

Family Law and Immigration: Victims of Marriage Fraud May Still Be on the Hook for Spousal Support

A Canadian who has been duped into sponsoring a spouse or simply has their marriage end within two years of their spouse's arrival in Canada may still be on the hook for spousal support. Changes to spousal sponsorship regulations to assist Canadian victims of marriages of convenience may not protect a duped spouse from a spousal support claim despite the acknowledgement from immigration that marriage fraud is a serious problem: "There are countless cases of marriage fraud across the country," stated Citizenship, Immigration and Multiculturalism Minister Jason Kenney when the new regulations were introduced. "I have consulted widely with Canadians, and especially with victims of marriage fraud, who have told me clearly that we must take action to stop this abuse of our immigration system. Sometimes the sponsor in Canada is being duped and sometimes it's a commercial transaction. Implementing a two-year conditional permanent residence period will help deter marriage fraud, prevent the callous victimization of innocent Canadians and help us put an end to these scams."

Under the new immigration regulations, permanent residency for applications received after October 25, 2012 is conditional upon the spouses cohabiting for at least two years after permanent residency is obtained. If the condition is breached, the permanent residency could be revoked except where the sponsored spouse has been subjected to abuse or neglect, or the sponsor dies while the parties are still living together or there exist humanitarian and compassionate grounds based on the parties having a child together. However,

revoking permanent residency is not automatic. According to Citizenship and Immigration's Operational Bulletin dated June 11, 2014, the process as to whether or not the permanent residency could be revoked will involve several steps and the involvement of various layers of authority of our immigration system. For example:

- once a tip of non-compliance is received by Canada Border Services Agency or Border Watchline, officers are to review and analyze the information received and then refer the tip for further investigation where appropriate,
- Citizenship and Immigration Canada (CIC) may then request evidence of compliance,
- if after the evidence is received CIC believes that there has not been compliance and none of the exceptions apply, then
- an inadmissibility report may be written on the basis of non-compliance,
- the inadmissibility report could be referred to the Immigration Division of the Immigration Refugee Board (IRB) for a hearing and if applicable, an issuance of a removal order if the board makes that decision,
- if a removal order is made the sponsored person may appeal to the Immigration Appeal Division.

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The process can make anybody's head spin and can be lengthy. Navigating it may take months or even longer and the Canadian spouse can be often left in the dark. Due to Canada's privacy laws, the sponsor is not able to access any information about the status of the process without the spouse's written consent or a court order. In the meantime, a Canadian sponsor that may in certain cases also be the victim of sponsorship fraud is still held subject to their sponsorship undertaking to provide for the sponsored spouse if they are not self-supporting. In fact, CIC has made it clear that "if the relationship breaks down, the sponsor remains financially responsible until the end of the three year undertaking period, irrespective of the cause of the breakdown". The undertaking mandates that the sponsor provide sufficient funds to cover food shelter, personal requirements for spouse to live *in* Canada.

Family courts have considered the undertaking as "highly relevant" on spousal support cases. What is worse, in the past, courts have ordered higher amounts of support that depart from the Spousal Advisory Guidelines in situations where the support recipient has been sponsored. For example, in 2005 a case involving a 15 month marriage, an Ontario judge ordered Ranjit Narayanan, a man who had sponsored his wife from India to pay Lalita Padathe, 31, monthly spousal support of \$3,200 until she completed her full-time co-op studies for an undergraduate business degree at Toronto's Ryerson University. Whether family courts are willing to consider the new changes in immigration regulations as highly relevant for spousal support purposes and take into account marriage fraud remains to be seen. Even assuming that a judge may be sympathetic to the sponsor, family court has no jurisdiction to "undo" a sponsorship undertaking.

The changes in the immigration regulations to protect sponsors who may be victims of marriage fraud in Canada are a good start in principle but appear to still have a long way to go.

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CFSP Members Share Highlights from the 15th Annual Forum of the International Academy of Collaborative Professionals in Vancouver October 23–26, 2014

This was my first international conference with collaborative colleagues. I met people from all across Canada, from Singapore, Hong Kong, New Zealand, Italy, and from many states of the US. Everyone was working to increase their knowledge, skills and ability in order to bring the very best back to their communities. At the beginning of the conference we were welcomed by Musqueam Elder Shane Pointe who gave us the Salish word for what we are and translated it for us. We are "Good Medicine" and Peacemakers. That is truly what we are all aspiring to be, peacemakers who help families resolve disputes respectfully and with a result far more satisfying than either party could have imagined in the beginning.

The conference was called "The Art of Holding Hope, Using Collaborative Skills to Open doors", and that is what was accomplished. We all benefited from the having the chance to refresh our skills in active non-judgmental communication and in building effective collaborative teams that create

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safety for the parties and consider all of their and their children's needs. As a team, collaborative professionals have the skills to support a family in making decisions that will work for them now and in the future. We renewed our strengths and skills in order to hold out hope to families that they can create a future that they will be proud of.

- Angela Atwood-Brewka, lawyer, has been practicing since 1990 in the areas of family law, personal injury and sexual assaults. She has been a member of the Collaborative Family Separation Professionals in Victoria since 2011.

I have attended four IACP conferences over the past twelve years. My impression from this conference is that the process has truly matured; that the participants have grown introspective in an effort to improve the client's experience and that the amazing level of energy that initially grew the process remains and contributes to improve the process and therefore the outcomes for our clients. The introduction of advanced courses for experienced practitioners made the entire weekend feel like a new and more enriching experience. I returned to the office with helpful new perspectives on conflict and on how to bring our teamwork to the next level while keeping the process affordable.

- Marge Thompson focuses her practice on collaborative family law processes working as part of a team with coaches, child specialists and financial specialists whether acting as a Collaborative family lawyer or as an accredited Family Law Mediator. As an accredited Family Law Arbitrator, she often acts as a Mediator-Arbitrator.

Along with hundreds of delegates from some 26 countries around the world, members of the Victoria Collaborative Family Separation Professionals were present to recharge our batteries and grow our skills. The international organization has some 5000 members and over 600 came to Vancouver for these 4 days of workshops and lectures.

We learned that this approach to dispute resolution is enjoying growing popularity all over the world. Workshops focussed on how to help our clients achieve success in their collaborative cases whether they are having a "grey divorce" (for older clients), or a same sex couple separation, or are working out the details of a pre-nuptial or cohabitation agreement. We were taught how the collaborative approach can be specifically tailored to successfully meet all relationship needs.

- Jennifer Cooper is a lawyer, mediator and arbitrator; and is a member of the Collaborative Family Separation Professionals in Victoria.

Interested in finding out more about Collaborative Family Law? Whether you are a potential client, a professional, a student or an interested community member, you can contact us through our website: info@collaborativefamilylawgroup.com. If you are in the process of separating, you can also initiate a collaborative law process through contact with any one of our team professionals. You may wish to begin by meeting with one of our divorce coaches, financial specialists, or child specialists, or see one of our collaborative lawyers. It is not necessary to retain a lawyer immediately in order to start to talk about your situation and the kind of information and support you and your family will need. We all work as a team, and regardless of which professional you choose to consult in the beginning, we will assist you with bringing your professional team together to meet your family's unique needs.