family members; joint bank accounts; a tenancy agreement; mail delivered to both of you at the same address; telephone bills showing calls to each other; insurance policies, employment benefits or wills made in favor of each other; etc.

In addition, you will each write a letter to Immigration, explaining how you came to meet, and fall in love; and how you have made the huge decision that one of you will change countries to be in Canada together.

From all of that, ultimately, we will write a submission on your behalf, supported by tabbed documents keyed to each paragraph.

In addition, Immigration requires forms to be completed, and status documents such as passports to be submitted for each of you. Finally, the non-Canadian has to have a medical exam, and a criminal record check (see below).

Does my Partner have to take a Medical?

Yes, a medical examination of your partner and their children by a physician on the CIC world wide list of physicians is required. But your partner can be excluded on medical grounds *only* if he or she has an illness that will threaten public health (such as TB, for example). Unlike applicants for permanent residence in most other categories, your partner cannot be refused permanent residence simply because she has an illness which is expensive to treat. This is important if your partner is HIV+ or has another expensive-to-treat medical condition.

Does my Partner Need a Criminal Record Check?

Yes, for every jurisdiction he or she has lived in for more than 6 months since he or she was 18!

What Happens if my Partner has a Criminal Record?

Depending on how old the record is, and the seriousness of the offence, it may be necessary to make an 'application for rehabilitation' in conjunction with the application for permanent residence. If the criminal record is recent and/or serious, the applicant may be refused.

A lawyer can help you assess whether or not your partner will be criminally inadmissible. The process involves comparing the non-Canadian offence with the Canadian criminal code, to see what the equivalent punishment would be in Canada. Based on the equivalent Canadian offence, there is a formula to determine whether the person

- will be eligible to immigrate notwithstanding their conviction;
- will need to make an application for rehabilitation to be eligible to immigrate or
- will be refused for criminal inadmissibility.

If an application for rehabilitation is required, the process involves explaining the circumstances of the offence and demonstrating that your partner is unlikely to commit another offence in the future.

How Long does the Process Take?

Within a week of your interview with Barbara Findlay, you will get our retainer agreement, your questionnaires, criminal record check instructions, list of documents, and a sample letter of support.

You complete the questionnaires as soon as possible, and return them to us. That enables us to prepare the forms, nailing down any details with you as we go

through them. Because of the detailed questions about your partner's activities over the past several years, and their addresses, it can take a while to complete those questionnaires.

At the same time, you will be applying for your criminal record checks, because they are often the slowest documents to arrive. Say all of that takes a couple of weeks.

Next we will prepare the forms. At the same time as we are doing that, you will be gathering your documents. It will take us about two weeks to do a draft of the forms for your review.

By then, hopefully you will have your documents assembled. You bring them to us, and we will review them to make sure that they are accurate and complete.

Gathering the documents and answering the questionnaires is onerous. But if it is not done in a timely way, Immigration may change forms and work requires duplication. So we allow three months for clients to do their end of the work on the file.

When the forms are done, you will review them to make sure they are perfect.

Once the forms are perfect, the documents complete, and your personal letters to Immigration written, we will write a submission outlining the legal basis of your claim to sponsor your partner. That takes another couple of weeks.

If an application sailed through, with no missing documents or inconsistent dates or puzzling separations to account for, and the clients turned around their questionnaires in two weeks and all their documents in another two, that application might be out the door within two months.

More typically, there is a delay in one stage or another: a translation is slow coming back, people who have agreed to write letters of support still intend to do so but haven't done yet, criminal record checks don't come back for a very long time, or life gets in the way of the partners being able to spend most of their time gathering information or filling out forms or responding to questions from us. The average time that it takes for an application to be completed is about three months.

After that, processing by Immigration is usually between 8 and 24 months. Out of Canada applications generally take less time than in-Canada ones (you can be living in Canada and submit outside). But the non Canadian cannot get a work permit while the application is pending if it is submitted outside Canada.

However, **we cannot guarantee** how long Immigration will take; in fact some visa offices can take much longer. You can get some idea of the relatively speed/slowness of the various offices by looking on the Immigration Canada (www.cic.gc.ca) on the red bars on the right side of the screen: "*I Need To*"..., click on "*Check application processing times*".

The application is assessed in two stages: first, the eligibility of the sponsor to make the application is determined. That usually takes about three months. Then the application is forwarded to the visa office that will be processing the application, who will examine the eligibility of the sponsored person, and determine whether the relationship is genuine.

Immigration sends us a letter acknowledging receipt of your application, and telling us what your file number is. That letter typically arrives approximately within a couple of months after we send in the application. After that you can monitor the progress of your application online.

Can the Non-Canadian Stay in Canada while the Application is being Processed?

Yes, the non-Canadian can stay in Canada while the application for permanent residence is being processed. If you apply for PR in Canada, there is a policy directive from Immigration that even if a partner is here without status, he or she will be permitted to acquire permanent residence. If you are applying outside Canada, you should apply to extend your visitor visa.

Can the Non-Canadian Work in Canada while the Application is being Processed?

Yes, IF the non-Canadian is 'legal' in Canada when the application is processed – because they have a student visa, a work permit, or a visitor visa. If the non-Canadian comes from a country for which no visa is required to enter Canada, they can leave and reenter Canada; at that point they are deemed to have a valid visitor visa for six months.

If the non-Canadian is 'legal' in Canada they can apply for a work permit along with the application for permanent residence. Processing of the work permit takes about four months.

A non-Canadian from a country that requires a visa should talk to a lawyer.

What happens after my Partner gets Permanent Residence?

You are responsible financially for your partner for three years after permanent residence is granted. If your partner goes on social assistance during that time, you will be expected to repay the entire amount. This can amount to tens of thousands of dollars. The government will **not** tell you if your partner applies for social assistance.

In addition to that general requirement, there is a rule in effect as of November 1, 2012. If when you applied for a spousal sponsorship (a) you had been living together for less than two years AND (b) you do not have children together, then

you must live together in Canada for two years after you arrive here. If you do not live together for that two years, the sponsored partner may lose her or his permanent residence.

NOTE that this DOES NOT apply to partners who are being abused. If that is your situation, do two things immediately: go to your doctor, and explain what is happening. Then go to a lawyer to advise CIC of the situation. In that case you will not be required to stay with your abusive partner in order to keep your permanent residence.

Once your partner gets permanent residence, he or she has all the rights and responsibilities of a Canadian citizen (including the right to work at any job, and live anywhere in Canada), with a few exceptions.

A permanent resident

- cannot vote or run for office
- must be physically in Canada 40% of every 5 year period
- must renew their permanent residence every 5 years

After a permanent resident has been in Canada for a total of 365 x 3 days of the previous four years, he or she can apply for Canadian citizenship. The days don't have to be continuous.

Can Your Office Help with the Application?

Yes. And since 1992 the acceptance rate in this office for same sex spousal applications is 100%.

How Does your Office Work on Cases like this?

If you are in Vancouver you will begin with an in-person interview with barbara findlay. If you are not in Vancouver, barbara findlay will speak with you (preferably with both of you) by telephone. The purpose of that conversation is for you to understand what is involved in a permanent resident spousal application, and to evaluate whether you are eligible to make the application.

First we will send you a 'retainer agreement' (a contract between the two of you, and our office) outlining the services we will provide and the cost to you.

Next, we will forward

1. a list of documents you will need to gather, including suggestions about what kinds of documents will demonstrate your relationship
2. a questionnaire for each of you, the answers to which will enable us to complete the forms which are required

3. information about how to get a criminal record check and a medical exam, and when to get them
4. sample letters from friends and family attesting to your relationship
5. a binder organized to help you keep track of what you are gathering and what you have sent to us

You will return the questionnaires so we can begin to work on the forms. When your documents are gathered, we will meet to go over the documents, to have you sign the forms we have prepared, and to review the submission we have written on your behalf. Then the application is sent to the appropriate office for processing.

What if the Application is Refused?

Provided that we have submitted the application outside of Canada, there is an oral appeal available through the Immigration Appeal Division. If the application is submitted inside Canada and is refused, there is no appeal.

Who Works on the File?

barbara findlay and her legal assistant will work on your file together. barbara findlay is an immigration lawyer.

The information in this booklet is current to May 2015

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